



Women, disability and violence: Barriers to accessing justice

Key findings and future directions

PROFESSOR JANEMAREE MAHER
School of Social Sciences, Monash University

DR CLAIRE SPIVAKOVSKY
School of Social Sciences, Monash University

PROFESSOR JUDE McCULLOCH
School of Social Sciences, Monash University

DR JASMINE MCGOWAN
School of Social Sciences, Monash University

KARA BEAVIS
Queensland University of Technology

MEREDITH LEA
People with Disability Australia

DR JESS CADWALLADER
People with Disability Australia

THERESE SANDS
Disabled People's Organisations Australia

ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY
to Reduce Violence against Women & their Children

COMPASS: ISSUE 02 | 2018
RESEARCH TO POLICY & PRACTICE | APRIL 2018

ANROWS acknowledgement

This material was produced with funding from the Australian Government and the Australian state and territory governments. Australia's National Research Organisation for Women's Safety (ANROWS) gratefully acknowledges the financial and other support it has received from these governments, without which this work would not have been possible. The findings and views reported in this paper are those of the authors and cannot be attributed to the Australian Government, or any Australian state or territory government.

Acknowledgement of Country

ANROWS acknowledges the traditional owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander elders past, present, and future, and we value Aboriginal and Torres Strait Islander history, culture, and knowledge.

Author acknowledgement

We thank the women who worked so hard to share their stories with us for their courage and commitment. Our thanks to facilitators, advocates and counsellors, and their organisations across Victoria and New South Wales who supported women's participation, Monash Gender and Family Violence team members, particularly Kate Fitz-Gibbon, Brandy Cochrane and Sandra Walklate who shared their knowledge and valuable insights and feedback and Madeleine Ulbrick who gave early research support.

Monash and PWDA collaborated on this project and used inclusive methodologies to best represent the voices of people with disability affected by the topic.

© ANROWS 2018

Published by

Australia's National Research Organisation for Women's Safety Limited (ANROWS)
PO Box Q389, Queen Victoria Building, NSW, 1230 | www.anrows.org.au | Phone +61 2 8374 4000
ABN 67 162 349 171

Women, disability and violence: Barriers to accessing justice. Key findings and future directions / JaneMaree Maher, et al.

Sydney: ANROWS, c2018.

Pages ; 30 cm. (ANROWS Compass, Issue 02/2018)

I. Domestic violence -Australia. II. People with disabilities - Abuse of. III. Family violence - Law and legislation - Australia. IV. Victims of family violence -- Legal status, law, etc -- Australia. V. Safety.

I. Maher, JaneMaree. II. Spivakovsky, Claire. III. McCulloch, Jude. IV. McGowan, Jasmine. V. Beavis, Kara. VI. Lea, Meredith. VII. Cadwallader, Jess. VIII. Sands, Therese.

ISBN: 978-1-925372-80-9 (print) | 978-1-925372-76-2 (online)

Creative Commons Licence

Attribution-Non Commercial



CC BY-NC

This licence lets others distribute, remix and build upon the work, but only if it is for non-commercial purposes and they credit the original creator/s (and any other nominated parties). They do not have to license their Derivative Works on the same terms.

Version 3.0 (CC Australia ported licence): [View CC BY-NC Australia Licence Deed](#) | [View CC BY-NC 3.0 Australia Legal Code](#)

Version 4.0 (international licence): [View CC BY-NC 4.0 Licence Deed](#) | [View CC BY-NC 4.0 Legal Code](#)

Please note that there is the potential for minor revisions of this report.

Please check the online version at www.anrows.org.au for any amendment.

Introduction

Background

Women with disability in Australia are recognised as facing significant challenges in accessing justice in relation to violence that they experience. Violence may include physical and sexual violence as well as other forms of abuse such as coercive control, emotional abuse, financial abuse, and physical and social isolation. The majority of the cases captured in this report were instances of domestic and family violence, broadly defined, meaning they occurred within a family or caring context. In addition, violence may take particular forms such as withholding required medications or aids, limiting access to disability support services or mainstream service providers, and threats related to women's mothering and care-giving roles. Avenues to seek desired justice, which may include prevention of future violence, everyday security and safety, and consequences for the perpetrators of violence are complex, as justice services and pathways may not effectively support the access of women with disability.

As part of their commitment to policy-relevant empirically grounded research, Australia's National Research Organisation for Women's Safety (ANROWS) commissioned research entitled *Women, disability and violence: Barriers to accessing justice*. The project was led by researchers from Monash University and People with Disability Australia, (hereafter PWDA) representing Disabled People's Organisations Australia, (hereafter DPOA).

Project aim

Our key objectives

- Produce knowledge of the experiences of women with disability in terms of violence, especially sexual assault and intimate partner violence, and pathways and barriers to accessing support and justice responses to such violence.
- Produce the research in partnership with an organisation constituted and led by people with disability, (PWDA, on behalf of DPOA, which works with people with disability in regard to violence), in order to ensure the validity, efficacy and potential for meaningful application of the findings of the research project.

Key research questions

- What are women's experiences of violence, especially sexual assault and/or intimate partner violence?
- How do women position and interpret these experiences in relation to their disability?
- What are the mechanisms and factors that lead to incidences of violence, especially sexual assault and/or intimate partner violence being reported?
- If women report, how do they experience responses in terms of services and justice systems, after reporting?

Methods

We undertook fieldwork in two Australian states, Victoria and New South Wales. In total, 36 women participated in our study, through semi-structured interviews or focus groups. These women lived in urban and regional locations in Victoria and New South Wales: the complexity and diversity of their insights has been the primary critical source in our project analysis. We also interviewed 18 specialist violence and disability stakeholders across the two states. Further details about the research methods and data analysis can be found in the accompanying research report *Women, disability and violence: Barriers to accessing justice: Final report* (Maher et al., 2018), also available on the ANROWS website (note Easy English & Auslan translations of the research report, including key findings are available on our website - <https://arts.monash.edu/gender-and-family-violence/projects/women-disability-violence/>).

Addressing “intersectional discrimination”

Intersectional discrimination is a term that is often used to explore the ways in which discrimination based on identity, social position or status, such as racism, sexism, ableism or classism, intersect to create new and unique forms of discrimination. Disability experts have long been using this term to discuss the unique forms of discrimination experienced by people with disability (Frohman & Sands, 2015, pp.17-18). This term captures discrimination experienced by people with disability as it intersects with discrimination based on other aspects of their identity, such as their age, gender, sexual orientation, religion, indigenous, ethnic or cultural background, immigration status or economic status (Frohman & Sands, 2015, p.17). As Frohman and Sands make clear, these various identity layers intersect to create new, unique and often quite complex experiences of discrimination. An analytical approach must therefore take various layers of identity, social inclusion/exclusion and social positioning into account when considering their subsequent access to justice responses. Understanding intersectional impacts in research practice is addressed in detail in our research report *Women, disability and violence: Barriers to accessing justice: Final report* (Maher et al., 2018). (See page 2 for Easy English & Auslan translation details).

Key findings

The need to listen to the voices of women with disability and to believe them.

Many women who participated in this project were motivated by a strong desire to achieve change for others in the future. As identified in the *Stop the Violence Project* (Dowse et al., 2013), supporting the leadership and participation of women with disability in legislative change and policy making will be necessary to achieve such changes. They spoke clearly about their experiences and often detailed a growing understanding of what they were experiencing as “violence” as part of a pathway to achieving greater everyday security. For those tasked with supporting women’s everyday care needs, ideas of violence may often be more limited and troubling. A recent study highlighted the way in which care workers’ concern about raising violence as an issue with women in discussion and in service provision can operate as a form of gatekeeping, preventing them from making informed decisions and taking control of their lives (Dyson et al., 2017, p.31). In moving towards the removal of barriers to women’s access to justice, attention to women’s own accounts and aspirations is critically important.

Women with disability face particular and sustained challenges in achieving everyday safety and security.

Typically, economic security, housing stability and care and service support are not readily accessible or available for women with disability. Understanding how violence impacts on women’s lives in this context requires attention to types of violence that may be invisible or less well understood, including attention to how women’s need for resilience and survival in the face of precarious everyday safety and security may impact on their definitions of, and decisions about, violence and the support and services they need. Women were clear that different forms of justice, personal and legal, were important to them in different contexts. Support to achieve the justice that they sought, that is, recognition of their legal capacity, autonomy and independence, was vitally important.

In considering how women might actually move towards pathways to justice, everyday security was identified as a

critical first step in all that followed. As some of the women explained, without a secure living situation in which they could feel confident, referrals and other forms of response to support transitions away from violence had little chance of succeeding.

Antoinette Where do I feel safe? Nowhere. What does that mean? The world’s an ugly place. Like society makes it really, really ugly; I’m so anti-societal now. I know I shouldn’t be.

Sandra I’m safer in my house on my lounge than anything, with my cats. But I don’t think anywhere really is safe in the world. There is no safe place in the world. Anywhere, anytime, someone violent can turn up or someone from your past and the whole thing starts again. I left him 14 years ago.

Linda Where do I feel safe? Well, sometimes not in my own home because I’m alone ... Mortality; you worry about that. I’m only young but I think about it sometimes. I’m sorry I’m crying.

Possible pathways to just outcomes.

Data gathered in this project indicated that women with disability face violence in multiple ways. Violence occurs through a diverse range of incidents, consistently as part of everyday experiences and through the operations of family structures, relationships, institutions, service delivery and policy settings. Legislative frameworks played a crucial role in diminishing women’s legal capacity: this was routinely denied or inhibited; reproductive and sexual autonomy were compromised; women’s decisions about treatment and desired outcomes were not respected; appropriate communicative methods and approaches were not offered; and therefore agency to act as full citizens before the law was not accorded them.

This complexity in terms of denying or limiting the legal capacity of women with disability has implications for effective responses, for how justice is defined and for how access to these different types of justice is understood. Women sought effective, respectful and prompt responses to disclosures as one important form of access to justice. Women’s aspirations for everyday security for themselves, and in many instances

their children, were also a critical aspect of what they identified as justice and access to justice. They often distinguished personal and legal justice. Our data suggests that definitions of violence and access to justice require considerable attention and expansion if we are to effectively address the needs, and embed the human rights of women with disability into service delivery models. However, as identified in the context review, action on existing recommendations which would change the extant patterns of injustice that this study confirms, is a critical pathway.

Service challenges across the specialist violence and disability service sectors.

In addressing the needs of women with disability, different services (here including disability support and advocacy services, specialist violence and family violence services, and legal support services) faced different challenges in supporting women to achieve access to justice. Understandings of disability and violence were variable and at times seemed reliant on common or pre-existing assumptions about women with disability – about women’s legal capacity and rights, about what “needs” women were likely to have, about what “barriers” to accessing justice might exist, about how violence might manifest and about what responses might best serve women. Supporting services to build cross-sectoral and grounded knowledge in workers, embedded in cross sector training packages, would ensure best practice outcomes, and build robust evidence bases for new and emerging knowledges about how best to support women to achieve safety, security and justice.

Impact of “siloes” knowledges.

The impact of assumptions about women with disability, their needs, strengths, aspirations, and concepts of violence, justice, security and safety are critical in influencing how effective social, institutional, service and policy responses are in supporting women to achieve everyday safety, security and justice. The notion of “siloes” as creating risks for women with disability and reducing the likelihood of effective responses have been urgently emphasised in multiple recent reports and also arose as a key issue in our study (see for example: Healey, 2008; Dowse et al., 2013; Dyson et al., 2017; WWDA,

2015). The impacts of assumptions and siloes knowledges vary according to different sectors and service agencies: the outcome however is that women’s access to justice is often contingent on partial knowledge, insights, skills and service delivery models. Many service providers were aware that these complementary skills and knowledges were crucial to building effective and just responses for women experiencing violence: pathways for information exchange and service sharing were not always clear, however. Despite systematic investigations, reports, and recommendations for change, there appears to be limited progress towards embedding access to justice for women with disability facing violence in meaningful and concrete ways.

Implications: Actions to achieve access to justice for women with disability

The *Royal Commission into Family Violence* (2016, hereafter RCFV) has been identified as a watershed moment in Victoria in terms of accepting broad-based responsibility for changing women's everyday experiences of family and other forms of violence. In other states in Australia and globally, a similar commitment is being articulated. Yet, the past five years in particular have seen numerous reports and inquiries that outline both the existing issues and pathways forward for women with disability facing violence and seeking access to justice. This study serves to reinforce that there has not been action on these existing recommendations. In securing access to justice and freedom from violence for women with disability, it is clear that we need to act on what is known and has been proposed, as follows:

1. ensure access to everyday security and safety with attention to housing, economic well-being, and respectful and responsive service structures that support and enhance women's autonomy;
2. ensure international instruments enshrining inclusive human rights for all are active;
3. ensure that women with disability have access to specialised violence services;
4. support disability services to facilitate access to specialised violence services for the women they support; and
5. continue to expand and rethink how we define violence with regard to understanding the experiences of women with disability.

As our findings indicate, women with disability require responses and support that we, as a society and community, are still struggling to deliver in the face of gendered disability violence (Fromhader et al., 2015). They also require the urgent development of structures that support their leadership and inclusion and which attend to their views of just outcomes including the particular barriers they face in achieving such outcomes. These structures and effective good policy and practice models can be sourced in the *Stop the Violence Project* outcomes (Dowse et al., 2013; WWDA, 2013).

In their report about equal recognition before the law, the Australian Human Rights Commission (AHRC) outlines a set of actions and principles necessary to support people with disability to claim their human rights and exercise full and effective legal capacity (AHRC, 2014: 36 ff). A Senate

Community Affairs report (Parliament of Australia, 2015) also contained a number of important recommendations. Recommendation 6 (2015, p.xvii) reiterates references to the need to implement the outcomes of prior reports. The Australian Law Reform Commission (ALRC) Family Violence and Commonwealth Laws— Improving Legal Frameworks (2011), identified necessary changes to address definitions of family violence that would better the needs of people with disability. The recent review of Australia's progress in meeting its human rights obligations in relation to responses to violence against women with disability (Didi et al., 2016) makes clear that there is still inadequate progress towards effective access to justice or indeed everyday security. Legislative change, as well as attention to ensuring women's full participation, is required to achieve those changes already identified as necessary.

Women participating in this study were articulate about the everyday ways in which their safety and security has been compromised. The deleterious and long-lasting effects of violence and a lack of access to justice were evident: all of the women identified extensive and on-going effects, many of which remain unaddressed.

Ruth I nearly burst inside sometimes when you get that bad. And know it's still going on that's the worst part.

Nicole I have struggled to find a sense of safety, of connection, of stability, of validation, of calm, of support, of justice and most of the basic essential needs for survival and life, including self-care/love. I have only ever just existed, not thrived. I have never experienced happiness or contentment. I live mostly in a state of fear and hypervigilance. Violence has robbed me of my life and my freedom.

In our view, as in the views of these women and the service providers we interviewed, the changing landscape of the disability and specialist violence sectors not only offers uncertainty, but also hope and opportunity. We are entering into a period in Australia's history where traditional approaches to violence are being challenged and new understandings of the capabilities, choice and control of people with disability are emerging. Accordingly, for us, there is a real opportunity at this time to support services across the specialist violence

and disability service sectors to build cross-sectoral and grounded knowledge in workers. Yet, we face a depressing recent history of the failure to effectively implement existing recommendations. As has been consistently emphasised and reinforced, there is a need for cross-sector training packages that support the specialist violence and disability service sectors to form stronger linkages and referral pathways which make use of the full range of provisions emerging across all sectors that support women with disability. However, the success of these initiatives will depend on close attention to what women say they want and need. It will also depend on the willingness to act to implement existing recommendations to ensure autonomy and participation in regards to legal and other processes.

This report has offered insights into the experiences of 36 women with disability as they have sought to stop the violence they were facing and achieve just outcomes for themselves, that were personal (everyday safety and security) and legal (redress, the proper attribution of responsibility and recognition of legal capacity). These findings are not startling or new.

Clear and consistent recommendations that could achieve change already exist, but have not been implemented. Multiple reports, ground-breaking projects such as the *Stop the Violence Project* (Dowse et al., 2013; WWDA, 2013), findings from national investigations such as the AHRC (2014) *Equal before the law: towards disability justice strategies*, and the ALRC (2014) *Equality, Capacity and Disability in Commonwealth Laws* have in fact identified the barriers women with disability face. Further, they have proposed changes that would create pathways to justice through supporting and enabling women's full citizenship and participation, recognising their legal capacity and ensuring Australia meets its human rights obligations.

The proposed AHRC (2014) Disability Justice Strategy is guided by the following principles:

1. Safety of people with disabilities and freedom from violence
2. Effective access to justice for people with disabilities
3. Non-discrimination
4. Respect for inherent dignity and individual autonomy

including the freedom to make one's own decisions

5. Full and effective participation and inclusion in the community (AHRC, 2014, p.6)

Our findings serve to reinforce the urgent need for implementation of these principles as illuminated by all prior research and offer a difficult insight into stalled change. We hope that the weight of accumulated evidence and what some in our study identified as a changing landscape of possibility can ensure real change.

Key implications for policy settings and service providers

- The *Stop the Violence Project* (Dowse et al., 2013) recommended a number of strategies to support the full participation and leadership of women with disability in the development of legislative and policy frameworks: this is critical to achieve long term change and effective social and service responses.
- The AHRC (2014) call for a Disability Justice Strategy and the implementation of prior recommendations in relation to legal capacity for people with disability. This call and the importance of rethinking current legal capacity frameworks and existing legislation in line with human rights frameworks and obligations (PWDA, ACDL, AHRCentre, 2014; Didi et al., 2017) must underpin movement forward.
- Recognising and identifying diverse types of violence that impact on the everyday safety and security of women with disability requires attention to individual, environmental and institutional factors because they influence, impact on, and in many instances, constrain those women's autonomy and agency.
- Experiences of violence are commonplace and contextual: effective responses to support women with disability to achieve justice, in ways that offer meaningful resolutions and pathways forward for them, will require integrated service systems that offer distinct services, insights and expertise, informed by the leadership of women with disability.
- Currently, as identified in our key findings, expertise exists across different sectors (disability services, family services, specialist family violence services, sexual assault services, and justice services) and is not generally accessible through one service portal. Knowledge of different sector expertise and insights is not readily accessible to service providers.
- Our key sector-focused recommendation is the development and provision of **cross sectoral training packages** (a model and trial that we hope will occur as one outcome of this ANROWS project) as a valuable and concrete way to address the current "siloed" knowledges and expertise around support for women with disability to access justice, most particularly in relation to just outcomes that support their identified needs. Such training will need to embed knowledge about how the experiences of violence at the intersections of gender, disability, indigeneity, cultural diversity and other forms of social disadvantage impact access to all forms of justice.
- In addition to cross sectoral training, we recommend sponsored **three month placements/professional development internships** for those working in disability service provision and specialist family violence/sexual abuse service provision and associated legal sectors. All these sectors bring distinct yet critical knowledge about disability as complex and environmental in its impacts on women's everyday safety and security; and violence rooted in practices of coercive control that can extend well beyond commonly understood types of violence. Ensuring these knowledges, which are always developing and emerging, are able to transition across all of the sectors that support women with disability is crucial in moving towards everyday safety and security in an inclusive society that strives towards the human rights of all. It is critical in ensuring women with disability have access to both personal and legal justice.

References

- Australian Human Rights Commission. (2014). Equal before the law: Towards disability justice strategies. Retrieved April 15, 2017 from <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>
- Australian Law Reform Commission. (2014). Equality, capacity and disability in Commonwealth laws: Summary report. Retrieved from <https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>
- Didi, A., Soldatic, K., Frohmader, C., & Dowse, L. (2016). Violence against women with disabilities: Is Australia meeting its human rights obligations? *Australian Journal of Human Rights*, 22(1), 159-177.
- Dowse, L., Soldatic, K., Didi, A., Frohmader, C., & van Toorn, G. (2013). *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper*. Retrieved from Western Sydney University ResearchDirect website <http://researchdirect.westernsydney.edu.au/islandora/object/uws:36865>
- Dyson, S., Frawley, P., & Robinson, S. (2017). "Whatever it takes": Access for women with disabilities to domestic and domestic violence services: Final report (ANROWS Horizons, 05/2017). Sydney: ANROWS.
- Frohmader, C., Dowse, L., & Didi, A. (2015). *Preventing violence against women and girls with disabilities: Integrating a human rights perspective*. Retrieved 12 September from Women With Disabilities Australia website http://wwda.org.au/wp-content/uploads/2013/12/Think_Piece_Revised_Edition.pdf
- Parliament of Australia. (2015). *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*. Retrieved 11 April 2017 from http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report
- People with Disability Australia, the Australian Centre for Disability Law, & Australian Human Rights Centre. (2014). Australian Law Reform Commission (ALRC): Equality, capacity and disability in Commonwealth laws (Discussion Paper). Retrieved 12 September 2017 from <http://www.pwd.org.au/documents/pubs/SB14-ALRC-Submission-PWDA-ACDL-AHRCentre.doc>
- Women With Disabilities Australia. (2013). Stop the violence: Report of the proceedings and outcomes. Retrieved September 11, 2017 from <http://www.stvp.org.au/documents/STVP%20Outcomes%20Paper.pdf>

This page has intentionally been left blank.

This page has intentionally been left blank.

This page has intentionally been left blank.

ANROWS

ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY

to Reduce Violence against Women & their Children

