

Disability and The Criminal Justice System: Achievements and challenges

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'Family Violence & Sexual Assault: A Criminal Justice Response for Women with Disabilities'

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I would like to thank you for this opportunity to speak with you today. Before I begin I wish to pay my respect to the traditional owners the Kulim community on whose land we have gathered.

I would like to congratulate the Hon Rob Hulls MP for his comments on sexual assault in his presentation this morning. For a longtime victim/survivors have given voice to how accessing the criminal justice system in relation to a sexual assault leaves them feeling revictimised all over again. The Attorney Generals comments on the commitment of the State Government to ensuring a fairer system for victim/survivors are warmly welcomed.

Today I am going to speak about Gender-based violence. The term gender-based violence recognises that particular types of violence are predominately, although not exclusively, perpetrated by men against women. These include domestic violence, sexual assault, stalking and sexual harassment. The term gender-based violence also places violence against women within the context of women's inequality in society and the power differences between women and men. 101 Ways

In the limited time we have, my presentation will attempt to raise **some** of the challenges women with disabilities face when they seek a criminal justice response to family violence and sexual assault; the limitations of the current system and the need for further reform.

Nationally and internationally there is an almost unanimous consensus among researchers that women identified as having a 'disability' experience violence and abuse at a much greater rate

than the rest of the population. Although there is no absolute agreement on the true extent of this violence it is generally agreed that women with disabilities are victimised at rates of at least twice that of the general population. Not only are women with disabilities at greater risk of abuse, abuse can be the cause of disability.

Violence against women with disabilities has been identified as not only more extensive than amongst the general population but also more diverse in nature than for women in general. A concise definition of violence in this area is made difficult by the pervasive nature of abuse against women with disabilities. It is argued the nature of violence against women with disabilities incorporates an “almost endless list of injustices and maltreatment” including unnecessary institutionalisation, denial of control over their bodies, lack of financial control, denial of social contact, employment and community participation as well as physical, mental and sexual abuse.

Internationally, violence against women and children is seen as a violation of human rights. International law upholds the right of women and children to live free of violence. These include the:

- United Nations (UN) Declaration on the Elimination of Violence Against Women (DEVAW);
- The UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);
- UN Convention on the Rights of the Child (CRC);
- Un International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- UN International Covenant on Civil and Political Rights (ICCPR).

Australia has ratified these international treaties however unlike many other countries; these instruments are not technically binding under Australian law.

Australian legislation regarding family violence makes no mention of gender equality, nor of the government's commitments under international law. It tends towards a gender-neutral definition, which distorts the reality of family violence and can dilute the usefulness of the legislation. ^{101 Ways}

We are taught that a fundamental principle of our democracy is that ‘all are equal before the law’. This principle is seriously

compromised if the justice system does not provide access to justice for people who are socially and economically disadvantaged.

The 1994 report by the Australian Law Reform Commission, 'Equal Before the Law', found a significant gender bias against women. It is now increasingly acknowledged that law is not a body of value free principles. A large body of legal scholarship now documents the gender bias of the law.

Both judges and parliamentarians, as lawmakers, must make decisions about which needs the legal system will try to satisfy, which values will be endorsed by laws and which interests will be protected by laws. All of these decisions must be made by individuals who do not occupy a neutral position, but necessarily have a point of view. The law inevitably reflects the values, concerns and interests of present and past lawmakers.

The participants in the process of lawmaking are judges in courts, lawyers arguing cases, members of parliament and public servants drafting and enacting legislation have overwhelmingly been men. In the process of lawmaking women's voices have been largely absent. The result of this longstanding exclusion of women from law is that the legislation and case law used by lawyers and judges had been developed by men, with their problems and concerns in mind, and they reflect men's perspectives on the world. ALRC 69 This includes their perspectives on women and women's roles as well as their perspectives on women with disabilities.

Whilst some progress has been made through law reform, the gender bias within the law, overwhelmingly remains women's experience. The fundamental issue that women and children are unequal before the law is still unresolved in this country.

What do we know of the experience of women with disabilities; the law and gender-based violence?

We know that family violence and sexual assault are very under reported crimes.

We know family violence and sexual assault against women with disabilities are often not reported.

The community has been slow to recognise and categorise violence against women; especially if committed in the privacy of one's home and by a family member. Women themselves have been taught that the violence is a personal matter.

The silence of victim/survivors in reporting family violence and sexual assault can be attributed to reasons many and varied, the most common are: fear of not being believed; shame, fear of the perpetrator and the fear and stress associated with the criminal justice system.

A major issue for many women with disabilities when reporting acts of family violence and sexual assault is credibility. Very powerful myths suggest that women with disabilities should not be believed when they report any form of violence against them.

Women with disabilities are often stereotyped as promiscuous, mad or incapable of understanding.

Women with intellectual disabilities are often stereotyped as being, asexual, childlike or promiscuous, and those who have psychiatric illness as provocative.

The criminal justice system rests heavily on being believed at every stage especially in family violence and sexual assault cases.

Victim/survivor's can be perceived as not knowing, not remembering and not being truthful particularly if they have a cognitive impairment.

- women with disabilities cannot always obtain information about family violence or sexual assault in accessible formats, or access information about how and where to get assistance.
- some women with disabilities may not tell anyone about the abuse because they may not understand that what has happened to them is a crime.
- women with disabilities may face misconceptions about their credibility and their memory, as a result of which their complaints about assault may not be taken seriously by the police.

- it is difficult, if not impossible, for women with disabilities to seek external assistance if they are being abused by someone they depend on for their day-to-day living needs.
- some women with disabilities may have difficulty in explaining what happened to them when they are interviewed by the police.
- complex courtroom language makes it difficult for women to respond to questioning or to understanding legal processes; and
- some women with disabilities are likely to find cross-examination particularly daunting and difficult.
- women who have already experienced situations in which their violence or mistreatment have not been believed, or where they have been treated as likely to fabricate reports, are even less likely to report abuse.
- women with no or limited verbal communication skills have no real access to the criminal justice system after experiencing family violence or sexual assault. Even when evidence that a sexual assault has occurred is available, an individual is required to be able to present evidence themselves about what has taken place. Without the capacity to verbalise the assault, an investigation is unlikely to proceed.
- limited or alternative communication may also lead to an assumption that an individual is incapable of giving evidence.
- women with disabilities are denied access to the judicial system because the community believes that they cannot cope with its complexity or stand up to vigorous questioning in court.
- women with disabilities face the same problems with legal representation and protection as others who are poor and disadvantaged. They have to rely on free or low-cost services, they have less choice in who represents them and they will generally have less understanding of the legal system.

Currently in Victoria there are a number of criminal justice initiatives with a commitment to responding to family violence and sexual assault more effectively. Some of these are:

- the Victoria Police Code of Practice for the Investigation of Family Violence.
- a Family Violence Division of the Magistrates' Court has been established to allow victims to have a range of legal issues dealt with within the one court. Two demonstration courts have been set up, one in Heidelberg and one in Ballart.
- the State Government also announced increased funds in the 2005-2006 Budget to strengthen the justice system responses to family violence: including more police prosecutors, training for court staff, and new family violence specialist services providing enhanced support for victims at three additional Magistrates' Courts.
- the County Court has announced they will develop a specialist 'sexual assault' list within the Court with the aim to better assist the victim/survivors of sexual assault and minimise the secondary trauma experienced by participating in the justice process.

It is also important to mention that The Victorian Law Reform Commission has held extensive consultations, developed discussion papers and produced final reports on the Review of the Family Violence Laws, Sexual Offences and Defences to Homicide.

In 2003 Disability Discrimination Legal Service produced a report *Beyond Belief, Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice*. A number of *Beyond Belief, Beyond Justice* recommendations have been adopted into The Victorian Law Reform Commission Sexual Offences final report.

How, if at all, will these new initiatives create change for women with disabilities?

The new Family Violence Division of the Magistrates' Court has advertised a commitment to developing an Access strategy for indigenous and CALD communities but there is no mention of disability.

Victoria Police Code of Practice For The Investigation of Family Violence has a section on referral information. There is a contact

for immigrant women, indigenous women, and lesbian women. These contact agencies are under resourced and over worked however they do provide an opportunity for issues affecting the marginalised women, they represent, to be heard. No contact for women with disabilities is included in the Police Code of Conduct because there is no contact agency.

The Victorian Law Reform Commissions' recent reports make a number of important recommendations in relation women with disabilities who experience family violence and sexual assault.

We all need to advocate and lobby to ensure that there is enough 'political will' to adopt these recommendations.

We need to continue to challenge and remove the overwhelming odds that prevent victim/survivors with disabilities from seeking and achieving justice.

In conclusion I would like to remind you:

The unwillingness to acknowledge women with disabilities as reliable witnesses in criminal matters - in particular women reporting gender-based violence -creates a second class of citizens for whom the justice system provides little protection.

The failure to recognise women with disabilities capabilities impedes women's access to legal intervention.

It is critical that any response to violence against women recognises the needs of all women and children. An understanding of individual needs and differences is important for a respectful and considered response. Women with disabilities have been subjected to power, policies and practices that have defined them in very narrow ways and precluded a consideration of them as individuals services must be designed and delivered to take into account the diverse needs and experiences of all women.

Women with disabilities are marginalised by their disability and further discriminated against through their gender. As Chenoweth (1993) states: 'Deeply rooted in hatred towards people with disabilities and compounded by the cultural oppression of women, abuse and violence towards women with disabilities is easier to inflict'. WWDA

If as an individual or representative of an organisation you espouse principles of social justice and human rights you must view with deep concern the extent of violence in the lives of women with disabilities.

THANK YOU

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