



7 May 2023

**RE: Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault**

Dear Attorney-General's Department,

Inclusion Australia is the national Disability Representative Organisation representing the rights and interests of Australians with an intellectual disability and their families. Founded in 1954, our mission is to work to make sure people with an intellectual disability have the same opportunities as people without disability. We have teams in Victoria, Western Australia, and the Northern Territory, and we have member organisations in New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

We thank the Attorney-General's Department for the opportunity to submit to the consultation re: scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault.

We wish to make some recommendations for what we believe should be a focus for the development of specialised and trauma-informed legal services, given the prevalence of sexual violence experienced among people with an intellectual disability compared to the general population and the barriers to legal services experienced by people with an intellectual disability who are victims and survivors of sexual assault.

We hope it will assist in ensuring the experiences of people with an intellectual disability are prioritised during the scoping process, and add value to the legal model(s) developed.

**Prevalence of sexual violence experienced by people with an intellectual disability**

It is well evidenced that people with disability are victims and survivors of sexual violence, abuse and harassment at significantly higher rates than people without disability. The Personal Safety Survey's (PSS)<sup>1</sup> most recent statistics show that since the age of 15, 21% of

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<sup>1</sup> The PSS is a general population survey conducted by the Australian Bureau of Statistics (ABS) that collects detailed information about how people in Australia experience physical violence, sexual violence, intimate partner violence, emotional abuse by a partner and stalking.

It is important to note that while the PSS is a rich source of data, for various reasons it cannot capture the full scope of sexual violence (and other forms of violence) in the Australian community—and particularly the disability community—especially in relation to intersectional identities, backgrounds and disability types. For example, the PSS figures do not include violence or abuse associated with restrictive practices or breaches of human rights (e.g. denial of privacy, sexual expression or education).

people with disability (764,729 people) reported experiencing sexual violence<sup>2</sup> compared to 10% of people without disability.<sup>3</sup>

The PSS data also shows important intersections between gender and disability type:

- Women with disability are twice as likely to report an incident of sexual violence over their lifetime than women without disability.<sup>4</sup> Women with psychological and cognitive impairments<sup>5</sup> experience very high rates of all types of violence, particularly sexual violence and emotional abuse.
- One in two women with psychological and/or cognitive impairment have experienced sexual violence in their lifetime.<sup>6</sup>

A limitation of the PSS data is that it does not collect data from people living in institutional care settings. Yet there is evidence suggesting that women with disability, and particularly those with an intellectual disability, who live in institutional and residential settings are highly likely to experience violence, particularly sexual violence.<sup>7</sup>

Rates of sexual violence crimes perpetrated towards lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) people with disability are also disproportionately high.<sup>8</sup>

Although people with an intellectual disability are overrepresented as victims and survivors of sexual violence, there are very low reporting rates of crimes perpetrated against them.<sup>9</sup> One reason for this is that perpetrators are likely to have contact with a victim or survivor through disability services, meaning the victim or survivor is less likely to recognise or report a crime due to the ostensible legitimacy of the disability service. In one study, it was found that 44% of perpetrators of sexual violence towards a person with an intellectual disability had contact with them through a disability service.<sup>10</sup>

Given the prevalence of sexual violence experienced among people with an intellectual disability, and particularly women and LGBTIQ+ people, and the related issues to do with

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<sup>2</sup> Australian Bureau of Statistics. (2016). *Personal Safety, Australia*. ABS.

<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/2016>.

<sup>3</sup> Ibid.

<sup>4</sup> 33% or 605,081 women with disability compared to 16% of women without disability.

<sup>5</sup> 'Cognitive Impairment' is a term used by the Australian Bureau of Statistics. It refers to a combination of intellectual disability and head injury, stroke, or other brain injury.

<sup>6</sup> Australian Bureau of Statistics. (2016). *Personal Safety, Australia*. ABS.

<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/2016>.

<sup>7</sup> Australian Institute of Health and Welfare. (2022). *People with disability in Australia*. Retrieved from

<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia>

<sup>8</sup> William, L. and Mann, R. (2018). *The Everyday Experiences of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People Living with Disability*. La Trobe University. Retrieved from:

[https://www.latrobe.edu.au/\\_data/assets/pdf\\_file/0008/929861/GAFLA-Report-Final-Version.pdf](https://www.latrobe.edu.au/_data/assets/pdf_file/0008/929861/GAFLA-Report-Final-Version.pdf)

<sup>9</sup> Fogden, B.C., Thomas, S.D.M., Daffern, M. *et al.* Crime and victimisation in people with intellectual disability: a case linkage study. *BMC Psychiatry* **16**, 170 (2016). <https://doi.org/10.1186/s12888-016-0869-7>

<sup>10</sup> Ibid.

under-reporting, it is crucial that the Attorney-General's Department specifically considers the experiences and needs of this group, particularly in view of important intersectional contexts such as gender and identity.

## **Barriers experienced by people with an intellectual disability to accessing legal services**

Research shows there are myriad barriers people with an intellectual disability face when trying to access legal services in response to any crime, including sexual violence.<sup>11</sup> We briefly discuss two key barriers here.

### **1. Legal services are not accessible**

By and large, legal services are not accessible to people with an intellectual disability. This is due to many factors, including cost, geography (especially for people in remote and rural areas) and a lack of accessible support services that are genuinely responsive to the support needs of people with an intellectual disability.

A key component of this is access to information about the rights and options available to people with an intellectual disability within legal services—particularly in relation to how legal services operate in relation to the criminal justice system and what support options are available to people.

Having accessible information means having information and communication tools available to people in a way that makes sense to them, whether through Easy Read formats or other Alternative and Augmented Communication (AAC) tools depending on a person's communication support needs.

It is critical that people have accessible information available to them at every step of their contact with legal services, particularly to enable people to make informed choices about their legal action and support. A key part of this is access to Supported Decision Making,<sup>12</sup> which all people with disability have a right to under Article 12 of the UNCRPD, which is about equal recognition before the law.<sup>13</sup>

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<sup>11</sup> MacDonald, S. (2008). "Which Way is Justice": A Practice Manual for supporting people with an intellectual disability in the criminal justice system". Community Living Association, Inc. Retrieved from: <http://www.communityliving.org.au/wp-content/uploads/2013/07/Which-way-is-justice.pdf>

<sup>12</sup> For more information on Inclusion Australia's advocacy for Supported Decision Making, please see our submission to the NDIA on Support for Decision Making:

<https://www.inclusionaustralia.org.au/submission/submission-to-the-ndia-on-support-for-decision-making/>

<sup>13</sup> Article 12 – Equal recognition before the law. *United Nations Convention on the Rights of People with Disabilities*. Retrieved from: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html>

## **2. There is a lack recognition and understanding of intellectual disability among legal professionals**

There is a lack of understanding and training about intellectual disability within the overall justice system, whether through Legal Aid, Corrective Services, Police, Courts or other agencies.

As a result, many people with an intellectual disability are not recognised as having a disability and therefore miss out on getting the support or legal protections they need. According to researchers, failure to recognise a person's intellectual disability in a timely manner is one of the most significant barriers to access to justice.<sup>14</sup>

### **Key recommendations**

Given the prevalence of sexual violence experienced among people with an intellectual disability and the barriers to accessing legal services discussed above, Inclusion Australia recommends the following be prioritised when scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault:

1. Once developed, ensure any information about the three legal models be made available in Easy Read formats. This will ensure that people with an intellectual disability can access and engage with the consultation findings and development of the legal model(s), and understand how any future changes to legal services will affect them. We thank the Attorney-General's Department in advance for this.
2. Ensure the legal model(s) include holistic, person and family-centred and trauma-informed support for people with an intellectual disability so they can participate safely and meaningfully in a criminal justice system process. That support should take into account important intersectional contexts such as gender and identity, which are reflected in the data demonstrating the prevalence of sexual violence crimes perpetuated towards people with an intellectual disability.
3. The legal model(s) must include access to Supported Decision Making materials for people with an intellectual disability to engage in the criminal justice system process and make informed decisions about their legal support.

We thank the Attorney-General's Department for the opportunity to submit to the Inquiry and we hope these recommendations will assist in ensuring that the experiences of people

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<sup>14</sup> Hayes, S & Bleakley, R. (2006). People with intellectual disabilities and cognitive impairments in the justice system: responding to the legal needs of people with an intellectual disability or cognitive impairment, report prepared for the Collaborative Project, University of Sydney.

French, P. (2007). Disabled Justice: the barriers to justice for persons with disability in Queensland. Disability Studies and Research Institute for Queensland Advocacy Incorporated, Brisbane.

with an intellectual disability are prioritised in scoping the development of specialised and trauma-informed legal services for survivors and victims of sexual assault.

We welcome any further opportunity to discuss the issues raised in this letter in more detail.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Catherine McAlpine', with a stylized flourish at the end.

**Catherine McAlpine**  
**Chief Executive Officer**