

WWILD Sexual Violence Prevention Association submission

To

The Royal Commission into the Violence, Abuse, Neglect and
Exploitation of People who have a Disability – Criminal Justice
System Issues Paper.

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

WWILD Sexual Violence Prevention Association Inc., is an organisation concerned with the vulnerability of people with an intellectual disability to experiencing violence, abuse and exploitation, with a particular focus on sexual violence. WWILD has been in operation since 1996 and developed a wide range of experience and knowledge in terms of abuse and neglect of people with intellectual, cognitive and learning disabilities. WWILD runs two programs, the Sexual Assault Service and the Victim of Crime – Disability Training Program. The Sexual Assault Service is accessible for people with an intellectual disability who have experienced sexual assault or are at significant risk of experiencing sexual violence. This program is funded by the Queensland Government’s Department of Child Safety, Youth and Women. We also have our Victims of Crime - Disability Training Program which provides direct support to people with an intellectual disability who have experienced a crime, as well as community education and professional training. This program is funded by the Queensland Government’s Department of Justice and Attorney General. WWILD also seeks to participate in systemic advocacy to address the issues contributing to the vulnerability of people with an intellectual disability. This includes vulnerability to violent crime, the faults within the justice system that fail to hold perpetrators accountable and lack of or inadequate service responses to support people to recover from abuse and neglect.

WWILD’s interest and greatest understanding is around the experience of people with an intellectual disability, although many of the issues we raise are relevant to people with a disability more broadly. We have endeavoured to answer the questions outlined in Criminal Justice System Issues paper.

Summary of Recommendations:

1. All police officers should have specific training about impaired capacity, particularly tips to identify intellectual disability and cognitive disability if it has not been disclosed, in order to refer them to the correct police unit who have officers trained in ICARE.
2. Clear direction in policy and procedures for QPS to err on the side of granting access to special provisions like 93A interviews. These provisions are there for a reason and should be used accordingly.
3. Police should be provided with a disability liaison officer who can support them to identify and respond appropriately to people who have an intellectual disability
4. Emphasis on procedural justice in investigating crimes of violence, abuse and exploitation of people with disabilities and particularly in the instance of sexual assault. Many people understand the inherent difficulty in prosecuting a sexual assault, but they need to feel like they were offered a respectful process that to the full extent possible investigates their report and starts from a place of believing.
5. Emphasis on spending time with a person before an interview. This will assist people with an intellectual disability to feel more comfortable and assist them to share if they are not understanding questioning during the interview process.
6. Police processes that cater to all needs and disabilities including those who are nonverbal.
7. Mandatory training for representatives of the ODPP and the Judiciary coming into contact with people with intellectual disability, including prosecutors, legal officers, and judges. Training should focus on: cognitive and communication difficulties, identifying intellectual disability, appropriate referral options (as relevant), and the benefits and implications of special witness provisions.
8. Funding for more specialist victim support services to work alongside people experiencing intellectual disability and navigating the justice system across Australia.

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

9. Stronger guidelines and protections for people experiencing an intellectual disability, particularly when they are being cross examined. E.g. Questioning should be presented in simple and concrete language.
10. There should be stronger emphasis on identifying intellectual disability by police and justice systems and subsequent data collection so the true and correct number of people with disabilities within the justice system is clear to government policy makers and decision makers.
11. Emergency accommodation options for people with disabilities experiencing violence, abuse, neglect and exploitation. NDIS in its current form has little or no capacity for crisis response. Options should be flexible as many people will have difficulty leaving an area where their supports are located.
12. All funded Domestic and Family Violence services in Australia should have designated programs/positions to provide specialist support for women experiencing intellectual disability and domestic violence.
13. Domestic violence refuges need to accommodate woman experiencing disability. This should include: ensuring physical access at all refuges in Australia, allowing space for woman to have support worker present while residing in the refuge and ongoing training for workers around the vulnerability and communication, cognitive difficulties experienced by this population.
14. Domestic violence order applications and domestic violence orders need to be presented in easy English to improve accessibility for people who experience intellectual disability. People who have an intellectual disability should be consulted throughout this process to provide feedback and suggestions.
15. Disability advocacy services need to be bolstered to allow for greater capacity to support those with who are at risk, or have experienced crime.

The following part of our submission will discuss our experiences and observations when working alongside people experiencing intellectual disability, to access police, courts and other victims support services.

Barriers to accessing appropriate police interviews

It is well-established that women and men with intellectual, learning and cognitive disabilities suffer extremely high rates of sexual violence in the community. Depending on the research cited, it is estimated between 50% and 99% of women with intellectual disabilities will experience sexual assault in their lifetime (French, 2007). In spite of this only a small proportion of victims will choose to report to police and an even smaller percentage will proceed to trial.

People who have an intellectual disability experience a number of barriers in relation to reporting their experience of crime. They are:

- Less likely to understand their rights and how to enact them;
- Less likely to be believed when disclosing incidences of abuse, neglect and exploitation;
- More likely to experience physical barriers to accessing police support;
- More likely to be more dependent on abusers to access supports;
- Less likely to have an understanding and knowledge of police processes which often results in person fearing that they will be in trouble;
- More likely to experience poor responses due to negative attitudes, stereotypes and myths of intellectual disability.

As sexual assault and domestic violence are examples of gender - based violence, woman with intellectual disability also experience poor responses to disclosure and reporting, due to victim

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Wooloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

blaming practices and rape myths which impact safety and ability to access satisfactory justice responses.

WWILD Example:

A woman with intellectual impairment lived in supported accommodation with a male housemate. They had been observed to flirt on occasion. One day sitting on the couch in their living room, the male housemate sexually molested the woman, who froze and was unable to show resistance through words or actions. The incident was witnessed by support workers, who reported it to their superiors, who decided that the female must have been consenting because she had been flirtatious with him prior. They refused to support the woman's subsequent allegation that the contact was unwanted and when she made a complaint they asked her to vacate the household. She reported the incident to police who were going to investigate but she withdrew the complaint as she 'didn't want to get anyone in trouble.'

Of those victims who have a disability who get to the point of attempting to report to police, our experience has been that they are likely to experience further barriers in accessing the most appropriate form of police interview. In Queensland, victims who have an intellectual disability or meet other criteria ('impairment of the mind') are eligible to participate in an interview with a detective who is trained to conduct an ICARE interview. ICARE trained detectives conduct interviews with children and people who have an impairment of the mind. The interview takes place in a comfortable, supportive setting with a detective who is trained to use simple, concrete language. The interview is recorded and can be used as the person's evidence-in-chief, if the case is committed to trial. This ensures that the person does not need to retell their experience during the trial, which reduces levels of re-traumatisation and is congruent with trauma-informed practice.

WWILD has been assured by QPS that detectives should be allowing access to the ICARE interview, if a person or their supporter identifies that an intellectual disability is present. This is also clearly stated in the QPS operational procedures manual. However, our experience has been that QPS can be reluctant to allow people with an intellectual disability to access this form of interview.

WWILD Examples:

A number of years ago, WWILD supported a young woman from CALD background who identified as having an intellectual disability. This young woman was assaulted by her father 10 years previously. When advocating for an ICARE interview, the worker was told by the detective that they required evidence of her disability before they would go any further. Many people who have a disability, including this young woman, do not have access to this type of diagnostic information. In this case, the detectives' demands pushed the interview back 2-3 months and placed a lot of unnecessary stress on the family to produce the documents.

Another example relates to a woman who requested WWILD's support to report two acts of sexual violence. The worker called the appropriate police unit and advocated for an ICARE interview. She was told that they were unable to organize an ICARE interview as they did not feel that the client had an intellectual disability, as she lived by herself and didn't have any disability supports. She was also told that this client had previously completed a written statement so would not be eligible for an ICARE interview. The worker explained the client would not have disclosed her disability as she wouldn't have known that she needed too. The detective told the worker that "It is not her job to let us know, we assess whether she has a disability or not". The detective was unable to state exactly what information he was referring to when he "assessed" that this client didn't have a disability. This resulted in the client deciding not to go any further with her report as it was becoming too difficult.

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

Two weeks ago another WWILD worker advocated for an ICARE interview for a client who had been acutely sexually assaulted. She was told that the station Sergeant would not allow the ICARE interview to take place as she did not have a carer and therefore was not eligible.

People who have an intellectual disability are often adversely impacted by the assumptions and attitudes of people within the community. These attitudes, myths and stereotypes contribute to people's vulnerability and in this context, directly impact their right to an interview process that is adequately tailored to meet their cognitive and communication needs.

People who have an intellectual disability have the right to access an ICARE interview; failure to allow this to occur is in breach of their right to procedural justice.

Police and Communication and Cognitive Difficulties

People who have an intellectual disability experience a range of cognitive and communication difficulties. These difficulties present in a number of different ways and are different for each person depending on level of disability, education, support and life experiences.

Some people may experience difficulty with: memory, sequencing, abstract thinking, jargon, compliance, suggestibility and masking e.g. (pretending to understand something).

WWILD Example:

Recently, one of our WWILD clients attempted to report a sexual assault to an ICARE trained detective. The VOC worker had to advocate strongly for this interview as the detective was demanding evidence of disability. The WWILD counsellor also explained that due to cognitive and communication issues, she would struggle to share the story in sequence and needed to be able to share it in her own time and way. He responded, that despite only speaking to her on the phone briefly at that stage that he didn't think she knew what she was saying. He stated "She clearly doesn't understand, she is making some really serious allegations"

Without adequate training, QPS representatives will rely on their own predetermined ideas of disability to identify and assess whether a disability is present and whether an ICARE interview should take place. These attitudes may also influence whether a person is seen as a credible witness, or if an investigation should be undertaken.

Recommendations

- All police officers should have specific training about impaired capacity, particularly tips to identify intellectual disability and cognitive disability if it has not been disclosed, in order to refer them to the correct police unit who have officers trained in ICARE.
- Clear direction in policy and procedures for QPS to err on the side of granting access to special provisions like 93A interviews. These provisions are there for a reason and should be used accordingly.
- Police should be provided with a disability liaison officer who can support them to identify and respond appropriately to people who have an intellectual disability
- Emphasis on procedural justice in investigating crimes of violence, abuse and exploitation of people with disabilities and particularly in the instance of sexual assault. Many people understand the inherent difficulty in prosecuting a sexual assault, but they need to feel like

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

they were offered a respectful process that to the full extent possible investigates their report and starts from a place of believing.

- Emphasis on spending time with a person before an interview. This will assist people with an intellectual disability to feel more comfortable and assist them to share if they are not understanding questioning during the interview process.
- Police processes that cater to all needs and disabilities including those who are nonverbal.

Court Processes

People who experience intellectual disability are over represented as victims of crime in our community. Despite this, there are limited accommodations made within the criminal justice system to allow victims who experience an intellectual disability an opportunity to participate in the processes to the best of their ability.

An integral part of our role at WWILD is supporting people with an intellectual disability to understand, access and participate in the criminal justice system. In practice, this allows us to:

- Advocate for special witness provisions
- Support people to understand court processes
- Understand and communicate with representatives of the Office of the Director of Public Prosecutions
- Provide emotional support during cross examination.

WWILD is the only service in Australia that is dedicated to solely providing specialist support to people intellectual disability who experience criminal violence and exploitation. Given the nature of the overwhelming cognitive and communication difficulties, the systemic disadvantage and high rates of crime this group experience, it is no surprise that this group also has difficulty navigating the justice system. There are limited avenues of support for people to access and navigate this system successfully. Although there are a number of victims of crime support services, including Victim Liaison Officers in the ODPP and Victims focussed court support, information and referral, they often have limited ability to provide a flexible, outreach service that allows the person to build a professional relationship with their supporter before they attend court proceedings. As it can be difficult to identify whether someone has an intellectual disability without adequate knowledge and training, many cases will be handed up to the Magistrates/District Court without the offer of appropriate tailored support. People who have an intellectual disability feel more supported when they have had an opportunity to develop trust and build rapport with their supporter. This is difficult to accomplish for all involved if they are meeting their supporter for the first time on the day of their court appearance.

WWILD's experience has been that even if a person has been offered support and information, they are still likely to have difficulty accessing adequate provisions to meet their needs. People who experience intellectual disability are incredibly vulnerable during cross examination as they:

- Often pretend to understand a question or concept so they do not appear stupid (also known as masking).
- May require more time to process a question and articulate an answer
- Are more likely to agree with a person that they view as powerful or in a position of authority
- May experience difficulty with concentration so may have difficulty if questioned for a long period of time.

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

- Often have difficulty with abstract concepts. A lot of the language used in cross examination is extremely abstract – an example is “I put it to you that you wanted to go Mark's house”. This is a common phrase used in cross examination. A person experiencing intellectual disability would have a lot of difficulty understanding this phrase and would most likely just agree.
- May have difficulty speaking up and stating that they don’t understand the question posed.

People who have an intellectual disability are unfairly disadvantaged within the justice system. This results in lack of accountability of perpetrators of violence, loss of faith in the system and a lack of procedural justice

Recommendations

- Mandatory training for representatives of the ODPP and the Judiciary coming into contact with people with intellectual disability, including prosecutors, legal officers, and judges. Training should focus on: cognitive and communication difficulties, identifying intellectual disability, appropriate referral options (as relevant), and the benefits and implications of special witness provisions.
- Funding for more specialist victim support services to work alongside people who have an intellectual disability and navigating the justice system across Australia.
- Stronger guidelines and protections for people who have an intellectual disability, particularly when they are being cross examined. E.g. Questioning should be presented in simple and concrete language.
- There should be stronger emphasis on identifying intellectual disability by police and justice systems and subsequent data collection so the true and correct number of people with disabilities within the justice system is clear to government policy makers and decision makers.

The following part of the submission will discuss the intersection of intellectual disability and domestic violence.

Protection and Safety

Research indicates that people who experience intellectual disability also experience higher rates of domestic violence. The prevalence of domestic violence experienced by this population is likely to be higher than the data demonstrates due to underreporting and inadequate data collection. People with an intellectual disability experience such high rates of domestic violence because they are:

- Often reliant on support therefore more vulnerable to threats by abusers and people in positions of trust
- Less likely to seek help
- Less likely to have received sex education, respectful relationships therefore less likely to have a language to describe/allow for disclosure.
- Less likely to have received accessible information about their legal rights in relation to sexual assault/sexual activity and other forms of violence e.g. justice, safety.
- More likely to be financially dependent on perpetrators therefore social isolation may be intensified.
- Likely to have limited capacity to organise/access the supports in a crisis
- Less likely to be believed /less likely to be acted upon

WWILD Example:

WWILD Sexual Violence Prevention Association Inc.
 211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030
 Phone: 07 3262 9877 Fax: 07 3262 9847
 Email: info@wwild.org.au
www.wwild.org.au

WWILD has been supporting a young woman to find safe accommodation as a result of her ongoing experience of family violence. This young woman did not feel comfortable accessing a domestic violence refuge, as this would mean she would need to move away from all of her supports. She requires daily support and views her disability day service as a safe haven, which is one of the only places she can access safely. She would also require a support worker to support her in the evenings, as she has never lived alone and requires support with independent living skills. NDIS were unable to fund emergency housing as this system does not respond well to emergencies, they also argued that this was domestic violence issue which should be serviced by the domestic violence system. Homelessness services also said they unable to assist as they felt she was too vulnerable to be placed in transitional accommodation. Furthermore, as she was already housed she was not a priority on their list. This young woman was forced to stay in an unsafe environment until long term housing options were found through her NDIS package.

Our experience has been that there are limited safe accommodation options available for women experiencing intellectual disability, particularly those who experience high levels of disability and require 24 hour care and support. Women who are able to access emergency accommodation usually have difficulty within the refuge/accommodation environment as there is often not a lot of accommodation made for their disability, nor is there any specialist disability support available within the service.

WWILD Example:

One example of this relates to woman supported by WWILD, who was placed in a homelessness shelter on the Gold Coast after fleeing domestic violence. The support offered at this service was underpinned by a resiliency framework meaning, women who reside within the service need to seek out their own long term housing options with very limited support from workers. In this situation, WWILD had to advocate quite strongly for extra support to be granted to this woman, as she was unable to navigate the housing system independently.

Clients of WWILD have also commented on the inaccessibility of domestic violence applications and orders, in terms of obtaining, understanding, reading and remembering the conditions. Particularly, where the conditions are ambiguous.

WWILD Example:

One WWILD worker observed a lawyer suggesting that a client trying to obtain a domestic violence order should agree to an undertaking. The woman agreed immediately without any understanding of what an undertaking was, or how it would impact her goal for protection. Without the support of her advocate she would likely to have agreed to this option. The lawyer showed little understanding of disability and how it can impact her experience of communication, domestic violence and protection.

WWILD Example:

Another WWILD client had a condition on her domestic violence order that stated that the perpetrator of violence was able to contact her if it related to discussion around contact with his daughter. This client received two different explanations as to what this condition meant; one suggesting that he was able to contact her over the phone to ask for permission the other stating that she had to initiate the contact. She immediately asked whether she could vary the order so there was no contact between herself and the respondent. She was told that she already had a no contact order. She decided that she would talk to the police and was told that they were also confused by the conditions. This was an incredibly distressing experience for this woman who admitted that she was extremely confused as to the conditions which resulted in little understanding of when the perpetrator was in breach of the order.

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

People who experience intellectual disability require information to be presented in a clear, concise and concrete manner. In the context of domestic violence, information on domestic violence orders/applications that are not presented in this way are likely to result in confusion and possibly ongoing experiences of violence and injury.

Services and Support

In order to recover from an experience of crime, people with an intellectual disability require support that is flexible, affordable and accessible. The support provided at WWILD is tailored to meet the needs of people experiencing intellectual disability who are escaping or recovering from an act of violence. Some examples of this support in practice are as follows:

- Providing free counselling sessions that are available to the client for as long as is helpful and necessary
- Providing outreach case management for people who have been victims of crime including domestic violence
- Ensuring language and communication is accessible and tailored to their cognitive and communication needs
- Providing flexible support which takes into consideration people's needs in order for them to fully participate in the support offered e.g. problem solving how they will travel to their appointment or what time they should leave their home to be at the appointment by a certain time
- Supporting people to access ongoing specialist disability and community support to improve wellbeing and recovery.

Many clients of WWILD have shared difficulties accessing mainstream sexual and domestic violence services due to inaccessibility of language used and lack of understanding of the complexity and vulnerability of people experiencing intellectual disability. Given the level of gendered violence experienced by women with a disability, and the over representation of people experiencing intellectual disability in the criminal justice system; more work needs to be done to address the gaps in specialist service provision for this population of people.

Recommendations

- Emergency accommodation options for people with disabilities experiencing violence, abuse, neglect and exploitation. NDIS in its current form has little or no capacity for crisis response.
- All funded Domestic and Family Violence services in Australia should have designated programs/positions to provide specialist support for women experiencing intellectual disability and domestic violence.
- Domestic violence refuges need to accommodate woman experiencing disability. This should include: ensuring physical access at all refuges in Australia, allowing space for woman to have support worker present while residing in the refuge and ongoing training for workers around the vulnerability and communication, cognitive difficulties experienced by this population.
- Domestic violence order applications and domestic violence orders should be available in Easy English to improve accessibility for people who experience intellectual disability. An Easy English guide to DV orders and conditions would be the easiest, but a tool which allows workers to

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au

create an Easy English version of a specific person's order would be the most useful as it would be specific and concrete to their situation. People who have an intellectual disability should be consulted throughout this process to provide feedback and suggestions.

- Disability advocacy services need to be bolstered to allow for greater capacity to support those with who are at risk, or have experienced crime.

WWILD Sexual Violence Prevention Association Inc.

211 Hudson Rd, Woolloowin QLD 4030 PO Box 495, Lutwyche QLD 4030

Phone: 07 3262 9877 Fax: 07 3262 9847

Email: info@wwild.org.au

www.wwild.org.au