

# Submission to National Human Consultation

On the introduction of a

## **Australian Bill of Rights**

By

**Women working alongside Women with Intellectual  
and Learning Disabilities Inc**



Sexual Violence Program



Victims of Crime – Disability Training Program

## **INTRODUCTION TO OUR ORGANISATION**

WWILD was funded following awareness by workers in the Community Living Program (QLD 1994) that young women with intellectual, learning and cognitive disabilities faced unique issues in their experience of sex, sexuality, sexual abuse and violence. The SVP (Sexual Violence Prevention) program is established on feminist principles of working alongside women to empower them with knowledge and practical skills which allow them to make choices that prevent them experiencing sexual abuse and violence.

WWILD is a service that works not just at the level of the individual but with the wider community, policy and government. The organisation provides a unique counselling service that uses a person centred approach to working alongside women with intellectual, learning and cognitive differences by listening to and validating the stories that they share. The organisation also undertakes a range of community development strategies to promote good lives for women to the wider community.

After several years of service delivery it became obvious that people with an intellectual, learning or cognitive disability were facing specific obstructions in the criminal justice system as victims of and witnesses to crime/s. A project Voices (1998) ran by WWILD, Alina and the Community Living Project led to the establishment of the VOC (Victims of Crime) program, which is auspiced by WWILD. This program works with people with intellectual, learning or cognitive disabilities to provide advocacy, support and minimal counselling when they are victims of or witnesses to crime and/or enter into the criminal justice system. The major focus of funding for the organisation is on training disability, health and justice systems on recognising the signs of abuse and violence; and understanding the issues that face people with intellectual, learning and cognitive disabilities when they are victims of or witnesses to crime/s.

## **OUR GENERAL THOUGHTS ON HUMAN RIGHTS ABUSE and PEOPLE WITH INTELLECTUAL and COGNITIVE DISABILITIES**

From our daily practice the SVP and VOC programs have deep insights into what it takes to stand beside people with intellectual, learning and cognitive disabilities. We see the rejection, isolation, pain, suffering and loss that come from the way that their label of difference enforces a life that is different to that which would be seen as the cultural norm in Australian society. On this basis we offer to you these experiences, thoughts and ideas about the introduction of Human Rights legislation into Australia.

Over the past decade there has been an ongoing call for human rights conventions in Australia. There are many supporters and dissidents. In our daily work we see breaches of human rights, but the key question in our minds is what will the legislated enactment of human rights provide to the people we work with and how will it differ from what should be morally available right now. Morally all Australians are entitled to the richness of opportunity that is part of the cultural norm in a first world nation. That, we

would advocate, is a good life. Education, employment, meaningful activity and relationship are the fabric of civil societies and we are not sure that the provision of legislation makes this available to the women (and men) we stand alongside. We have sat in rooms with many lawyers and supporters of human rights over many years and continue to have one key concern about human rights legislation for the people we work with. They are simply these:

- ☺ You have to be seen as human to have a human right met.
- ☺ You have to have agency in your own life to demand that a right is met.
- ☺ You have to make a legal complaint when a breach of your right has occurred. We know from our work that the people we work with often will not have a complaint heard in a legal system because they are deemed as not having capacity.

Therefore although we support the ideals of human rights, we question their potency to make a difference in people's everyday living. We do see that there are many people who could benefit from a human rights bill. Indeed we would encourage you to read Westcott – Lives Unrealized (2003) whose work outlines the hierarchy of disability in Australia and documents how people with developmental disabilities have failed to benefit from any changes developed since the 1986 Commonwealth and State Disability Service Agreement and via the Disability Discrimination Act (1992). Clear (2000) also provides a useful deconstruction of the way that many people have missed out on the prosperity of leading the good life many Australians currently enjoy.

We would however support any legislation that can impose a moral entitlement to provide a good life, ensuring the safety and protection with access of opportunity for the people whom we work alongside. We would also be willing to work collaboratively to be a part of this social change.

## OUR SPECIFIC EXPERIENCES of HUMAN RIGHTS ABUSE and PEOPLE WITH INTELLECTUAL and COGNITIVE DISABILITIES

**What we know about Human Rights abuse of people with intellectual, learning and cognitive disabilities.** In our everyday work with people we know a number of things about their everyday experience that would be considered a breach of human rights. For example

- ☞ We see women (and men) who have experienced and continue to experience high rates of exploitation, violence and assault. This typically starts in their childhood and leads into a lifetime of ongoing exploitation and violence.
- ☞ The rate of sexual abuse of women and men is off the scale and the true picture of this remains hidden from view as most assault goes unreported and occurs in the place where people live by the people charged with their care. Sims (2006) revealed on The Law Report (ABC Radio National) that 70-90% of people with intellectual disabilities have been abused. This is both in community and institutional care, with 80% of women experiencing abuse of these 65% are abused more than once).  
(<http://www.abc.net.au/rn/lawreport/stories/2006/1627299.htm>)
- ☞ From the women we are in relationship with we know that they live in poverty and as such have all the socially added disadvantage associated with this; including the threat of exploitation on a daily basis, a high rate of vulnerability to abuse and sexual violence, lack of opportunity to be actively engaged in the wider Australian community, lack of access to high quality education, lack of opportunity to work in a meaningful workplace, lack of appropriate housing, lack of opportunity to engage in meaningful freely given relationships and intimacy and poor levels of health and wellbeing.
- ☞ We also know that people with intellectual disabilities experience higher rates of victimization and crime. They are over represented in the criminal justice system at all levels both as victims and offenders (French, 2007). Prisons have become the housing option for many people with a mild intellectual disability.
- ☞ We know that the label that constructs intellectual disability in Australia leaves most people with mild or moderate intellectual disability without support. When the AAMR changed their definition of Intellectual Disability this resulted in approximately 13% of people who were previously defined as intellectually disabled without support services yet these people are some of the most vulnerable Australians and the people whose “rights” are abused on a daily basis.
- ☞ Words count – it is the way that you are labeled and named that gives you access to disability support services in Australia. Yet this language usage imposes breaches of human rights by imposing false constructs about who is entitled to support and who is not.

## Key Consultation Questions

- **Which human rights and responsibilities should be protected and promoted?**

It is important to remember the context within which the United Nations Convention of Human Rights was written. In 1948 the world was traumatized by World War II and there was an international commitment and goodwill to enter into agreements designed to, it was believed, circumvent all future international conflicts by the enforcement of these Rights. While the intention of this legislation has been in the highest of moral order, no countries around the world have been able to meet these broad brush civil and political rights. Maybe this is the sad reflection of our humanities capacity to live with moral integrity; it also indicates that while rights may be an important part of influencing social consciousness, they do little to change moral action in policy and politics. Indeed in the disability sector we would argue that the road to hell is lined with good intentions.

People in our service need basic needs met and moral treatment prior to having rights met. It is moral that they should live free from violence and victimization yet this is not their experience. Furthermore we would argue that they are once again victimized and traumatized in the current legal systems in Australia charged with upholding their access to justice. While the 1992 DDA promised much in the way of access to 'rights' in reality it has offered little to the women (and men) in our service. Mostly because of the historic habit of discrimination that is entrenched in social consciousness in Australian society. A bill of rights will not change this. Nor will a bill of rights undo the notions that create ability and disability as binary opposites, which justify differential treatment between 'us and them'. We would argue that Australia's treatment of people with intellectual learning and cognitive disability is in breach of articles 7, 13, 16, 23, 25 and 26 and as a minimum these need to be met.

- **Are human rights sufficiently protected and promoted?**

As we have outlined it is our daily experience that the people we work alongside do not have their rights protected or promoted. If this occurs through the introduction of a Bill of Human Rights it would be a great benefit of the legislation. What people need today is a good life. Education in a school of their choice, work that they enjoy and that pays them equal to people without disabilities, real relationships, homes which they choose to live in, that are safe and free from violence and victimization; and to no longer be the poorest Australians based on their material difference.

A key difficulty in the current process of accessing a right under the DDA is that a person has to have a right breached before they are able to make a complaint to the Human Rights Commission. What this means in our work is that the most vulnerable people with the least amount of agency and power are let in the position of needing to go to a complex legal system when they seek some form of justice or compensation. What is really needed is that their basic needs are met out of moral action right now.

- **How could Australia better protect and promote human rights?**

Australia could better protect the rights of people with intellectual learning and cognitive disabilities by breaking down the stigma that separates and imposes ability and disability into normative categories.

We could promote that we are **all** human and have inherent worth. This is contained in the Salamanca Statement (1994) and needs to be widely promoted.

**Difference and Diversity is Normal!**

## Reference List

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## **Additional information about WWILD**

### **Women working alongside Women with Intellectual and Learning Disabilities**

#### ***WWILD - Sexual Violence Prevention Service***

Our service aims to achieve social justice and systemic change that will uphold the rights of women with intellectual, learning and cognitive disabilities, to live free from sexual violence. Our vision is one of a society that values people with disabilities and acknowledges their abilities. WWILD is funded by Queensland Health and auspices the Victims of Crime - Disability Training Program which is funded under the Department of Communities (QLD).

#### **Our Target Group**

Women with intellectual, learning and/or cognitive disabilities aged 15 years and over who have experienced or are at risk of sexual violence.

#### **Our Service Provides**

- ☞ Therapeutic and education groups for women that deal with topics such as; how to create healthy and safe relationships; sex and sexuality; using self protective behaviours; understanding sex and sexual violence; self esteem and self image.
- ☞ ☐ Individual support and counselling.
- ☞ Referral (when required) to appropriate criminal justice systems.
- ☞ Advocacy regarding the human rights of women with intellectual, learning and cognitive disabilities to safety, protection and a good life.
- ☞ ☐ One-off women's community events.
- ☞ Opportunities for women to participate in our service development – historically through evaluations like having their say.
- ☞ ☐ Training on ways to ensure women's prevention of sexual abuse and violence.
- ☞ ☐ Organisational responses to public policy relating to sexual abuse and violence against women with intellectual, learning and cognitive disabilities.
- ☞ ☐ A range of information, support and resources to women on safety and protection.
- ☞ ☐ Increased awareness through media and community development projects on the issues faced by women who use our service
- ☞ To undertake a range of resource development and evidence based practice responses when working with women.
- ☞ As an organisation we strive to be at the leading edge of developing research and resources that provide evidence based practice framework for the delivery of programs for women on sexual violence and protection.

## ***Victims of Crime (VOC) – Disability Training Program*** (Auspiced by WWILD)

VOC is a service for people with intellectual, learning and cognitive disabilities who are victims of or witnesses to crime. The program is funded by the Department of Communities (QLD). As a state wide program we provide organisations, services and communities with information and education on the issues that face people with intellectual, learning and cognitive disabilities who are victims of or witnesses to crime. We also provide advocacy and minimal supports to people who are in the criminal justice system.

### **Our Target Groups**

Individuals, organisations and systems that provide services to people with intellectual, learning and cognitive disabilities who are at risk to being victims of or witnesses to crime/s. We also support people with intellectual, learning and cognitive disabilities who have been victims of or witnesses to crime/s when they are moving through the criminal justice system.

### **Our Service Provides**

- ☞ ☐ Support in plain English and relevant information to people with intellectual, learning and cognitive disabilities who have been victims of or witnesses to crime.
- ☞ ☐ Minimal support and advocacy to people with intellectual, learning and cognitive disabilities who are victims of crime involved the criminal justice system.
- ☞ State wide training for organisations, services and community groups which cover issues pertaining to the impact and affect of crime and violence on people with intellectual, learning and cognitive disabilities.
- ☞ A wide range of information and referrals to the person, their families, carers and service providers on the legal and criminal justice systems.
- ☞ Victims or witnesses to crime/s with referrals to an appropriate counselling service, as required.
- ☞ A leadership role in the presentation of papers at conferences, seminars and workshops in the area of people with intellectual, learning and cognitive disabilities as victims of or witness to crime/s.
- ☞ ☐ Input into key government and non government initiatives which affect primary target group and issues of crime.
- ☞ Strives to be at the leading edge of developing research and resources that provide evidence based practice framework for the delivery of programs for people who are victims of crime.
- ☞ We host information and recourses that provide information and knowledge about victimisation of people with intellectual, learning and cognitive disabilities and the ways to assist and respond to them.