



Women
With
Disabilities
Australia
(WWDA)

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

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Dear Senators,

Thank you for the opportunity to provide feedback on the Draft National Disability Insurance Scheme [NDIS] Bill 2012. Due to the impact of the Tasmanian bushfires on the only two staff of Women With Disabilities Australia (WWDA), this Submission is necessarily brief. WWDA has previously contributed to a number of consultative processes on the Draft NDIS Bill 2012, including a key stakeholder interview with those responsible for its drafting. In this context, this Submission therefore addresses key principles for your consideration in the Review of the Draft Bill.

As you are aware, Women With Disabilities Australia (WWDA)¹ is the peak non-government organisation (NGO) for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities, and represents more than 2 million disabled women in Australia. WWDA's work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.²

WWDA looks forward to continued opportunities to contribute to on-going work as the NDIS unfolds.

Yours Sincerely

Karin Swift
WWDA President

Carolyn Frohmader
Executive Director

¹ For more detailed information on Women With Disabilities Australia (WWDA), go to: <http://www.wwda.org.au>

² See WWDA's *Strategic Plan 2010 – 2015* at: <http://www.wwda.org.au/stratplan.htm>



Women With Disabilities Australia (WWDA) Submission to the Senate Community Affairs Legislation Committee National Disability Insurance Scheme Bill 2012

Women With Disabilities Australia (WWDA) remains deeply concerned that the NDIS Bill fails to acknowledge or give any consideration to the issue of gender. This is despite the fact that successive Australian Governments have committed, internationally and domestically, to enshrine gender equality into legislative and policy frameworks, and implement parallel strategies in order to promote gender equality and denounce discrimination against women. As a member State of the United Nations, and as a party to a number of human rights conventions and instruments which create obligations in relation to *gender equality*, Australia has committed to eliminate all forms of discrimination against women and to ensure equality between men and women. In recognition of the fact that women with disabilities face multiple discriminations and human rights violations and are often profoundly more disadvantaged than disabled men, Australia has also agreed to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights. The need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities (included for eg: through legislation), is expressly stated in the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Attached to this brief Submission, are two Submissions WWDA has contributed to previous consultations on the establishment and development of a National Disability Insurance Scheme (NDIS). These Submissions³ [Attachment 1 and Attachment 2] clearly articulate the rationale, need, context and framework for a gendered NDIS, including the NDIS legislation. WWDA therefore respectfully requests that, in addition to this brief document, these attached Submissions be formally accepted by the Senate Community Affairs Legislation Committee as part of WWDA's contribution to the current Senate Inquiry into the National Disability Insurance Scheme Bill 2012.

In meeting its obligations for the promotion of gender equality under the international human rights treaties and instruments to which Australia is a party, including domestic legislative and policy contexts, the Australian Government has a responsibility to ensure that gender is mainstreamed into all aspects of the

³ Women With Disabilities Australia (WWDA) (2010) *Gendering the National Disability Care & Support Scheme: WWDA Submission to Stage One of the Productivity Commission National Disability Care and Support Inquiry*. WWDA, Rosny Park, Tasmania. See also: Women With Disabilities Australia (WWDA) and Women With Disabilities Victoria (2011) *Submission in Response to the Productivity Commission's Disability Care and Support Draft Report*.

NDIS, including legislation, in recognition that women and girls with disabilities have fewer opportunities, lower status and less power and influence than men and boys with disabilities. Women with disabilities:

- are poorer and have to work harder than disabled men to secure their livelihoods;
- have less control over income and assets;
- bear the responsibility for unpaid work in the private and social spheres;
- have a smaller share of opportunities for human development;
- are subject to violence, abuse and intimidation;
- have a subordinate social position; and,
- are poorly represented in policy and decision-making⁴

The NDIS Bill should therefore include a principle consistent with Article 6 of the CRPD that explicitly recognises the impact of multiple discriminations caused by the intersection of gender and disability, and that includes the need for focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights. This is critical in order for the NDIS to take into account gendered impacts in considering for eg: Scheme eligibility and benefits, engagement with services and accountability processes, and inclusive governance arrangements.

In its current form, the NDIS Bill assumes that people with disabilities are a homogenous group who share a common set of issues - and that men and women experience disability in the same way. However women with disabilities and men with disabilities have different life experiences due to biological, psychological, economic, social, political and cultural attributes associated with being female and male. Patterns of disadvantage are often associated with the differences in the social position of women and men. These gendered differences are reflected in the life experiences of women with disabilities and men with disabilities. Women with disabilities face multiple discriminations and are often more disadvantaged than men with disabilities in similar circumstances. Women with disabilities are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination.⁵ Women with disabilities face **particular** disadvantages in the areas of education, work and employment, family and reproductive rights, health, violence and abuse.

For example, women with disabilities experience alarmingly high rates of all forms of violence and abuse from a range of perpetrators yet remain largely excluded from violence prevention legislation, policies, services and supports. They continue to be assaulted, raped and abused at a rate of at least two times greater than other women, and are at greater risk of severe forms of intimate partner and other forms of

⁴ Women With Disabilities Australia (WWDA) (2010) OpCit.

⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at: <http://www.unhcr.org/refworld/docid/43f3067ae.html> [accessed 27 June 2010]

violence. Compared to non-disabled women, women with disabilities experience violence at significantly higher rates, more frequently, for longer, in more ways, and by more perpetrators, yet programs and services for this group either do not exist or are extremely limited. In addition:

- women with disabilities experience violence, particularly family violence and violence in institutions, more often than disabled men;
- gender-based violence, including domestic/family violence, sexual assault/rape is a cause of disability in women. Domestic violence is the leading contributor to death, disability and illness of women under the age of 45;
- women and girls with disabilities are often at greater risk than disabled men, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation;
- more than 70% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives;⁶
- the overwhelming majority of perpetrators of sexual abuse of disabled girls and women in institutions are male caregivers, a significant portion of whom are paid service providers who commit their crimes in disability service settings, and other forms of institutional settings;⁷
- perpetrators frequently target and select their victims for their perceived powerlessness and vulnerability - and for their seeming limitations;⁸
- crimes of violence committed against girls and women with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences.⁹

Australia is obligated to take all appropriate measures to protect persons with disabilities from **all** forms of violence, abuse, exploitation and neglect, including their gender-based aspects. In this context, WWDA is concerned at the lack of attention given to violence in the NDIS Bill. For example, the NDIS Bill has as one of its principles [Part 2: Principle 6]:

People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.

⁶ Stimpson & Best; cited in Elman, A. (2005). *Confronting the Sexual Abuse of Women with Disabilities*. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence.

⁷ Sobsey & Doe; cited in Elman, A. (2005) OpCit.

⁸ Elman, A. (2005) OpCit. See also Women With Disabilities Australia (WWDA) (2007b) *Forgotten Sisters. Resource Manual on Violence Against Women With Disabilities*. WWDA, Rosny Park, Tasmania.

⁹ Women With Disabilities Australia (WWDA) (2007b) OpCit. See also: French, P., Dardel, J., & Price-Kelly, S. (2009) *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*, People with Disability Australia, Sydney.

Yet the CRPD [at Article 16], clearly states that States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

In this context, WWDA strongly recommends that Principle 6 of the NDIS Bill should be re-worded to accurately reflect Article 16 of the CRPD:

People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from violence, abuse, neglect and exploitation.

WWDA further recommends that the Objects and Principles of the NDIS Bill be re-drafted to align with the CRPD. The Bill currently articulates one of its objects as being to:

give effect to certain obligations that Australia has as a party to the Convention on the Rights of Persons with Disabilities.

The Bill does not stipulate *which* obligations it aims to give effect to, which is an obvious short-coming of the Draft Bill as it stands. Critically, if an object of the Bill is to ‘*support the independence and social and economic participation of people with disability*’ [at Part 2: (3) 1 (b)], then the NDIS Bill should have the objective of giving effect to the CRPD in its entirety.

The Bill also stipulates that a further objective of the Bill is to: ‘*raise community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability*’ [at: Part 2: (3) 1 (g)]. If this is the case, then the gendering of the NDIS and indeed the Bill, is even more crucial – to help combat the negative perceptions, stereotyping and prejudices of women and girls with disabilities which prevail. Women with disabilities in Australia want options for diversity in relationships, marriage, mothering, control of fertility and reproduction, running a household, caring for children and older family relatives and to live safely, as well as opportunities for employment and further education.¹⁰ Yet they are often stereotyped as passive, asexual, dependent,¹¹ compliant,¹² sick, child-like, incompetent and helpless,¹³ powerless¹⁴ or insecure.¹⁵ Alternatively, women with intellectual disabilities in particular may be regarded as overly sexual, creating a fear of profligacy and

¹⁰ Women With Disabilities Australia (WWDA) and Women With Disabilities Victoria (2011) Op Cit.

¹¹ See for eg: Curry, M. et al (2001) Abuse of women with disabilities: An ecological model and review. *Violence Against Women*, Vol. 7, No. 1.

¹² See for eg: Carlson, B. (1997) Mental retardation and domestic violence: An ecological approach to intervention. *Social Work*, Vol.42, No.1.

¹³ See for eg: Crawford, D. & Ostrove, J. (2003) Representations of Disability and the Interpersonal Relationships of Women with Disabilities. *Women & Therapy*, Vol. 26, No.3/4.

¹⁴ See for eg: Chang, J. et al (2003) Helping Women with Disabilities and Domestic Violence: Strategies, Limitations and Challenges of Domestic Violence Programs and Services. *Journal of Women's Health*, Vol.12, No.7.

¹⁵ See for eg: Calderbank, R. (2000) Abuse and Disabled People: vulnerability or social indifference? *Disability & Society*, Vol.15, No.3.

the reproduction of disabled babies, often a justification for their sterilisation.¹⁶ These perceptions, although very different, often result in women with disabilities being denied the right to participate in decision-making processes that affect their lives, and contribute to the high incidence of violence perpetrated against them.

The problems with the current service system highlight that many supports are either inaccessible, or not relevant to women with disabilities. For example women with disabilities who require supports to enable them to access their reproductive rights, in particular to have and raise children, and be part of families, are likely to be poorly served by the limited range of current supports. Yet under the international human rights treaties and instruments to which Australia is a party, the Australian Government has committed to recognise the right of women with disabilities *'to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.'* There is clearly a need to review and broaden the scope of the existing disability support system to meet the diverse needs of women and girls with disabilities, in order to facilitate their full inclusion and participation on an equal basis. Further, existing services urgently need to improve their responsiveness with respect to women and girls with disabilities. For example, research clearly demonstrates that women with disabilities have a poor interaction with specialist employment services. A stronger focus on building equal employment outcomes for women is required to address current disparities between disabled men and women, including the fact that disabled women are less likely to be in the paid workforce than disabled men and have significantly lower incomes.

In addition to providing a broader scope for potential support services, there needs to be a much stronger understanding of the limitations of existing 'mainstream' services in responding to women with disabilities. For example in many areas, public and crisis accommodation services remain inaccessible to many women with disabilities. Adjustments to facilitate access to secure accommodation support may enable women with disabilities to more fully access rights to full inclusion and participation. The NDIS has the capacity to allow individuals to respond flexibly to these needs. However an exclusion on the provision of housing support (and other 'mainstream' supports) through the NDIS may have the effect of excluding women with disabilities from accessing these rights to inclusion on an equal basis with others.

It remains unclear as to how the NDIS Bill in its current form, will *'raise community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability'*.

¹⁶ Women With Disabilities Australia (WWDA) (2007b) Op Cit.

It is therefore extremely important that the NDIS Bill reflects the fact that people with disabilities live in societies that are permeated by gender differences and gender inequalities. There is a real opportunity to build in gender responsiveness from the start of the NDIS through its foundational principles and assumptions; and in its implementation so that the disability service system recognises and addresses the issues for women and girls with disabilities, and so that mainstream services are required to improve their responsiveness to disabled women and girls.

WWDA makes the additional brief points regarding the NDIS Bill in its current form:

- There is a need to ensure in the legislation, provision of a nationally consistent and independent complaint process for participants;
- The critical role of independent and systemic advocacy in the NDIS must be articulated within the Bill;
- The current definition of disability needs to be re-conceptualised to be more inclusive to ensure that people with certain disabilities (including those which are temporary and/or unable to be determined as potentially 'life-long') are not excluded from the Scheme;
- There are several 'subjective' terms and elements within the Bill which are problematic and need re-considering (eg: 'value for money'; 'reasonable and necessary');
- There are elements of the Bill that are paternalistic as well as assumptive: eg: the expectation that 'families' will provide a degree of care and support [at: (cl 34(e); cl 4(5) and cl 4(12)]. Whilst WWDA acknowledges the contribution families provide to people with disabilities, and the importance of families, it must also be recognised that people with disabilities live in different family structures. For example, there are families of origin and families of choice or destination, each of which has differing characteristics, relationships, decision making processes and power arrangements. When families as carers are unable to deal with both internal and external pressures, the most vulnerable member of that unit - the person with disabilities - can be placed in physical, economic and psychological jeopardy. In many cases, 'family' does not exist as a support for the person with disabilities. In some cases, particularly for women with disabilities, the 'family' can in fact be the site of oppression, particularly in situations of domestic violence;
- The requirement that NDIS participants have to articulate their 'life goals and aspirations' in a documented Plan, is paternalistic and simplistic;
- Much more clarity is required around the role and scope of nominees;
- Both the Board and the Advisory Council of the Agency must have membership of people with disabilities, including a gender balance. This should be stipulated in the Bill.