



**Submission to
Parliament of Victoria Law Reform Committee Inquiry into
Access to and Interaction with the Justice System by
People with an Intellectual Disability and Their Families and Carers**

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Submitted by:

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Domestic Violence Victoria
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Introduction

This submission is the joint work of a number of services and peak bodies concerned with the issues affecting women with disabilities within the Victorian justice system:

Women with Disabilities Victoria is Victoria's peak body for women with disabilities. Members and staff represent the diversity of women with disabilities, and supports women with disabilities to achieve their rights through community education, peer support, research and systemic advocacy. The organisation speaks for the human rights of women with disabilities on many of Victoria's key violence prevention and violence response committees.

Domestic Violence Victoria (DVPic) is the peak body for over fifty family/domestic violence services in Victoria that provide support to women and children to live free from violence. The central tenet of DVPic is the safety and best interests of women and children and DVPic provides leadership to change and enhance systems that prevent and respond to family/domestic violence.

Federation of Community Legal Centres Victoria is the peak body for 49 Victorian Community Legal Centres (CLCs). CLCs are independent community organisations that provide free legal advice, information, assistance, representation and community legal education to more than 100,000 Victorians each year. CLC work against family violence includes the provision of duty lawyer services in Magistrates' Courts for victims of family violence. The Federation also conducts strategic research, casework, policy development and social and law reform activities.

Women's Legal Service Victoria & Family Law Legal Service (WLSV) has been providing free legal advice, information, representation and legal education to women for over 30 years. WLSV is the only specialist legal service in Victoria for women experiencing relationship breakdown and violence. WLSV is committed to improving access to justice for women and protecting the rights of those women who are least able to protect themselves.

Maroondah Halfway House/Brenda House is a Regional and State Wide organisation providing an emergency, crisis and transitional accommodation and support response to women and children who have experienced family violence. The organisation's major objective is to ensure the provision of a quality and integrated service response to clients that offers a range of options that promote both safety and healing.¹

¹ We gratefully acknowledge additional contributions to the submission from Dr Lucy Healey and Joanie Smith, University of Melbourne with the Safety Accountability in Families: Evidence and Research (SAFER) Team. This research is funded by an Australian Research Council Linkage Grant. It involves researchers from the University of Melbourne, Monash University in partnership with the Victorian Government Departments of Planning and Community Development, Human Services and Justice and Victoria Police.

We welcome the opportunity to comment on access to justice for Victorians with a cognitive disability. For too long the issues concerning access to justice for people with disabilities, particularly people with cognitive disabilities, have not been considered in a comprehensive and systematic manner. We hope that the Inquiry will address this failure in the justice system.

We have collaborated on this submission out of our concern for the safety, protection and human rights of women with disabilities and other disadvantaged groups. Our focus is the need to provide a safe path of access to justice for women with cognitive disabilities who experience violence and abuse. This violence and abuse is perpetrated in a range of settings, by family members, by both paid and unpaid carers and by other service providers. Many victims currently do not have access to justice to effectively prevent or escape violence.

The submission also addresses the issues affecting women with disabilities as parents in relation to the child protection system.

Process for development of this submission

The submission is based on a literature review, consultations with women with cognitive disabilities and other anecdotal evidence from members of Women with Disabilities Victoria and relevant service providers in the family violence, sexual assault and disability sectors.

Definitions and parameters of this submission

We note that the focus of this Inquiry is people with intellectual disability and how the findings of this Inquiry might 'apply to people with a disability other than an intellectual disability, for example those with an acquired brain injury or neurological condition leading to cognitive disability'.

The contributors to this submission share the view that with regard to the law, legal assistance and law-related processes, people with cognitive disabilities share a common experience of systemic discrimination as a result of their devalued place in society and the systematic failure of the justice system to address their human rights.²

We use the term 'disability' to mean that which 'results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.³ This definition highlights the fact that disability is a fluid rather than fixed experience and as a society we have the capacity to ameliorate the effects of impairment by removing barriers to effective participation.

² For more on the meaning of systemic discrimination on the basis of disability, see Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008), Article 2.

³ Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008), Preamble (e).

In this submission, ‘cognitive disability’ refers to intellectual disability, mental illness, acquired brain injury, dementia and other neurological impairment affecting cognitive processes.

People with speech impairment are also severely disadvantaged in regard to the justice system. Our submission therefore focuses on both women with cognitive disability and women with speech impairment. These groups are referred to as ‘women with disabilities’ throughout the submission unless otherwise noted. While our concern is specifically women with disabilities, in many instances our remarks are relevant to the needs of all people with disabilities.

In the submission, ‘support services’ refers to

- disability support services including personal care, interpreters, communication aides, accommodation, case management and other client services;
- support services for victim/survivors of sexual assault;
- support through the family violence services system such as outreach, accommodation, counselling and referral;
- victim support services and compensation; and
- court support.

The Victorian Government’s obligations concerning access to justice for women with disabilities

In responding to the Inquiry we are guided by the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter). Under the Charter, legislation must be interpreted and enacted consistent with human rights.⁴ Public authorities must also act compatibly with human rights and give proper consideration to human rights in any decision-making process.⁵

Human rights relevant to family violence and abuse against women with disabilities include express provisions in the Charter, such as the right to life,⁶ the right to freedom from torture and inhuman and degrading treatment,⁷ and the right to respect for private and family life.⁸

The State of Victoria is also bound via the Charter and via its membership of Australia’s federal system to a number of international human rights instruments signed by Australia. The Convention on the Rights of Persons with Disabilities (CRPD), ratified by Australia in 2008, recognises the moral and legal imperative in securing access to justice for people with disabilities. Article 13 of the Convention requires States to:

4 *Charter of Human Rights and Responsibilities Act 2006 (Vic)* ss 28-37.

5 *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 38.

6 *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 9.

7 *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 10.

8 *Charter of Human Rights and Responsibilities Act 2006 (Vic)* ss 13 & 17.

‘ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.’⁹

The CRPD recognises that ‘women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation’.¹⁰ Articles 12 (right to equal recognition before the law), 13 (effective access to justice), 16 (freedom from exploitation, violence and abuse) and 31 (State obligations to collect appropriate statistics and data) are some of the key State obligations relevant to reforming the current justice system in Victoria in order to redress the current inequity.

Other international instruments address further aspects of violence against women, such as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Declaration on the Elimination of Violence Against Women.¹¹

Women’s right to freedom from violence, including domestic/family violence, is accepted as an aspect of the right of women to be free from discrimination, under Article 1 of CEDAW.¹² Violence against women is both a fundamental rights violation and a form of discrimination.¹³

Violence against women can also be fuelled by other forms of discrimination and marginalisation: characteristics such as disability; sexual orientation; age; coming from a culturally or linguistically diverse background; or being Aboriginal or Torres Strait Islander, homeless, a refugee, a migrant, or in prison make women particularly vulnerable to violence.

Much violence against women has a seemingly epidemic and endemic nature due to these dynamics of *intersectionality* – the fact that any woman also has other identities and is subject to varying social processes due to her membership of various social communities. These identities and memberships are not simply additive, but instead combine in complex ways to shape her experience of violence - and therefore the effective Government responses required.¹⁴

9 Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008), art 13.

10 Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008), Preamble (q).

11 Convention on the Elimination of all Forms of Discrimination Against Women, opened for signature 18 December 1979, [1983] ATS 9 (entered into force 27 August 1983); Declaration on the Elimination of Violence against Women, GA res. 48/104, 48 UN GAOR Supp. (No. 49) 217, UN Doc A/48/49 (1993).

12 UN Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 19 (11th session, 1992); UN Declaration on the Elimination of Violence Against Women, UN Doc A/RES/48/104; United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences* (2009); *Kontrova v Slovakia* [2007] ECHR 419 (31 May 2007).

13 United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences* (2009); CEDAW General Recommendation No. 19 (11th session, 1992).

14 Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, UN Doc A/HRC/17/26 (2011).

This means that failures in protection are often compounded when the victim of violence is a member of a group, such as people with cognitive disabilities, that suffers additional disadvantage and discrimination.

Under international human rights law, Australia has an obligation to respect, protect and fulfill the human rights in the treaties to which it is a signatory. 'Respect' requires Australia to refrain from interfering directly or indirectly with human rights, while 'protect' includes the obligation to take measures to prevent third parties from interfering with human rights. Australia therefore has a duty 'to prevent, investigate, punish and provide compensation for all acts of [violence against women] wherever they occur.'¹⁵

The obligation to 'fulfill' contains further obligations to facilitate, provide and promote human rights, and thus requires Australia to adopt appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of human rights.¹⁶

Courts, police, social services, and any other agencies designated by Government to have responsibility, are under a duty to ensure that all appropriate, reasonable steps are taken to protect individuals from threats to their life, threats of inhuman and degrading treatment or threats to their moral and physical integrity. Governments cannot delegate their ultimate responsibility to exercise this due diligence.¹⁷

The Victorian Government is therefore required to not only make legal avenues accessible for victims, but to take positive action – action necessary to protect the rights of all persons to be free from violence from other individuals.¹⁸ The focus of assessment of whether there has been sufficient due diligence is 'analysis of results and effectiveness'.¹⁹ For example, in reinforcing the capacities and powers of the justice system to hold perpetrators of violence against women to account, Victoria must implement programs that gather data on violence against women, provide legal information to victims, and encourage victims to enforce their rights.²⁰

While as yet there has been little Victorian or Australian litigation concerning freedom from family violence as a human right, law is emerging from international forums. This jurisprudence elaborates on the principle that States have an obligation to

15 United Nations Special Rapporteur on Violence against Women, *Its Causes and Consequences*, 15 Years of the United Nations Special Rapporteur on Violence against Women, *Its Causes and Consequences* (2009) 25; CEDAW General Recommendation No. 19 (11th session, 1992) para 9.

16 Committee on Economic, Social and Cultural Rights, General Comment 14, The Right to the Highest Attainable Standard of Health, UN Doc E/C 12/2000/4 (2000), para 33. See also Human Rights Law Resource Centre, *A Human Rights Act for All Australians*, paras 46-48, <http://www.hrlrc.org.au/files/hrlrc-submission-a-human-rights-act-for-australia.pdf>.

17 UN Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 19 (11th session, 1992); *Velasquez-Rodriguez v Honduras*, judgment of 29 July, 1988, Inter-Am. Ct. H.R. (ser. C) No. 4, para 172; *Maria da Penha v Brazil*, Case 12.051, Report No. 54/01, Inter-Am. C>H.R., Annual Report 2000, OEA/Ser.L/V.II.111 Doc.20 rev. (2000).

18 Inter-American Commission on Human Rights (IACHR), Report on the Merits No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) and Others (United States)*, July 21, 2011, especially paras 122-127.

19 Special Rapporteur on Violence Against Women, *Its Causes and Consequences*, *Summary Paper on the Due Diligence Standard for Violence Against Women* (2011) <http://www2.ohchr.org/english/issues/women/rapporteur/vaw.htm> .

20 Special Rapporteur on Violence Against Women, *Its Causes and Consequences*, *Summary Paper on the Due Diligence Standard for Violence Against Women* (2011) <http://www2.ohchr.org/english/issues/women/rapporteur/vaw.htm>.

protect human rights when these are threatened by the actions of other private individuals.

For example, *AT v Hungary* concerned a complaint by Ms AT that the State failed to take sufficient action to protect her from severe domestic violence by her common law husband, LF.²¹ One of Ms AT's children had a severe disability and she was unable to access a suitably equipped domestic violence shelter. Hungary did not have a protection order system, so Ms AT was forced to try other methods to keep LF away from the apartment where the family lived. These strategies were unsuccessful. Despite two ongoing prosecutions against LF for his violence against AT, he was not detained at any time.

The UN Committee on the Elimination of All Forms of Discrimination Against Women upheld the complaint and confirmed that Hungary (and therefore other signatories to CEDAW like Australia) was obliged to take positive steps to protect Ms AT.²²

What are the main issues?

The major disadvantages experienced by women with disabilities with regard to the justice system that are addressed in this paper are:

- The devalued place of women with disabilities in society. This means that women are systematically excluded from the resources, information and supports that keep people safe from victimisation and discrimination.
- The resulting perception that women with disabilities are 'vulnerable' and easily exploited, leading to targeting by perpetrators of violence.
- The failure of victim support services and the justice system to be relevant to the needs of women with disabilities.

Without understanding and addressing the underlying causes, this denial of access to the justice system will not be remedied. Alongside changes to legislation and legal processes, fundamental attitudes must be challenged.

The devalued place of women with disabilities in society

Our social values and attitudes are such that women with disabilities are culturally devalued and experience strongly negative attitudes and assumptions about the capacity, reliability, sexuality and reasoning of both women and people with disabilities.

In a study by Saxton, participants explained the relationship they saw between societal attitudes towards disabled people and abuse or neglect:

²¹ *AT v Hungary*, Communication No. 2/2003 UN Doc CEDAW/A/60/38 (Part I)/2003 (2005).

²² *AT v Hungary*, Communication No. 2/2003 UN Doc CEDAW/A/60/38 (Part I)/2003 (2005) para 9.3.

'People that are devalued as cripples and burdens and inferior and defective will be abused.'²³

Justice and Justice found that

'disability is a risk factor in cultures that devalue people with disabilities, but not in cultures that place a higher value on them.'²⁴

The impact of devaluation: perception that women with disabilities are 'vulnerable' and easily exploited

Cultural devaluation of women and persons with disabilities, often compounded by age-related devaluation, overprotection, and internalised societal expectations, all contribute to significantly heightened vulnerability to violence and exploitation for women with disabilities. Women with disabilities 'are often perceived to be powerless and physically helpless.'²⁵ This perception reinforces negative stereotypes of women with disabilities and renders them vulnerable to violence.

Research indicates that women with disabilities are more likely to experience abuse and violence than others.²⁶ Women with disabilities also:

- experience violence in similar ways to other women as well as experiencing violence specifically related to their disability;
- experience prolonged, severe, frequent violence;
- experience violence at the hands of a greater number of perpetrators;
- are not believed when they report experiences of violence;
- think they will not be believed and so do not report experiences of violence.²⁷

Women with disabilities live in many diverse domestic and residential arrangements (as well as accounting for a substantial proportion of those living homeless). These include private residential homes in which an intimate partner or another carer (paid or voluntary) provides personal assistance; situations in which unrelated people may be living together in intimate (not necessarily sexual), family and/or care arrangements; and other residential and care settings, such as aged care facilities, psychiatric and mental health institutions, and other group homes or activity day centres.²⁸

Within any of these settings there is the potential for carers, whether intimate partners or personal care assistants, to be perpetrators of violence against women

23 Saxton, Marsha, Curry, Mary, Powers, Laurie, Maley, Susan, Eckels, Karyl, & Gross, Jacqueline (2001) 'Bring My Scooter so I can Leave You', *Violence Against Women* 7(4): 393-417.

24 Sobsey, Dick & Doe, Tanis (1991) 'Patterns of Sexual Abuse and Assault', *Sexuality and Disability* 9(3): 243-259.

25 Howland CA, Rintala DH. Dating behaviors of women with physical disabilities. *Sex Disabil* 2001; 19(1):41-70.

26 Brownridge, D.A. (2006) 'Partner Violence Against Women with Disabilities: Prevalence, risk and explanations', *Violence Against Women* 12 (9) 805-822.

27 Healey, L., Howe, K., Humphreys, C., Jennings, C., Julian, F., Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria, 2008

<http://www.wdv.org.au/publications.htm#bte>

²⁸ Hague, G., Thiara, R. and Mullender, A. 'Disabled Women, Domestic Violence and Social Care: The Risk of Isolation, Vulnerability and Neglect', *British Journal of Social Work*, 41, 1: 148-165 2011

with disabilities.²⁹ Many people may be involved in caring activities which involve intimate touching and contact. Women with disabilities can be easy targets of violence from a diverse range of potential known perpetrators which can include an intimate partner, relatives, paid or unpaid caregivers, co-patients or co-residents, residential staff, or other service providers, such as transport drivers.

Assumptions and stereotypes about carers depict them as generous, hardworking people taking on 'burdens of care', doing difficult work and motivated by the best interests of the people they care for. While this may often be true, it does not reflect the reality of violence and abuse that is perpetrated against people with disabilities by a person responsible for their care.

'It took me ten years to get the strength to leave him. I left with nothing. I couldn't bear the thought of going through the Court system to try and get my share of our assets. I know that I wouldn't have a hope against him – after all, he was the "successful Saint" and I was the "disabled mad burden".'³⁰

The higher risk of violence against women with disabilities highlights the imperative to address the inadequacies of the justice system that keep women exposed to violence and exploitation.

The failure of victim support services and the criminal justice system to be relevant to the needs of women with disabilities

No integrated response

With regard to people with disabilities, clearly the current system is seriously flawed in its capacity to provide protection from violence. The factors described above impact on the credibility of people with disabilities when they make complaints about violence or seek legal redress. They therefore depend on other carers or family to support their claims. This again renders women with disabilities vulnerable to carer exploitation.

Despite the research evidence that people with disabilities, particularly women with disabilities, experience violence at greater rates than other Victorians, there is no effective integrated justice and service response.

For example, depending on their specific disability, an individual's daily life may be shaped by at least one of the *Disability Act 2006* (Vic), the *Mental Health Act 1986* (Vic), and the *Guardianship and Administration Act 1986* (Vic). These legislative regimes lack consistent, clear and accessible pathways for effectively responding to violence and abuse. This runs counter to the purpose of all three regimes which is to protect the persons who fall within the legislation.

²⁹ Nosek, M., Foley, C., Hughes, R., & Howland, C. (2001) 'Vulnerabilities for Abuse among Women with Disabilities', *Sexuality and Disability* 19 (3): 177-89.

³⁰ WWDA "A Life Like Mine: narratives of women with disabilities who experience violence" (2007).

At present, victims of violence have different experiences attempting to access justice, depending on, for example, whether they have been abused in the mental health system, by private perpetrators, or in residential care. The result for many people is that the violence or abuse is treated as somehow a lesser violation, or the victim or her/his advocate must follow a tortuous path to attempt to obtain protection and redress. As this submission outlines, even where a victim is able to access the criminal justice system via the police and possibly the courts, women with disabilities are much less likely to be believed and will probably not be regarded as having a potentially successful case at trial.

As recommended by the report from the Office of the Public Advocate Victoria, *Violence Against People With Cognitive Impairments*,³¹ there is an urgent need for clear pathways for complaints. Effective avenues must be combined with access to advocates for victims, and with community legal education so that people with disabilities are aware of their rights to be protected from violence and of where they can seek effective help – and are confident that the violence will be taken seriously and protection and reparation provided.

The development of an integrated response to abuse and violence against people with disabilities is consistent with existing Victorian and Commonwealth policy directions concerning family violence.³² At both State and federal level, community services and governments have identified a need to combat a ‘silo’ approach to issues of violence. For example, the Australian Law Reform Commission and New South Wales Law Reform Commission Inquiry into Family Violence found that:

‘[t]he fragmentation of the [legal] system has also led to a fragmentation of practice. A number of stakeholders in this Inquiry commented that the different parts of the legal framework dealing with issues of family violence operated in “silos” and that this was the key problem in the system. Although the laws utilised within each “silo” might be perceived to operate effectively, or to require minor refinement and change, the problems faced by victims of violence required engagement with several different parts of the system. Consequently, . . . these people could be referred from court to court, and agency to agency, with the risk that they may fall into the gaps in the system and not obtain the legal solutions – and the protection – that they require.’³³

The Final Report of the Inquiry therefore emphasises the principles of seamlessness, accessibility, fairness and effectiveness as underpinning the necessary reforms.³⁴

With respect to violence and abuse against people with disabilities, it should not matter what part of the system or what type of violence the victim originally

31 Office of the Public Advocate Victoria, *Violence Against People With Cognitive Impairments* (August 2010).
32 Commonwealth of Australia, *National Plan to Reduce Violence against Women and their Children* (2011); Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response* (October 2010). The latter report singles out the Victorian model as an example of evolving best practice direction.

33 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response Summary Report* (October 2010) 12-13.

34 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response* (October 2010), Recommendations 16.1-16.13, 17.1-17.6, 30.1-30.8, 30.14-30.19.

experiences - there should be 'no wrong door' and instead all victims should be able to access a 'one stop shop'.³⁵

People's knowledge of their rights

Violence against women

'Due to the complex nature of the justice system it is vital that processes and information is given in a way that can be understood. Without appropriate support, this information is not relayed in a way that is easy to understand.'

- Family violence Case Manager

Women with disabilities are at a greater disadvantage in responding to violence because women who live with disability often lack education on how to recognise violence and where to go for help.³⁶ Education about what constitutes violence does not routinely occur in Victorian disability settings, rendering women at a loss to both recognise abusive behaviour as such or to take action to prevent its recurrence.

The introduction of Victorian training concerning Common Risk Assessment of family violence has sought to skill disability workers in recognising family violence, and is a critical initiative that must be sustained and expanded across the disability sector to day services, community residential units, employment services and case managers.

A peer education program, *Living Safer Sexual Lives*, has met with success in training people with intellectual disability to provide education on appropriate behaviour, sexual health and respectful relationships. Such programs are critical in complementing print and electronic information, as these do not reach many people with a cognitive disability in institutions and disability service settings.

Tell Someone, a DVD and website explaining violence against people with disabilities, was launched in Victoria this year and is an excellent resource for women with cognitive disabilities.

Programs such as *Living Safer Sexual Lives* and *Tell Someone* must be promoted and supported by the disability service system. However there has not been any systematic promotion of these resources through disability services and in fact in some instance there has been active resistance to the provision of these resources. Further, as noted above the disability services system cannot be relied upon to respond appropriately to women reporting violence. Without improved training and policies within the disability system, the advice to 'tell someone' puts people with disabilities at risk of being ignored and further violated.

The Victorian Government has a responsibility under the CRPD to make this information available in appropriate formats to all people with disabilities.

³⁵ Commonwealth of Australia, *National Plan to Reduce Violence against Women and their Children* (2011); Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response* (October 2010).

³⁶ Jennings, C. (2003) *Triple Disadvantage: Out of sight, Out of mind*, Domestic Violence and Incest Resource Centre, Melbourne.

Child protection

Women with disabilities who have involvement with the child protection system are often not informed of the process. Despite Child Protection Services' stated policy of reunification with the family, the comments below from a woman with an intellectual disability whose children were removed indicate the lack of knowledge she had about her rights and the challenges of negotiating the Child Protection system:

'I found it very hard to know how to get help with this. . .Child Protection often don't return my calls when they say they will – this happens very often – they don't keep me informed – this often means that I am not aware of important information that might be held against me. . .Child Protection just took my child from respite without discussing with me.'³⁷

This woman believed that rather than assisting her to parent her son effectively, Child Protection Services were biased against her because of her disability and assumed that she was unable to parent:

'I felt that information was being used against me ie I didn't make the milk formula correctly and Child Protection used that information to take my son off me – I believe anyone can make a simple mistake like that. . .My child was removed, returned, removed, returned.'³⁸

She found the system confusing and unhelpful:

'I have a different Child Protection worker for my son and daughters – they are from different offices – this is very difficult for me. . .The solicitor I had was telling me to do what Child Protection wanted me to do – I had to change my solicitor and now I am getting good advice.'³⁹

Inconsistency between Child Protection Services as a statutory agency and the community-based family support services further complicated her understanding of the child protection system.

'It needs to be one person to deal with – I get told "Anglicare do that – or another service is responsible for that – talk to GippsCare about that" - I get so confused.'⁴⁰

These comments are mirrored by the comments of women from other regions such as those participating in the Mpower parent support program in the South Western region.⁴¹

³⁷ Woman with an intellectual disability interviewed in a focus group as part of the consultation for this submission, September 2011.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ See submission to the Inquiry from Angela Alexander, Mpower Inc.

Being able to get appropriate services and supports

‘Women with a disability need to know who they can go to for help’⁴²

Women consulted for this submission talked of not knowing about what support services and legal advocacy existed. Many did not know of the existence of community legal services, Centres Against Sexual Assault, family violence services or other victim support services. This was despite all of the women consulted being in contact with disability services.

Disability Services

One of the most commonly used services for people with a cognitive disability are specialist disability services that could potentially provide a critical link to appropriate support for victims of crime. Sadly the very support services designed to assist people with disabilities may be where women are targeted by perpetrators.

While little research has been undertaken into experiences of abuse within the Australian context, Women with Disabilities Victoria receives anecdotal evidence of abuse by disability workers. In a US study, participants described personal care providers’

‘threats of withholding assistance, physically rough treatment, inappropriate touch during hygiene care, refusal to honor women’s choices and preferences, and stealing money and property.’⁴³

In 2010 the Office of the Public Advocate undertook research in Victoria to explore the pattern of violence against its represented persons. It found:

‘the response of service providers, notably from the disability and family violence sectors, is not well co-ordinated and is based on different understandings of violence and disability. The response of Victoria Police and the Justice system also requires improvement. Few examples could be found of effective cross-sectoral collaboration that works in the interests of clients. When acts of violence are not responded to appropriately, the report shows that further violence is likely to be perpetrated against the person and it is less likely that the person will report it. On the other hand, in those cases where appropriate action was taken, clients benefited significantly.’⁴⁴

Ignoring violence and abuse is not uncommon within disability services. Explanations as to why staff do not report violence include:

- Staff witnessing violence may fear reprisals or retribution from the perpetrator, management and peers;
- Managers may feel the abuse reflects upon their competence;
- Managers may fear negative publicity;
- Staff culture normalises violence;

⁴² Ibid.

⁴³ Nosek, M, Clubb C., Hughes, R., Howland, C., Vulnerabilities for Abuse among Women with Disabilities’, *Sexuality and Disability* 19 (3): 177-89.

⁴⁴ Office of the Public Advocate, *Violence against people with cognitive impairments* (2010). Pg 5
http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence_and_disability_report_August2010.pdf

- Assumptions that allegations of abuse would be difficult to prove.⁴⁵

Other research suggests that disability services do not adequately understand family violence issues and lack the capacity to identify or respond to abuse.⁴⁶ Disability services are also required to pick up support that might previously been provided by a violent carer. For example, a woman interviewed who has a mild intellectual disability talked about returning to home after an extended time of receiving family violence support services, because she was unable to receive the ongoing practical and emotional support she needed from disability services.

Centres Against Sexual Assault (CASAs)

A Victorian study of sexual assault of adults with disability noted that sexual assault specialist services report a large variation in the number of referrals made from disability services and residential facilities, with some services seemingly very aware of the importance of offering support to victims and other services appearing to retain a culture of only responding internally.⁴⁷

Within CASAs, workers report inadequate resources to cope with the more intensive support required by women with disabilities who have experienced sexual assault. Workers are not always confident to work with women with cognitive disabilities and seek additional expertise from disability workers.⁴⁸

Family Violence Services

Many family violence services are not equipped or resourced to meet the needs of women with diverse disabilities. Emergency and crisis accommodation services often lack the funding to redevelop their premises to make them physically accessible, and staff may lack the training and expertise in working with women with disabilities.⁴⁹ The majority of crisis accommodation facilities in Victoria are communal, with women required to share a bedroom with their children, and kitchen, bathroom and laundry facilities with up to five other families. Such living arrangements are unsuitable for the majority of women with a disability.

In 2008, Women with Disabilities Victoria, in co-operation with the University of Melbourne School of Social Work and the Domestic Violence Resource Centre, undertook an extensive mapping of the Victorian family violence sector's response to women with disabilities who experience violence. The report, *Building the Evidence: A report on the status of policy and practice in responding to violence against*

⁴⁵ WWDA, 'Forgotten sisters: A global review of violence against women with disabilities' Commonwealth of Australia 2007

⁴⁶ Healey, L, Howe, K, Humphreys, C, Jennings, C, & Julian, F., *Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria* <http://www.wdv.org.au/publications.htm#bte> date?

⁴⁷ Murray, S. and Powell, A. (2008) *Sexual assault and adults with a disability: enabling recognition, disclosure and a just response*, Australian Centre for the Study of Sexual Assault Issues 9: 1–19.

⁴⁸ Swan, D., *Making Rights Reality Stage 4*, Federation of Community Legal Centres (2006) unpublished report.
⁴⁹ Healey, L, Howe, K, Humphreys, C, Jennings, C, & Julian, F., *Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria* 2008 <http://www.wdv.org.au/publications.htm#bte>

women with disabilities in Victoria, found serious deficits in the system's capacity to respond to women with disabilities with regard to workforce development, data collection and quality standards. The report listed 53 recommendations to improve information and communication, access to services and accommodation, crisis support, data collection, standards of practice, workforce development, cross sector collaboration, monitoring, evaluation and research.⁵⁰

Since the publication of *Building the Evidence*, there has been increased recognition within the family violence sector of the high risk of exposure to violence by women with disabilities. Often women accessing the justice system are required to attend several hearings, appointments and interviews. When being supported by a Case Manager from a family violence service, ongoing support is often available, although restrictions on support occur due to limited resources.

The introduction of Intensive Case Managers (ICMs) to support women with disabilities who experience violence has been an important innovation, but does not exist in all regions, or in crisis accommodation services. Where these case managers are present, women with disabilities are offered more intensive support over a more extended time. ICMs can also ensure that referrals to community supports are established, successful and ongoing. However, ICMs report being under-resourced and frequently unable to keep up with demand. The comments submitted by a case manager below reflect the importance of coordination across the system and the role of case management in supporting women with disabilities through the justice process:

'In a particular case that spanned over 12 months, consistent support was key to the woman being able to pursue the matter. Not only was transport offered, allowing the woman to be able to attend all appointments with the various professionals in the justice system (police, lawyers, mediators, court) but clarification of processes, further explanation and being with someone that she trusted and had built a relationship with she felt able to ask questions and say when she felt uncomfortable, overwhelmed, etc.

Women often find police and legal professionals and going to court extremely intimidating and they have often had experiences where they have not been believed or their accuracy of events questioned. Advocacy at this point is crucial and not all women know of their rights. Not only practical support was given to this particular woman, but emotional support provided during lengthy police interviews and days in court. Often having to retell and relive traumatic experiences is emotionally draining and tiring and can impact greatly on a woman's level of stress and anxiety. Reliving these traumatic events can also impact on the ability to process new information.

As stated earlier, women with disabilities comprise an extremely small proportion of those that access family violence services due to the various barriers experienced, therefore are not receiving the support required to not only access the justice system but obtain positive outcomes. There often is not the level of collaborative work needed to ensure women with disabilities obtain the support required when accessing the justice system. All sectors, Disability, Family Violence, Justice need to work together in responding to women that have experienced violence and provide a service that is tailored specifically to their needs.'

- Family Violence Case Manager

⁵⁰ Ibid.

The Safety Accountability in Families: Evidence and Research (SAFER) team researching the Integrated Family Violence Reforms invited members of regional and sub-regional Integrated Family Violence Committees to respond to a questionnaire. Responses recognised the deficits in the family violence system in responding to women with disabilities:⁵¹

‘Women with disability are restrained from accessing service by carers/guardians.’

‘The system is extremely under-resourced when addressing the needs of women and women and children who have a disability.’

‘I believe there is a distinct issue where the individual or a member of their family has a disability especially a physical disability as services are not physically accessible but also because workers are not trained in how to support people with disabilities.’

‘The lack of appropriate access to suitable accommodation for disability clients is an issue.’

‘Still not enough work has been done in the disability sector in particular to say that women and children are safer as a result of the reforms.’

Access to refuge and emergency housing has seen some improvement in the Eastern Region but in most areas access to refuge is almost non-existent. The lack of access to personal care for women escaping violent partners on whom they depend for support has been identified as a critical concern. Without sustained alternative personal care, women feel that leaving violent relationships does not guarantee them safety and security. Women also lack timely and affordable access to other supports such as home help, transport, aids and other specialist supports such as Auslan interpreters.

A recent funding initiative, *Safe at Home*, was introduced to help women and children escaping domestic violence to remain safely in their homes. Services funded under the program work with the police and courts to remove the violent family member so that if she chooses, the woman and her children can stay in the home. The initiative was not provided with the additional funding that would be required to assist women with a disability to remain in their homes, thus forcing some unnecessarily into homelessness. With many women’s homes already modified for their specific needs, and local disability services already providing specialist support, this initiative could provide a safe, economical and practical alternative.

Mainstream services

Among mainstream support services, women with disabilities who report violence are not always believed:

‘On the very few occasions when I tried to disclose the violence to my friends and family, they simply wouldn’t hear of it. They suggested that I was somehow exaggerating. . . after all he was “such a nice man” and had done “so well for himself” in his career...I got basically the same reaction when I went to see a counsellor about

⁵¹ Extracts from responses to the Governance Survey conducted by SAFER Team. The data is currently under analysis 2011.

my husband's abuse. She suggested that I was a "burden" to my husband and that he basically deserved a medal for marrying (and "taking on") someone who was disabled.'⁵²

Family Support Services

Family support services are a critical element of the service system for parents with a cognitive disability. Family support services are not always competent to assess women with intellectual disabilities and to provide parent education and support in an appropriate way. In such instances women with intellectual disabilities may find themselves engaged in the child protection system for lack of appropriate support and because of negative attitudes toward parents with an intellectual disability on the part of the family support worker. In a study at the Royal Women's Hospital WIN Clinic, an antenatal clinic for women with disabilities, women who were referred to a specialist family support service were more likely to successfully parent and to remain outside of the child protection system, whereas women reliant on mainstream family support were more likely to have a notification to Child Protection Services made.⁵³

Dealing with the police

States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted

- CRPD, Article 16 (5) Freedom from exploitation, violence and abuse

The interface between the police and people with cognitive disability is crucial in setting the scene for the trajectory of the report through the justice system. Credibility - whether the reports made to police by victims with cognitive disabilities are believed - appears to be the biggest obstacle in gaining access to justice for people with cognitive disabilities.⁵⁴ A study by Zweig found that 45% of agencies saw the credibility of these women as the greatest barrier to their accessing services.⁵⁵

Women with intellectual disabilities consulted in preparation for this submission spoke in detail about their interactions and perceptions about police.

One woman spoke about not being given adequate information by police:

⁵² WWDA "A Life Like Mine: narratives of women with disabilities who experience violence" Commonwealth OF Australia, 2007

⁵³ Brenda Burgen, 'Still not accepted: When women with intellectual disabilities choose to become mothers,' *Violence against Women*, Issue 19, 2007.

⁵⁴ Camilleri, M., *[Dis]Able Justice: Why reports of sexual assault made by adults with cognitive impairment fail to proceed through the justice system*, unpublished PhD thesis (2009).

⁵⁵ Zweig, J.M., Schlichter, K.A. & Burt, M.R., (2002) 'Assisting Women Victims of Violence who Experience Multiple Barriers to Services', *Violence Against Women* 8(2): 162-180.

'I was very scared about the hearing – I had to wait one year for the hearing – I was not told what would happen or what to expect – I didn't know who to ask or what to ask.'⁵⁶

When asked who they would go to if someone had committed a crime against them, women most frequently cited the police as 'they know what to do'. However, when asked if they had felt respected by police in the past, there were mixed reactions, with some stating they were not respected or believed. One woman talked of a friend assaulting her daughter and how she was given the opportunity to make a statement and to appear as a witness in court. However, in this instance there were other complainants against the man in question.

Research conducted by the Office of the Public Advocate found that while positive comments were made about police, several concerns were raised about the police response, including:

- Not acting to remove the perpetrator from the home, despite the represented woman requesting this and the home being leased in her name;
- Not investigating allegations of assault by a staff member at a psychiatric facility because the represented person did not make a statement (OPA advocacy led to the matter being investigated, with statements made by witnesses);
- Charging a woman with making a false report after she was pressured by her perpetrators to withdraw a statement, and
- Not following up on reports of IO breaches.⁵⁷

The report also states that '[t]hese cases include examples of police believing the perpetrator rather than the victim.'⁵⁸ This finding is consistent with Camilleri's finding that police were more likely to believe 'third parties' in preference to victims with cognitive impairment.⁵⁹

Camilleri's doctoral thesis focused on reports of sexual assault made to the police by adults with cognitive disabilities.⁶⁰ This research found that police use a range of influences to make decisions about how they respond to sexual assault reports made by adults with cognitive impairment. Police decision making is informed by negative societal perceptions of people with disabilities. Police as members of the community do not work in a vacuum, and as such their perceptions of people with cognitive impairment mirror the largely negative perceptions held by the broader population.

In their interactions with adult victims with cognitive impairment, police are also informed by the justice system which perpetuates the view that cases involving these victims will not be successful at prosecution. In addition, the police organisational culture and police unit culture also influence police decision making. For example,

⁵⁶ Woman with an intellectual disability interviewed in a focus group as part of the consultation for this submission, September 2011.

⁵⁷ Office of the Public Advocate, *Violence against people with cognitive impairment* (2010) 25.

⁵⁸ Ibid.

⁵⁹ Camilleri, M., *[Dis]Able Justice: Why reports of sexual assault made by adults with cognitive impairment fail to proceed through the justice system*, unpublished PhD thesis (2009).

⁶⁰ Ibid. The findings discussed in the remainder of this section are from this thesis.

dominant views within police units assume primacy in determining the response to the victim.

Camilleri found that police also have a range of generalised assumptions about victims with cognitive impairment, and that these assumptions influence police decisions about whether a report of sexual assault should be progressed through the justice system. Negative generalised assumptions include that people with cognitive impairment:

- make false reports

Researcher: Do you get victims who come in on a regular or semi regular basis?

Participant 1: Multiple victimisations

Researcher: You do?

Participant 1: We do. I was trying to think about whether they were. Oh, we had that one last week.

Researcher: What happened there?

Participant 2: Psych issues, she had psych issues.

Researcher: What happened?

Participant 2: She's [victim] a sexual allegator [sic] as in alleging she's had sexual assault against her and when it comes to us, [the victim] actually being able or available to ask her questions, she always retreats. Now whether it's [retreating] part of her condition or whether it's [sexual assault] in fact happened, we still can't establish.

Participant 1: Oh, yes [it does affect the credibility] it has to. Because you know, that if you were the prosecutor, a single allegation that every other previous allegation ever made will be subpoenaed, and the [information of previous allegations] just gets smacked around [in court], and it's not worth it. You'd want some more evidence than just her word, and that makes it very hard.⁶¹

- will not make a 'good witness'

'There's no doubt that with a good witness, it's a strong case. If you've got a good witness that is credible and delivers in the [witness] box, there's no doubt whatsoever that it helps. At the same time if you get a mentally impaired person in the box in front of the jury [not going to be strong].'⁶²

- are promiscuous
- are 'child like', and as such are treated like children and assume the characteristics of a child
- lack credibility, so police are more likely to accept the views of third parties (staff, family, carers) as being more reliable (a major concern given that people with cognitive impairment, depending on their level of dependence, are particularly vulnerable to those they depend on for care)
- are not competent

⁶¹ Ibid 192.

⁶² Ibid 181.

Camilleri identified that a dominant view expressed by police who participated in the research, was that cases involving adult victims with cognitive impairment are 'too difficult'.

'They're harder to investigate, they're harder to prove and they're harder to prosecute. It's just the fact of it.'⁶³

Indeed, this view was so entrenched that Camilleri noted 'it appeared to become 'self fulfilling', in that police knew before they commenced the investigation that there was a high likelihood that the case would not succeed. As the following extract highlights, the implication is that there was no point in perusing these cases or spending too much time on the investigation.

'To be perfectly blunt, I think probably the attitude was, "Well, she's intellectually disabled, so it's not going to get anywhere." So it'll all be a storm in a tea cup, get it over and done with and that's it.'⁶⁴

Camilleri also analysed the response to a sexual assault report made by an adult with cognitive impairment which was successfully prosecuted. The analysis identified several key factors which potentially enhance access to justice and improve participation of victims with cognitive impairment in the criminal justice system. These include:

- Strong consistent advocate from report to prosecution:

'In this case, the role of a strong and consistent advocate appeared pivotal in ensuring the crime was reported to police...that the police remained focused on the case [and] ensured that the victim was supported throughout the justice system process.'⁶⁵

- Consistency in the police personnel from report to investigation, and the investment of that police officer in seeing the case through to its conclusion:

'In the case under discussion here, [the police officer] for a number of reasons, decided to seek permission to investigate this particular case herself rather than pass the file on to the CIU. Although a SOCAU member ...[the police officer] was very interested in conducting investigation [herself]. Her decision to seek permission to undertake the investigation in this case was influenced by who was available in CIU. [The police officer] explained, "It depends on who's on in our CIU as to whether they're interested or not in this particular case. It might have been that the interested people were away or something" (Police officer-interview transcript).

[The police officer] indicated that the response of CIU members to the investigation of sexual offences involving adults with cognitive impairment was

⁶³ Ibid 177.

⁶⁴ Police Officer - interview transcript, ibid 204.

⁶⁵ Ibid 209.

variable. The implication was that there were no CIU members available to whom [the police officer] would have necessarily entrusted the investigation.

[The police officer] did not receive encouragement to investigate the case from her superior officer at the time. She states: "To be perfectly blunt, I think probably the attitude was, 'Well, she's intellectually disabled, so it's not going to get anywhere'. So it'll all be a storm in a tea cup, get it over and done with and that's it".(Police Officer - interview transcript)".⁶⁶

Angela's story

The following case study illustrates many of the themes of system failure discussed above, and also demonstrates the need for intensive sustained support and co-ordination between family violence, police, post natal care, family support and disability services, before it can be truly claimed that women with disabilities have access to justice.

Angela, in trying to protect herself and her new baby, fled from another state to Victoria two years ago, so the long-term nature of the family violence she had already experienced in one state was further compounded by moving across a jurisdictional boundary.

Angela is a 25 year old woman, living with her abusive partner in a semi-industrial, regional town in Victoria. She has an acquired brain injury from childhood abuse she experienced from her father, who was schizophrenic and was also violent to her mother. From the time she began living with her partner 8 years ago, she has lived with severe abuse: being treated 'like a dog', strangled and rendered unconscious.

When Angela had her daughter, it was a difficult delivery with complications that followed months later and she had negligible post-natal support or understanding from the hospital of the vulnerability her ABI exposed her to, let alone any insight into the violence she was returning home to. After a particularly violent episode, neighbours called police. The police threatened to remove Angela's daughter unless she left the State but between her leaving for Victoria two days later and the arrest and charges laid and her partner's release from the lock-up, he managed to follow her and is once again living with her. There was no police follow-up or referral between the States.

In recent months, the abuse has escalated and Angela called the police:

'Oh, I worked up the courage to ring the police - well, I don't know, a couple of months ago. The police just pretty much laughed at me. They said, he hasn't touched you. I said, you know mate, it's not the point. I feel like he's going to. I actually ended up telling them to leave, the police. He just didn't care. He said, did he touch you? I said, no. He said, well there's nothing we can do about it. That's when I said, I'm sure I've got an order on him. If he breaks that don't you pull him up and go, hey, what's happening? Hello?'

A couple of days later Angela worked up the courage to go to her local police and talk to someone about what had happened when the police came to her home.

'That is really out of the ordinary for me to go there. I was actually about to start making dinner. I just couldn't shake it off. It was bothering me and I thought, they

⁶⁶ Ibid 204.

need to know it's not right in case a woman - something dangerous happens, or I need them again.'

She spoke with a police woman who she found encouraging and supportive and was told that the incident would be followed up. Several months later she has heard nothing.

Angela's experiences with the police in both states has left her feeling unsafe and unsupported. The lack of follow up and support in Victoria reinforces her feelings of powerlessness and isolation. Her experiences with the police in two states and throughout her life have left her feeling that she cannot be protected from her partner.

The chronic abuse Angela has experienced has left her unable to be alone at night. She struggles to sleep and has frequent violent nightmares about being strangled. She lives in fear of losing her daughter and needs to have her near her all the time. Angela talks about needing someone to go through the services with her step by step, someone to help her, like a mother figure; someone to explain what's happening and what her choices are, in a way that she can take in, understand and retain.

Angela's knowledge of services is limited and her ABI means that she doesn't retain much of the information that is given to her without repetition and support. Whilst she has had contact with support services she is confused and frightened about what her options are and how she can cope.

'See I kind of think there's nothing. Like when I do go - where am I going to go? Where am I going to go where he doesn't know, and where am I going to go where someone goes, stop it...I just don't know where to go. If I don't know - and I've got nowhere to go, and I've got no money and, you know I'm thinking of rent - and then I think, oh yeah, okay, I'm going to pull bond out of my backside. You know, I've got no income...'

Apart from her limited understanding of the support services available to her Angela also talks about how a lifetime of abuse has left her unable to make the decision to leave.

'I don't have the strength to do anything. Like I'm so caught-up in - I'm so used to, not only eight years but all my life, in dealing with - I've just got to deal with whatever's going on. I don't move; I don't take off, I don't get a break. I've just got to deal with it.'

Angela talks about wanting to be a good mother to her daughter; about wanting to break the cycle. She sees that she is repeating the life of abuse with her daughter that she experienced and wants to change that but doesn't believe it is possible. She sees the distress the abuse is causing to her child and is very distressed when talking about it.

'I just thought, you know, I'm sitting there, and I thought, people just don't feel me. I am lost.'⁶⁷

The way courts operate

Victim/survivors with cognitive disabilities who report violence and abuse face multiple difficulties when trying to access justice. For example, as outlined above, even if victims of sexual assault who have cognitive disabilities are believed and supported by a third party when they first disclose what has happened to them, there is a high attrition rate at the police stages of investigation and potential referral to the Office of Public Prosecutions.⁶⁸ Some of this attrition is due to police making judgments about the likelihood of a successful prosecution, and so the general court process is an influence on police decision-making.

For those comparatively few victim/survivors who proceed to court, there are further numerous barriers to justice. These barriers include a lack of general accessibility and specialised supports for victim/survivors with cognitive disabilities.

In 2003, *Beyond Belief - Beyond Justice: The difficulties for victim/ survivors with disabilities when reporting sexual assault and accessing justice* outlined many of these difficulties.⁶⁹ The report's nine recommendations were adopted in the Victorian Law Reform Commission's *Sexual Offences Final Report* (2004) and subsequently incorporated into many of the changes contained in the *Crimes (Sexual Offences) Act 2006* (Vic).

However, many barriers still remain. Some of these barriers are illustrated by the experience of Women's Legal Service Victoria & Family Law Legal Service (WLSV) in assisting women with cognitive disabilities.

Women with cognitive disabilities regularly attend the Magistrates' Court in relation to intervention orders. A woman may be an applicant for a family violence intervention order, or for a personal safety intervention order. A woman may also be a respondent to an application for such an order. Many women are respondents as a result of their being victim of family violence, as the perpetrator makes an application. Women can be further victimised by the justice system because of this.

It is usual for parties in intervention order proceedings to be unrepresented at the first mention date as there is no legal aid available, and it is often considered not worth paying a private solicitor (even if the client is able to do so). Both applicants and respondents may therefore seek advice and assistance from the duty lawyer.

⁶⁷ Case study from PhD candidate, Joanie Smith (SAFER Research Team) who is conducting longitudinal research with men who are participating in men's behavior change programs and, where possible, their (ex)partners.

⁶⁸ See also Farah Farouque, 'Files reveal failed sex assault cases', *The Age* 28 September 2011 <http://www.theage.com.au/national/files-reveal-failed-sex-assault-cases-20110927-1kvgx.html>.

⁶⁹ Jonathon Goodfellow and Margaret Camilleri, *Beyond Belief – Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice. Final Report of Stage One of the Sexual Offences Project*, Disability Discrimination Legal Service, (2003).

WLSV provides a duty lawyer service every week day at the Melbourne Magistrates' Court for women who are a party to intervention order proceedings. WLSV may also assist women with disabilities at the Federal Magistrates' Court/Family Court in their role as duty lawyer in those courts.

The following are particular issues for women with cognitive disabilities:

1. Lack of training of court staff and legal professionals
 - Often court staff, private lawyers, duty lawyers and magistrates have not had requisite training to deal appropriately with women with disabilities.
 - The duty lawyer may not pick up that the client has a cognitive disability, if the client does not disclose this.
 - Duty lawyers and private lawyers may not know the right questions to ask, and may feel uncomfortable asking the client if she has an intellectual disability.
 - Lawyers may not realise that the client has not understood the advice she has been given.
2. Lack of time
 - Duty lawyers often have a list of up to 10 clients to see in a morning. They usually have to explain the nature of the proceedings and the legal process and provide legal advice to each client. They may also represent the client in Court. Where the woman has a cognitive disability it is likely to take much more time for the lawyer to obtain instructions, and give the necessary advice and explanations.
 - Lawyers may not have the time to obtain proper instructions from a client with a disability.
 - Lawyers and court staff may experience higher levels of frustration with clients with a disability, where they do not have the time that is needed to attend properly to that client.
3. Lack of support
 - Women with a cognitive disability may come to court without a support worker or friend. This makes the process more complicated and time-consuming for a duty lawyer if the client does not have an understanding of the proceedings due to intellectual disability or other cognitive impairment.
 - There is one psychiatric nurse at the Melbourne Magistrates' Court, servicing all the Courts. If the Magistrate has concerns about the mental health of one of the parties, the Magistrate may refer the party to the psychiatric nurse. He is often not available.
4. Concern that the Registrar at the Magistrates' Court is not able to screen out applications where there is not sufficient evidence against the Respondent (woman with cognitive disability), so the Respondent has to attend court anyway, which may be a very stressful and difficult experience for them. The Registrar may also allow an application where the Applicant is suffering paranoid delusions and there is not sufficient evidence against the Respondent.

5. Concern that in the Federal Magistrates' Court/Family Court in children's proceedings, difficulties may arise for a woman if she discloses an intellectual disability as it may have a negative impact on her case. The duty lawyer may not want to make a call as to whether her disability should be disclosed if this might affect her case.
6. A woman with a disability who is involved in proceedings in the FMC/FCA in relation to her children may find the experience of being at court particularly distressing. Matters are often stood down for a number of hours requiring the client to wait, not necessarily knowing what is going on. As various reports have noted, these delays can be particularly stressful for a mother with a cognitive or psychiatric disability.⁷⁰
7. There is no mental health worker at the Federal Magistrates Court/Family Court.
8. Concern that many clients with an intellectual disability fail to attend their court hearing (through eg lack of understanding, lack of support, inability to get there) and end up with an order being made against them without having been heard.

Sophie's story

Sophie acquired a medical disability involving neurological impairment, some years ago and is the mother of two young children with autism. She separated from her husband in 2004 after he threatened to kill the children and himself, after years of violence directed at them, particularly once it was clear to him that the children had developmental impairments. Neither Sophie's nor her children's disabilities are necessarily obvious but their experiences of courts have been distressing and marked by offensive and insensitive comments made by judges and lawyers, which made her fearful of telling the court too much about her disability for fear it would prejudice decisions about contact arrangements. On her first court attendance, she was able to wait in a secluded, quiet room but on a subsequent appearance, it was no longer available and she was abused by her ex-husband whilst waiting in the foyer, whilst court staff stood by and said nothing.⁷¹

The requirements of evidence also function to directly and indirectly discriminate against victim/survivors who have cognitive or particular communication disabilities. For example, the police may require a greater amount of and stronger evidence before they are prepared to progress a criminal complaint involving a victim/survivor with these kinds of disabilities.⁷² In turn, as discussed above, this 'higher bar' required by police appears at least in part to be due to broader societal prejudices and stereotypes about people with cognitive and/or specific communication

⁷⁰ See eg Abigail Gray et al, 'Cognitive impairment, legal need and access to justice' *Justice Issues* Paper 10 March 2009, 8.

⁷¹ Healey, L., Howe, K., Humphreys, C., Jennings, C., Julian, F., *Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria* (2008) <http://www.wdv.org.au/publications.htm#bte>

⁷² Camilleri, M., *[Dis]Able Justice: Why reports of sexual assault made by adults with cognitive impairment fail to proceed through the justice system*, unpublished PhD thesis (2009).

disabilities, such as myths that women with cognitive disabilities who allege sexual assault are less credible or more promiscuous than other complainants.

Victim/survivors who require communication devices or the assistance of a support worker to be understood may also have their evidence ruled inadmissible, or more often, may never get to court because police have decided that this will undermine the case because the court will rule that their evidence has been inappropriately led.⁷³

Caroline's story

Caroline has cerebral palsy, is in a wheelchair, and is totally dependent on carers for all personal and daily living activities.⁷⁴ Cognitively very aware, she depends on assisted communication to enable her to communicate. Caroline lives with her mother, who is also her primary carer. Caroline's mother does not drive, so Caroline travelled to and from her mainstream school by taxi each day. Within a few days of starting her year 11 studies, Caroline was sexually assaulted by a taxi driver.

The sexual assault was reported to police and an investigation began. Caroline uses a communication book to communicate, but the book did not have the vocabulary she needed to describe what had happened to her, such as 'penis' or 'rape'. The police would not allow these words to be added to the book after the incident, because in court this would be seen to be leading the witness. The police even advised Caroline's mother, school staff and social worker not to talk to her about what had happened, because the prosecution would again be able to assert that the witness had been led.

It took great courage and much time and energy as Caroline struggled to find the means to reveal the facts of her ordeal. She worked every day with the coordinator of the school's special education unit. It was a painstakingly slow process that took its toll not only on Caroline but on the teacher working with her.

Despite Caroline's extraordinary efforts, the police were unable to lay charges due to insufficient evidence. The trauma of her assault was overlaid by the trauma of the police investigation, which ultimately failed to produce a result because there was no process in place which allowed for the sort of assistance and support that Caroline needed, in order to give evidence in a manner which met the requirements of the legal system.⁷⁵

The Sexual Assault Reform Strategy Final Evaluation Report found that there were a number of occasions where the Charter of Advocacy for Prosecuting and Defending

⁷³ See eg Jonathon Goodfellow and Margaret Camilleri, *Beyond Belief – Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice. Final Report of Stage One of the Sexual Offences Project*, Disability Discrimination Legal Service, (2003) 64.

⁷⁴ This example is an edited version of a letter that was written by the social worker who assisted 'Caroline'.

⁷⁵ See also Jonathon Goodfellow and Margaret Camilleri, *Beyond Belief – Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice. Final Report of Stage One of the Sexual Offences Project*, Disability Discrimination Legal Service, (2003) and more broadly, L Healey et al, *Building the Evidence: A Report on the Status of Policy and Practice in Responding to Violence Against Women With Disabilities in Victoria* (2008); Office of the Public Advocate, *Violence Against People With Cognitive Impairments* (2010).

Sexual Offence Cases (Department of Justice, 2010) – which includes an obligation to identify and take into account any specific needs relating to disability - was not being applied.⁷⁶

The Final Evaluation Report also found:

- the Court's capacity to allow expert evidence concerning the capacity of a witness with cognitive impairment to competently provide evidence is being under-utilised;⁷⁷
- Magistrates, police and prosecutors all said that identifying people with cognitive disabilities was extremely difficult, meaning that these witnesses were not being provided with appropriate support in order to effectively access the courts;⁷⁸
- There was support among stakeholders for the development of a specialist witness support service analogous to the present Child Witness Service but tailored to the needs of adults with cognitive disabilities.⁷⁹

Other issues

Victims of crime compensation

The following case studies illustrate how a lack of accessible information about legal rights can combine with other disadvantages for women with cognitive disabilities.⁸⁰ These examples also demonstrate the importance of victim/survivors having access to strong legal advocates.

Case Study 1

Our client is 39 and has had an intellectual disability since birth. This affects her literacy (she is illiterate), and her cognitive abilities. I had previously provided assistance to this client in two other unrelated matters. Our client lives in public housing commissions, and whilst assisting our client in a matter involving a tenant who lived upstairs from our client, due to his constant violence and disruption, I received calls from our client's partner. He was abusive towards me for my involvement in the housing case. In the course of further instructions from our client, it became apparent that our client's partner was 'mates' with the tenant upstairs, that this tenant provided our client's partner with a steady supply of drugs, and finally, that our client has suffered a 10 year history of violence with this partner.

Our client has a seven year old son with this partner, who lives in foster care. Our client had previously sought four Intervention Orders against this partner, the most recent of which she had 'revoked' in late 2009 on his promise to change. It was at the time of the housing complaints, in late 2010, that our client sought another IVO against this partner,

⁷⁶ Success Works for Department of Justice, *Sexual Assault Reform Strategy Final Evaluation Report* (2011) 71.

⁷⁷ Success Works for Department of Justice, *Sexual Assault Reform Strategy Final Evaluation Report* (2011) 114.

⁷⁸ Success Works for Department of Justice, *Sexual Assault Reform Strategy Final Evaluation Report* (2011) 189.

⁷⁹ Success Works for Department of Justice, *Sexual Assault Reform Strategy Final Evaluation Report* (2011) 142.

⁸⁰ Both case studies kindly supplied by Victoria Legal Aid.

after she was subjected to another violent attack. She instructs she has not seen him since, and will shortly be seeking to renew the IVO.

Our client has debts incurred in her name by this partner (phone bills and damage to the flat). She also wishes she had better clothes to wear to visit her two children (our client has another older child from a previous relationship), a bit more money to buy them birthday gifts and other small things and travel costs to and from their foster homes. These are items that are beyond her budget on the Disability Support Pension income.

Earlier this year I advised that she ought to seek an award as a victim of crime. I advised the violence she had suffered from this now ex-partner would qualify her to an award for special financial assistance but also to extras, such as those small items listed above, as 'items to assist her recovery' under section 8(3) of the Victims of Crime Assistance Act. We are now in the process of finalising this claim, whilst we await a report from a psychologist regarding the psychological injury incurred as a result of this ongoing violence.

Case Study 2

Our client is 43 and has a significant intellectual disability since birth. Our client is illiterate and has significant cognitive abilities, and has lived in itinerant housing for some 20 years. Our client was referred to us from Criminal Law – where she has been assisted for some years due to her criminal history, and has recently been in gaol for some 10 years (although she is now released).

During our client's recent time inside she was required to undergo counselling with a psychologist. During the course of counselling it became apparent that our client was subjected to serious sexual assaults by her father from the age of around 7 to 15, as had her older sister. This was not 'recovered memory' as our client had always remembered these attacks, but was previously not properly orientated to her rights, or indeed the criminal nature of her father's actions, to tell anyone – although she and her sister (who does not have any cognitive difficulties), had been recently speaking to her about these assaults. In her words, she 'thought no one would care'.

The alleged perpetrator now resides in Queensland. The police are now intending to charge him, and so we are awaiting the outcome of criminal investigations before lodging her claim at VOCAT. This is because a police investigation would greatly assist our client and her sister's VOCAT claim – even if charges are ultimately not laid, or if the alleged perpetrator is not convicted.

There are significant items that might be claimed to 'assist our client's recovery' under section 8(3) of the Victims of Crime Assistance Act. It seems that the downward spiral of her life can largely be attributed to these assaults. Therefore depending on the alleged perpetrator's means we will also be advising that the judge make orders for compensation under the Sentencing Act – if he is convicted. If he is not convicted, but there is sufficient grounds to prove the attacks 'on the balance of probabilities', this client will also be advised to consider a civil action for personal injury against him.

Data and research

The lack of adequate data collection and research with regard to the experience of women with disabilities in all aspects of the justice system is a significant impediment to understanding the interaction between disability and the justice system and improving responses to people with disabilities. It is essential that data include disaggregation by gender and that research examines the experience of people with disabilities as both victims and offenders. The current failure of both police and court data bases to systematically record data about people with disabilities must be addressed as a priority.

Measures within Australia and internationally to improve access to, and interaction with, the justice system

Knowledge of rights and access to support services

1. Access to adequate information has been found to be effective though
 - verbal information in a range of methods: through peer education, individual and group face to face means.
 - On line DVD's
 - Easy English web-based text
2. Information about violence against women with disabilities and measures to respond must be promoted to women with disabilities through the services they utilise, in particular through disability services and carers. Current research and anecdotal evidence suggests there is a 'gate keeping' role played by both workers and family based carers that hinders rather than creates avenues for information on these matters. Training and resourcing of disability workers and carers is needed to address this 'gate keeping'.
3. Increasing the availability and resourcing of Intensive Case Managers for women with disabilities who experience violence, within family violence services and extending this model to sexual assault services, across all regions is essential to providing practical and emotional support.
4. Introduction of personal care for women escaping violent carers on whom they are dependent must be implemented and sustained across all regions.
5. Additional support is required by victims after the crisis abates. Post-crisis co-case management could ensure that women leaving a family violence service has adequate ongoing assistance from either a disability or other mainstream support service.

Legal processes

There are a number of measures in international jurisdictions which, according to evaluation reports, have increased the number of reports made by victims with cognitive impairment reaching prosecution. While the programs outlined below have

demonstrated some success in increasing access to justice for victims with cognitive disabilities, it is important to note that any new measures or programs envisaged for Victoria should only be introduced after consultation with all stakeholders, including people with cognitive disabilities.

Intermediaries

The United Kingdom has introduced intermediaries whose role is described as:

'The intermediary's role at investigative interview and trial is to enable complete, coherent and accurate communication to take place. Intermediaries are approved for use by the court and are allowed to explain questions and answers to the witness, but not to change the substance or meaning of evidence. The role may assist questioners to test the witnesses evidence but intermediaries cannot provide an opinion on whether the witness is truthful.⁸¹

The intermediary program assists vulnerable victim/witnesses, including young people and children as well as adults with a cognitive impairment. According to an evaluation of the program, access to justice for victims increased. It was estimated that at least half of the 12 trial cases would not have reached trial without the involvement of the intermediary.⁸²

Court Support

A key issue identified by both women with disabilities and advocates is the need for specialist support for women with disabilities attending court. This is currently not guaranteed and is dependent on the victim/survivors own resources. The following example illustrates the positive outcomes that result from a co-ordinated supportive process for a victim with speech impairment.

Vera's Story

Vera, who has no speech, alleged sexual abuse and wanted to lay charges. She has cerebral palsy and could communicate only with her eyes, using a form of augmentative and alternative communication held by a communication support worker in front of her, enabling her to choose letters with her eyes to spell sentences.

A specialist disability communication agency (Communication Rights Australia) supported Vera to make several statements to the police; liaised with police over an extensive period to ensure a proper investigation proceeded which was not compromised in any way due to Vera's communication disability or uninformed assumptions concerning their capacity. This involved an extensive process of meetings, letter writing, and complaints. There was also extensive liaison with the Office of Public Prosecutions, helping to educate the solicitors, barrister, social worker and judge about the Vera's chosen method of communication; and investigation of a new communication technology with a view to it being used in court.

⁸¹ Plotnikoff, J & Woolfson, R. The .Go-Between.: evaluation of intermediary pathfinder projects Lexicon Limited http://www.lexiconlimited.co.uk/PDF%20files/Intermediaries_study_report.pdf p. vi

⁸² Ibid 57.

Throughout this process there were regular meetings with Vera to relay information from the police and solicitors and to help answer questions and address concerns. Liaison was also needed with DHS and attendant care providers to ensure Vera had adequate attendant care on court days. Communication Rights Australia then identified, employed, trained and coordinated a team of six speech therapists who acted in court as communication support workers for Vera (who was cross-examined for seven days during committal). This was funded by Office of Public Prosecution which set a new precedent for the Department of Justice. The outcome was a successful committal hearing, and a full jury trial.⁸³

South Africa is another jurisdiction that has attempted to address the issue of few sexual assault cases involving victims with cognitive impairment reaching prosecution. A 'psycho-legal' project was established in Cape Town in 1990 to assist sexual assault victims with a 'learning' disability.⁸⁴ The project involves preparing complainants for court and using psychologists to advise investigating officers and prosecutors, and to provide expert testimony. The project evaluation found that the number of sexual assault reports made by victims with cognitive impairment which reached prosecution increased to 28%, almost identical to the best conviction rate in such cases in the general population in South Africa.⁸⁵

Sexual Offences Advocacy Pilot Project

The Federation of Community Legal Centres has developed an advocacy pilot project which seeks to provide specialised support to sexual assault victims with a cognitive impairment and/or communication difficulties, in order to better address the factors influencing low reporting and successful prosecution rates and to increase access to justice for victims.

A partnership of cross-sector agencies and individuals from the sexual assault, disability and legal sectors has guided and coordinated each stage of development of the Advocacy Pilot Project.

People with a cognitive impairment and/or communication difficulties have had direct input into the Project via consultations, and via representation on the Project Reference Group and through the organisations involved in the Project.

Previous stages of the Project focussed on areas which impact directly on the ability of victim/survivors with cognitive impairment to access justice in the first instance and to be treated justly by the justice system once they have access.⁸⁶ Research focused on advocacy services for victim/survivors with cognitive impairment, the Office of the Public Advocate's Independent Third Person Program and mandatory reporting for sexual offences in residential/accommodation settings.

⁸³ This case story was kindly provided by Communication Rights Australia.

⁸⁴ Dickman, B. J., & Roux, A. J. (2005) 'Complainants with learning disabilities in sexual abuse cases: a 10-year review of a psycho-legal project in Cape Town, South Africa,' *British Journal of Learning Disabilities* 33, 138-144.

⁸⁵ Ibid.

⁸⁶ See eg Jonathon Goodfellow and Margaret Camilleri, *Beyond Belief – Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice. Final Report of Stage One of the Sexual Offences Project*, Disability Discrimination Legal Service, (2003).

Extensive consultation and focus group discussions were also undertaken with consumers, Centres Against Sexual Assault, community legal centre workers, disability advocacy organisations, and key government stakeholders including the Office of the Public Advocate and independent third persons.

In collaboration with a range of legal, disability and sexual assault agencies, the Federation has now developed a model for a pilot specialist advocacy support service.

The Advocacy Pilot Project will be based for two years in Melbourne's South East region. South Eastern Centre Against Sexual Assault, Springvale Monash Legal Service and disability agencies will provide victims with:

- advocacy and support during dealings with police and prosecutors. Crisis support will be offered through a 24 hour service;
- ongoing advocacy and support during investigation, prosecution and court processes. Victims will be helped to monitor, understand and participate in these processes;
- legal and other advice on criminal justice processes and the options and services available;
- legal support to access crimes compensation and other compensation options; and
- a skilled communication support service and other disability support services where required.

The Advocacy Pilot Project will build on the existing infrastructure, skills and expertise of agencies that are already working either with victim/survivors of sexual assault or with people with a cognitive impairment and/or communication difficulties. This building will involve increasing the skills of specialist workers who may, for example, be experienced in disability service provision but need more training in supporting victim/survivors of sexual assault; or who may be sexual assault counsellors requiring support for assisting victim/survivors with particular cognitive or communication disabilities.

The emphasis of the Advocacy Pilot Project is on establishing pathways and opportunities for victim/survivors with a cognitive impairment and/or communication difficulties to access professional, appropriate and specialised services to advocate for their current and ongoing needs, independent of families, friends and carers.

There will be a strong focus on data collection and evaluation with a view to modifying and expanding the pilot across Victoria in the future.

Recommendations concerning ways that government departments and agencies could work together

'...any project that links services and increases co-operation has to be of benefit to the service user. Assisting disability services and generic services to work together and understand each other's role reduces the barriers for access and increases participation.'⁸⁷

1. Collaboration across sectors including disability, mental health, family violence, sexual assault, police and courts is critical to creating a fair and just response to women with disabilities who experience violence – lead responsibility is needed to develop this collaboration.
 - a. Protocols between agencies are needed to establish referral, information exchange and secondary consultation.
 - b. Innovative opportunities to build sector capacity such as exchange of staff and observation in different agencies could complement secondary consultation.
 - c. A multi-agency approach to identification and assessment of a woman's experience of violence could be achieved through joint assessment by family violence/sexual assault specialist services and disability services.
2. Collaboration is a time consuming process to develop. It requires regional departments to resource time being allocated to allow for networking and relationship building. Bringing workers together between regions and across regions requires dedicated resources to organise, administer and support these meetings.
3. There are instances of co-ordination breaking down because of misunderstanding across sectors that operate in different paradigms. Coordination requires the development of shared language and understanding each sector's language and policy and practice frameworks. Shared workforce development will assist the development of shared language.
4. Regular training, developed and provided in consultation with women with disabilities and their advocates, should be provided to the police, the judiciary, court staff, duty lawyers, prosecutors and private solicitors involved in the criminal justice and civil law systems (eg intervention orders) in order to improve their understanding of the needs of clients with an intellectual disability, and to enable those clients to be assisted to engage effectively with the legal system. This training should include information about the rationale for the law reform resulting in s 13(8) of the *Evidence Act 2008* (Vic) (capacity to hear evidence from specialists concerning the capacity for a person with a cognitive impairment to provide evidence).

⁸⁷ Extract from interview with family violence service undertaken by the SAFER Program, Social Work Department, University of Melbourne (unpublished report 2010).

5. Through workforce development there is a need for continuing focus on disability awareness across both mainstream and specialist services including family support services, health services and family violence/sexual assault support services.
6. Learning about disability by specialist violence response services requires the involvement of women with disabilities in relevant forums and committees related to violence against women needed at local and regional levels. This involvement requires particular resourcing to support women with disabilities in these professional contexts.

Recommendation regarding the child protection system

7. It is recommend that the Victorian government, in consultation with key stakeholders and parents with disabilities, undertake a review that considers and makes recommendations regarding⁸⁸:
 - a. how the processes and practices of legal, child and family, disability and community based services interact to impede or promote the well-being of the family unit where the parent has a disability
 - b. ways for family support services, disability services and other relevant services to effectively co-ordinate services to parents with disabilities to minimise the number of services involved, ensure parents have access to responsive case management and reduce automatic referral to tertiary level services of Child Protection.
 - c. the efficacy of specialist family support services tailored to support parents with a cognitive disability as a means of preventing unnecessary notifications to Child Protection.
 - d. the need for a transparent and easily accessible complaints process to hear and resolve complaints about the handling of child protection matters, including discriminatory practices on the basis of disability,
 - e. the availability of individualised disability support packages based on family rather than individual need for parents with a disability .

Other recommendations

⁸⁸ This recommendation mirrors recommendations of previous Victorian research on parents with cognitive disability See Fitt, K and Lee, J., *Our Forgotten Families: Issues and challenges faced by parents with a disability in Victoria* 2010 http://www.valid.org.au/documents/our_forgotten_families.pdf and Swain, P et al *Pride and Prejudice: Final report of the Disability Parenting and the Law Project* 2002 [http://www.vcat.vic.gov.au/DOJFileLib.nsf/fa2bc723c4c39e2a4a2567c1000caf65/235980233cc7fcc0ca2573f60018c765/\\$FILE/FV_Children_Disability_Protection_Pride&Prejudice.pdf](http://www.vcat.vic.gov.au/DOJFileLib.nsf/fa2bc723c4c39e2a4a2567c1000caf65/235980233cc7fcc0ca2573f60018c765/$FILE/FV_Children_Disability_Protection_Pride&Prejudice.pdf).

8. Magistrates and judges should be provided with specialist reports and advice to assist them to identify witnesses with cognitive disabilities, and encouraged to use such material.
9. Regular training of sexual offence prosecutors should be undertaken in order to ensure consistent application of the Charter of Advocacy for Prosecuting and Defending Sexual Offence Cases.
10. A specialist witness service along similar lines to the Child Witness Service should be developed to support victims of violence with cognitive disabilities.
11. Other specialist supports, for example mental health and intellectual disability dedicated advocates, must be provided at court.
12. Victoria Police, in conjunction with the Office of Public Prosecutions and Department of Justice, should further develop the brief authorisation process to minimise the use of discretion and to ensure that myths and stereotypes do not dominate police decisions.
13. Urgent consideration should be given to the acceptance of and legitimisation of alternative methods of communication in justice system processes and the *Evidence Act 1958 (Vic)* should be amended to incorporate such changes.
14. An integrated and coordinated data collection system which specifically identifies victims of violence with cognitive disabilities across the various courts, disaggregated by gender, should be introduced.
15. Regular data analysis and evaluation should be undertaken in order to identify target outcomes, such as whether a decrease in attrition rate for sexual assault and family violence cases for victims with cognitive disabilities is being achieved.
16. The Department of Justice should adopt a social model of disability as a framework to review and further develop inclusive legislation, policies and procedures which facilitate access to justice by all members of society irrespective of any impairment.

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