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NSW Law Reform Commission

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Thank you for allowing us to make a brief preliminary submission to the NSW Law Reform Commission review of consent in relation to sexual offences. PWDA would like to take this opportunity to support the recommendations made by Rape and Domestic Violence Services Australia (R&DVSA) to this review.

In addition to endorsing the submission and recommendations of R&DVSA, we would also like to acknowledge some issues around consent, sexual violence and access to justice specifically in relation to people with disability.

PWDA has extensive expertise in the area of violence, including sexual violence, against adults and children with disability. Although data is limited, that which is available shows that children and adults with disability experience violence at much higher rates than children and adults without disability.¹ This holds for both sexual and non-sexual violence. For instance, children with disability are 2.88 times more likely to experience sexual abuse than children without disability.²

As is seen in the general population, sexual violence against people with disability is gendered. More than 70% of women with disability have experienced 'violent sexual encounters' at some point in their lives,³ and it has also been reported that 90% of women with intellectual disability have experienced sexual

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¹ For more information, see: Frohmader, C., & Sands, T. 2015. *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*. Australian Cross Disability Alliance (ACDA); Sydney, Australia. pp 69-70. Available: http://pwd.org.au/documents/Submissions/ACDA_Sub_Sen_Inquiry_Violence_Institutions.pdf

² Llewellyn, G., Wayland, S., Hindmarsh, G. 2016. *Disability and Child Sexual Abuse in Institutional Contexts*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

³ Frohmader and Sands 2015, op cit., p36. See also: Frohmader, C. 2014 'Gender Blind, Gender Neutral': *The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities*. Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1. Available at: http://wwda.org.au/wp-content/uploads/2013/12/WWDA_Sub_NDS_Review2014.pdf



abuse, with 68% of these women having been sexually abused before the age of 18.⁴

It is important for this review to assess the structural systems and barriers that contribute to these increased rates of sexual violence against people with disability. We can look, for instance, to the sex and relationships education that is provided to children and young people with disability. From our experience, children and young people with disability (in special schools or specialist streams within mainstream schools) may receive no education around sexuality, consent or relationships. Often, that which they do receive is inaccessible, inappropriate, and inconsistently delivered. Having limited access to information around sex and consent contributes to the vulnerability of children, young people and adults with disability to experiencing sexual violence.⁵

In addition to having limited access to information that could help protect against the abovementioned disproportionate rates of violence, people with disability experience many barriers to justice, some of which have been the topic of discussion in previous reports and inquiries.⁶ These barriers to justice may include, for example, people with disability feeling as though their experiences haven't been taken seriously, being reliant on the perpetrator of the crime to contact police, or being unable to attend a police station or court (or access the appropriate supports to do so). Some of these barriers emerge from or are exacerbated by the discriminatory stereotypes, myths and attitudes about disability and sexual assault that often influence the justice system.⁷ Consequently, these stereotypes, barriers and legislative limitations, including the tendency to deny the legal capacity of people with disability in justice contexts, will often restrict access to justice for people with disability.

Indeed, women with disability in particular are frequently disbelieved when disclosing or reporting their experiences of violence, including sexual assault, and may be presumed to be unreliable witnesses or unable to participate in legal proceedings.⁸ PWDA is also aware of a case in which practitioners failed to collect physical evidence in a timely manner due to concerns about whether the victim had 'capacity' to consent to medical procedures (she did). The experiences of women with disability, including questions around legal capacity

⁴ Australian Law Reform Commission (ALRC). 2010 *Family Violence — A National Legal Response*. ALRC Final Report 114. Available: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

⁵ For more information regarding this see, for instance, PWDA's submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse with regards to Issues Paper 3: Child safe institutions (2013) and Issues Paper 9: Risk of child sexual abuse in schools (2015).

⁶ For further discussion of these barriers, see: *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities*, August 2012, p82. Available:

<http://www.afdo.org.au/media/1210/crpd-civilsocietyreport2012-1.pdf>; French, P. 2007. 'Disabled Justice: The barriers to justice for persons with disability in Queensland', Queensland Advocacy Incorporated; and Victorian Equal Opportunity and Human Rights Commission, 2014. 'Beyond Doubt: the experiences of people with disabilities reporting crime', Available: <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime>

⁷ French, P. 2007 op cit., p30; see also Australian Human Rights Commission, 2014. *Equal Before the Law: Towards Disability Justice Strategies*, Available:

[https://www.humanrights.gov.au/sites/default/files/document/publication/2014 Equal Before the Law.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/2014%20Equal%20Before%20the%20Law.pdf)

⁸ Frohmader, C. 2011. *Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities*, (A/HRC/RES/17/11). Prepared for Women With Disabilities Australia (WWDA). Available: <http://wwda.org.au/wp-content/uploads/2013/12/WWDAsubUNStudyViolenceWWDDec2011.pdf>



and consent in relation to sexual violence, require further consideration within this review. These topics must also be actively considered alongside the important recommendations and points made by R&DVSA in their preliminary submission.

Thank you again for the opportunity to provide our preliminary comments at this time. PWDA is looking forward to providing additional information over the course of the review to ensure that the perspectives and experiences of people with disability are thoroughly taken into consideration.

Yours sincerely,



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