



# Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

March 2021



## Acknowledgements

### Acknowledgement of Aboriginal and Torres Strait Islander peoples

Domestic Violence Victoria acknowledges Aboriginal and Torres Strait Islander peoples as Australia's First Nations and Traditional Owners of Country. We pay respects to Elders past, present and emerging. We acknowledge that sovereignty was never ceded and recognise the right to self-determination and continuing connection to land, waters and culture.

### Acknowledgement of Victims and Survivors

Domestic Violence Victoria (DV Vic) acknowledges the strength and resilience of adults, children and young people who have experienced family violence and recognise that it is essential that responses to family violence are informed by their expert knowledge and advocacy. We pay respects to those who did not survive and acknowledge friends and family members who have lost loved ones to this preventable and far-reaching issue<sup>1</sup>.

### Thank you to contributors

DV Vic wishes to thank and acknowledge member agencies who contributed to this submission either directly or indirectly through consultations or providing case studies to illustrate the breath and complexity of the work they undertake with victim-survivors of family violence daily. The contributions of organisations and individuals have helped to shape this submission and the 'on-the-ground' expertise has added a richness that quantitative examples and data can never provide.

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<sup>1</sup> Adapted from DV Vic Code of Practice

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## About Domestic Violence Victoria (DV Vic)

Domestic Violence Victoria (DV Vic) is the peak body for specialist family violence response services for victim-survivors in Victoria. As such, DV Vic is recognised as the state-wide voice of Specialist Family Violence Services (SFVS) responding to victim-survivors. DV Vic is a membership-based organisation and is accountable to its members, who also comprise its Board of Governance. DV Vic's core membership comprises state-wide and regional specialist agencies working with victim-survivors of family violence across Victoria. We are an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach. However, the organisation is ultimately accountable to victim-survivors of family violence and works in their best interests.

DV Vic's work is focused on advocating for, supporting, and building the capacity of specialist family violence practice and service delivery for victim-survivors; system reform; and research, policy development and law reform. DV Vic analyses the views and experiences of member organisations, the evidence on family violence, and the lived experience of victim-survivors, and translates this into innovative and contemporary policy, practice, and advocacy.

DV Vic holds a central position in the Victorian family violence system and its strategic governance and is one of the key agencies with responsibility for providing family violence subject matter expertise, technical assistance, capacity building, and policy and practice advice to the SFVS sector, broader sectors, government, and other partners and stakeholders.

## Language and Terminology Used

### Family Violence

DV Vic recognises family violence as any behaviour that occurs in family, domestic or intimate relationships that is **physically** or **sexually** abusive; **emotionally** or **psychologically** abusive; **economically** abusive; **threatening** or **coercive**; or is in any other way **controlling that causes a person to live in fear** for their safety or wellbeing or that of another person. This definition includes violence within a broader family context, such as extended families, kinship networks and **'family-like' relationships which can include a paid or unpaid carer for people with disabilities**; families of choice for LGBTIQ people; and cultural kinship networks.<sup>2</sup> In relation to children, family violence is defined as behaviour by any person that causes a child to **hear or witness or otherwise be exposed** to the effects of the above behaviour.<sup>3</sup>

The **scope of this submission** is guided by this definition and includes violence, abuse, neglect and exploitation of victim-survivors with disabilities that occurs within the context of family, domestic, intimate and 'family-like' relationships, including violence perpetrated by a carer (paid or unpaid).

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<sup>2</sup> See *Family Violence Protection Act 2008* (Vic) s.5; the Royal Commission into Family Violence noted that, "the dynamics between a person with a disability and paid carers may give rise to 'family-like' relationship very quickly [and] where elements of a 'family like' relationship do exist in relation to non-related carers or co-residents, then the FVPA definition should be applied", pp193-194

<sup>3</sup> *ibid*

## Family Violence and the Use of Language

Family violence is predominantly driven by gender-based oppression and inequality. Research to date demonstrates that the majority of perpetrators are men, and the majority of victim-survivors are women and children. As such, gender-binary language and terminology is often used in SFVS to acknowledge and communicate about this deeply entrenched social problem. At the same time, family violence impacts people across a diversity of gender identities, social and cultural contexts, and within various intimate, family and family-like relationships. Consequently, this submission uses the gender-inclusive terms ‘victim-survivor’ and ‘perpetrator’ without assigning gender-binary terms (i.e. women and men) or pronouns (i.e. she/her and he/him) to acknowledge the complex ways family violence manifests across the community<sup>4</sup>.

Where the term ‘**victim-survivor**’ is used it refers to people with disabilities who experience family violence (adults and children), and the term ‘**perpetrator**’ is applied to **adults** who use family violence. Although we refer to ‘victim-survivors with disabilities who experience family violence’ throughout this submission as though they are ‘one homogeneous group’, we recognise that each victim survivor will have their own unique support needs and experience of family violence<sup>5</sup>.

Where this submission does use gender-binary terms (i.e. women and men), it does so to accurately reflect the current evidence-base which predominantly pertains to the experience of women with disabilities who experience family violence perpetrated by men within the context of intimate partner or family-like relationships. This manifestation of family violence results from the intersection of systemic gender-based discrimination against women and disability-based discrimination against people with a disability<sup>6</sup>.

## Social Model of Disability

Historically, disability has been viewed within the context of the *medical model*, where disability is considered a tragic health condition that should be ‘fixed’ or ‘cured’ or the *charity model* where people with disability are viewed as in need of ‘help’, unable to do things for themselves<sup>7</sup>. For decades disability advocates have been working tirelessly to shift thinking about models of disability to a *Social Model* which views ‘disability’ as:

*“the result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers. It therefore carries the implication that the physical, attitudinal, communication and social environment must change to enable people living with impairments to participate in society on an equal basis with others.”<sup>8</sup>*

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<sup>4</sup> Domestic Violence Victoria (2020). *Code of Practice: Principles and Standards for Specialist Family Violence Services for Victim-Survivors*. 2nd Edition. Melbourne: DV Vic. p9.

<sup>5</sup> Maher, J. M., Spivakovsky, C., McCulloch, J., McGowan, J., Beavis, K., Leas, M., Cadwallader, J., Sands, T. (2018). *Women, disability and violence: Barriers to accessing justice: Final report*. Sydney: ANROWS: note that it is important to recognise and identify the ‘diverse types of violence that impact on the everyday safety and security of women with disabilities’.

<sup>6</sup> Women with Disabilities Victoria (2015). *Royal Commission into Family Violence: Submission by Women with Disabilities Victoria*. p4 <[https://www.wdv.org.au/documents/FV\\_RC\\_submission\\_Women\\_with\\_Disabilities\\_Victoria\\_2015.pdf](https://www.wdv.org.au/documents/FV_RC_submission_Women_with_Disabilities_Victoria_2015.pdf)>

<sup>7</sup> ‘Shifting models of thinking’ (n.d). In Disability Advocacy Resource Unit. Retrieved from <<https://www.daru.org.au/what-is-advocacy/shifting-models-of-thinking>>.

<sup>8</sup> Domestic Violence Victoria (2020). op cit. p80.

The *Social Model* recognises that disability is socially constructed and does not seek to change or deny the reality of living with a disability or impairment; rather, it is the social and physical environment that must change to enable the full and equal participation of people with disabilities.<sup>9</sup> This was reflected in a key finding of recent research undertaken by ANROWS, which concluded that focus must remain on barriers to support, rather than impairment when responding to the needs of mothers and children with disabilities<sup>10</sup>.

Throughout this submission, we use the term disability within the context of a *Social Model* of disability to examine the systemic, structural and attitudinal barriers that restrict equal access to and participation in systems and decision-making processes for victim-survivors of family violence with disabilities.

### Rights-based language and ‘pivoting’ to the perpetrator

The language used to describe and document the experiences of victim-survivors of family violence with disabilities is critically important. The language used can attribute blame, locate responsibility for preventing and responding to violence at the individual or systemic level and can influence whether a victim-survivor seeks help and support. If a victim-survivor feels blamed, disbelieved, unworthy or excluded it is unlikely they will seek support and the violence they are experiencing will remain hidden.

Consequently, language used must be underpinned by a rights-based approach that emphasises a victim-survivor's right to safety and to equitable and inclusive access to services, processes, and systems. Language must convey belief and acknowledge the strength and capabilities of each victim-survivor in resisting and surviving family violence and must attribute blame and responsibility for the violence with the perpetrator (referred to as ‘pivoting to the perpetrator’<sup>11</sup>) by:

- Emphasising and affirming that victim-survivors are not at fault or to blame for family violence they are experiencing,
- Situating blame and responsibility for violence with the perpetrator and the structural systems of patriarchy and ableism that enable abusive behaviour,
- Referring to women with disabilities who experience family violence as being ‘targeted’ by perpetrators or ‘at risk’ rather than ‘vulnerable’<sup>12</sup>,
- Not colluding, concealing, mutualising, excusing or supporting perpetrator’s use of violence.

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<sup>9</sup> ‘*Social model of disability*’ (n.d). In People with Disability Australia. Retrieved from <<https://pwd.org.au/resources/disability-info/social-model-of-disability/>>

<sup>10</sup> Australia’s National Research Organisation for Women’s Safety. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice: Key findings and future directions* (Research to policy and practice, 16/2020). Sydney: ANROWS, p1.

<sup>11</sup> Healey, L., Humphreys, C., Tsantefski, M., Heward-Belle, S., Chung, D., & Mandel, D. (2018). *Invisible Practices: Intervention with fathers who use violence: Key findings and future directions* (Research to policy and practice, 04/2018). Sydney, NSW: ANROWS.

<sup>12</sup> Women with Disabilities Victoria (2015). op. cit. p5: respecting women with disabilities involves “presenting their stories, using the words ‘targeted’ and ‘at risk’ rather than ‘vulnerable’”

Using rights-based language within a social model of disability, ensures that responsibility for addressing barriers to support and safety is situated in structures and systems rather than in individuals, and responsibility for stopping the violence is located with the perpetrator and a systemic response that seeks to hold the perpetrator to account.

### **‘Complex systems’ rather than ‘complex clients’ or ‘clients with complex needs’**

Victim-survivors of family violence with disabilities may have support needs that require them “to navigate multiple service systems”<sup>13</sup> (i.e. disability, family violence, housing, justice, health systems etc). This is primarily due to the “majority of services [being] funded to address a particular issue or concern”<sup>14</sup> which leads to ‘siloe’d’ services responses. Unfortunately, individuals with multiple support needs that span numerous service systems are often labelled as ‘complex clients’ or ‘clients with complex needs’ which can result in excuses or justifications being made that a client’s support needs cannot be met by services because their needs are too complex. As noted by Maher et al. (2018), “knowledge silos and assumptions made about the needs of victim/survivors with disability as well as a lack of understanding about referral pathways prevent women from accessing the support services they require”<sup>15</sup>.

In framing disability within the *Social Model* of disability we contend that the reason why victim-survivors of family violence with disabilities often face insurmountable barriers to accessing the support they require lies in the complexity of structures, systems and services rather than in the complexity of an individual’s support needs. This systemic complexity often manifests at the interface between different service systems (discussed in more detail below) and is exacerbated by ‘siloe’d’ service responses which result in fragmentation and create additional access barriers. Consequently, a shift in focus is required to ensure responsibility for navigating ‘complex systems’ rests in systems/structures that create and maintain the complexity rather than misplacing this responsibility at the individual level.

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<sup>13</sup> Robinson, S., Valentine, k., Newton, B. J., Smyth, C., & Parmenter, N. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice* (Research report, 16/2020). Sydney: ANROWS. p1: mothers interviewed in this study had difficulty accessing services they were entitled to, and had to navigate multiple service systems” < <https://www.anrows.org.au/project/mothers-and-children-with-disability-using-early-intervention-services-identifying-and-sharing-promising-practice/>>

<sup>14</sup> Salter, M., Conroy, E., Dragiewicz, M., Burke, J., Ussher, J., Middleton, W., Vilenica, S., Martin Monzon, B., & Noack-Lundberg, K. (2020). *“A deep wound under my heart”: Constructions of complex trauma and implications for women’s wellbeing and safety from violence* (Research Report, 12/2020). Sydney: ANROWS. p8

<sup>15</sup> Maher et al (2018) cited in ANROWS (2020). *Working across sectors to meet the needs of clients experiencing domestic and family violence*. (ANROWS Insights, 05/2020). Sydney. p8



## Introduction

DV Vic welcomes the opportunity to contribute to the *Royal Commission into Violence, Neglect and Exploitation of People with a Disability* ('the Royal Commission') and respond to the *Violence and abuse of people with disability at home Issues Paper* ('the *Issues Paper*'). The content of this submission responds to many of the questions raised in the *Issues Paper* and more broadly addresses matters outlined in the *Terms of Reference* for the Royal Commission at paragraph (b)<sup>16</sup>. To assist the Commission, we have cross-referenced sections of the submission that address questions in the *Issues Paper*. This submission also builds on the earlier response DV Vic provided to the *Criminal Justice Issues Paper*<sup>17</sup> and should be read alongside positions outlined therein.

Given DV Vic's central position in the Victorian family violence system, we are well placed to provide insights into the unique and complex experience of family violence for people with disabilities and the barriers victim-survivors face accessing support and safety. As noted above, family violence includes violence, abuse, neglect and exploitation of victim-survivors with disabilities that occurs within the context of family, domestic, intimate and 'family-like' relationships, including violence perpetrated by a carer (paid or unpaid). We note that although the *Issues Paper* refers to violence/abuse 'at home', family violence occurs in the context of **relationships** rather than **locations** and therefore may be perpetrated 'inside' or 'outside' the home.

The content of this submission draws on the practice wisdom and expertise of our member services who work with victim-survivors of family violence and current research and evidence examining the experiences of victim-survivors of family violence with disabilities. We highlight key issues and themes that emerged during the consultations with our members and following a review of available research/evidence. We seek to provide the Royal Commission with an overview of:

- The **prevalence, nature, dynamics and impacts** of family violence experienced by victim-survivors (adults and children) with disabilities to illustrate the extent and complexity of the issue and the knowledge/data gaps that still exist (*Issues Paper* - Questions 1 -2 and 7).
- The **nature and dynamics of family violence risk** experienced by victim-survivors with disabilities and how this differs from people without disabilities (*Issues Paper* – Question 3).
- The **systemic and structural barriers** victim-survivors of family violence with disabilities face accessing support and safety – particularly from the justice and housing systems (*Issues Paper* – Questions 9-11).
- The **gaps and challenges that exist at the interface of the family violence and disability service systems** which create barriers to accessing support and safety and impact on responses provided to victim-survivors (*Issues Paper* – Question 5).

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<sup>16</sup> Note: much of this submission relates to identifying barriers victim-survivors face in disclosing and reporting family violence and in accessing appropriate responses from systems and services which is the focus of the Terms of Reference, para (b).

<sup>17</sup> Domestic Violence Victoria (2019). *Submission to the Royal Commission into Violence, Neglect and Exploitation of People with a Disability: Criminal Justice Issues Paper*. Melbourne: DV Vic.

- The **impact the COVID-19 pandemic** has had on the prevalence and type of family violence experienced by people with disabilities (*Issues Paper* – Question 12).

Throughout the submission we provide **recommendations** that point to ways of ensuring victim-survivors of family violence with disabilities are ‘visible’ to services, systems and government, and to address the structural and systemic barriers that restrict and/or prevent victim-survivors accessing support and safety. The **recommendations** proposed in this submission are underpinned by the following foundational principles:

- The prevalence of family violence among people with disabilities and the increased risk they experience necessitates that a family violence and trauma-informed lens must be applied in the disability system to ensure the safety of victim-survivors is prioritised.
- Specialist Family Violence Services need to be responsive to the disability **and** safety needs of victim-survivors with disability to ensure the safety and support needs of victim-survivors with disabilities are identified and addressed and they can easily access and engage with appropriate services<sup>18</sup>.
- The right to safety for all and a shared understanding of family violence and risk must be developed across service systems to promote safe and consistent responses for victim-survivors regardless of where they enter the service system.
- Long-term collaboration and commitment across all levels of government is required to address systemic and structural barriers which exclude victim-survivors of family violence with disabilities from accessing the services they need.

## The prevalence, nature and impact of family violence experienced by people with disabilities

### Issues Paper – Questions 1 and 2

Family violence is a significant and complex form of violence experienced by people with disabilities that can have far reaching and life-long impacts for victim-survivors. Systematic and consistent data collection is critical to obtaining an accurate understanding of the extent and scope of family violence experienced by people with disabilities, to inform the development of policy and practice frameworks and to address structural and systemic barriers that currently prevent victim-survivors of family violence with disabilities from accessing support and safety<sup>19</sup>.

### Limitations and gaps in prevalence data

As noted in our response to the [Criminal Justice Issues Paper](#)<sup>20</sup>, unfortunately it is difficult to definitively determine the prevalence of family violence experienced by people with disabilities due to a lack of

<sup>18</sup> Domestic Violence Victoria (2020). op cit. See for example page 52, Principle 8: Inclusion and Equity

<sup>19</sup> State of Victoria (2014-16). *Royal Commission into Family Violence: Report and recommendations, Vol V*. Parl Paper No 132. p193.

<sup>20</sup> Domestic Violence Victoria (2019). Op cit.

systematic data collection and the multiple and complex barriers people with disabilities face reporting and disclosing violence they have experienced<sup>21</sup>. The cumulative impact of inadequate data collection processes and under-reporting result in the true extent of family violence experienced by people with disabilities remaining ‘hidden’ and the prevalence being much higher than what is reflected in current data<sup>22</sup>.

Prevalence data for victim-survivors with disabilities who identify as members of other marginalised groups including victim-survivors from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and LGBTIQ+ communities is even more limited. This is due to the limitations in survey instruments, the lack of disaggregated data and additional barriers to reporting and seeking help. For example, the Personal Safety Survey (PSS) which is currently the best source of prevalence data primarily relates to cis-gendered women and men, resulting in it being difficult to analyse the prevalence of violence against people with intersecting forms of oppression and discrimination (i.e. family violence against LGBTIQ people with disability, culturally and linguistically diverse people with disabilities, Indigenous people with disabilities etc)<sup>23</sup>.

The **Victorian Royal Commission into Family Violence** (RCFV) noted that the “current lack of data available in relation to violence (including family violence) against people with disabilities...has been a significant and recurring finding in recent state and commonwealth inquiries”<sup>24</sup>. Specifically, the RCFV noted there was a lack of systematic data collection, disaggregated data, and data on the intersection of gender, disability and violence<sup>25</sup>. This led to the RCFV recommending “the Victorian Government adopt a consistent and comprehensive approach to the collection of data on people with disabilities who experience or perpetrate family violence”<sup>26</sup>. These same concerns were detailed in the earlier **Voices Against Violence** report which highlighted that: “despite the concern about heightened risk of violence for women with disabilities, there is no systematic collection of data in Australia or within the states and territories that enables the determination of the prevalence of violence against women with disabilities”<sup>27</sup>.

More recently, the Australian Institute of Health and Welfare (AIHW) noted that ‘key data gaps’ still exist in collecting information about family violence experienced by people with disabilities<sup>28</sup>. Specifically, the report noted that the PSS currently excludes people with disabilities living in institutional/care settings and experiences of certain types of disability-based family and sexual

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<sup>21</sup> Australian Institute of Health and Welfare (2019). *People with disability in Australia 2019-In brief*. Cat. No. DIS 74. Canberra.

<sup>22</sup> Frawley, P., Dyson, S. and Robinson, S. (2017). *Whatever it takes? Access for women with disabilities to domestic and family violence services: Key findings and future directions*. ANROWS Compass Issue 05/2017. Sydney, NSW; State of Victoria (2014-16). Vol V. op.cit.

<sup>23</sup> AIHW (2019a). *Family, domestic and sexual violence in Australia: continuing the national story*. Cat. No. FDV 3. Canberra.

<sup>24</sup> State of Victoria (2014-16), Vol V. op. cit. p193.

<sup>25</sup> State of Victoria (2014-16), Vol V. op. cit. p181; see also Women with Disabilities Victoria (2015). op. cit. p28; see also Day, A., Casey, S., Gerace, A., Oster, C., & O’Kane, D. (2018). *The forgotten victims: Prisoner experience of victimisation and engagement with the criminal justice system* (Research report, 01/2018). Sydney, NSW: ANROWS: “despite the attention paid to IPV, few [studies] have investigated the intersection between the fields of disability and IPV”. p25.

<sup>26</sup> State of Victoria (2014-16), Vol V. op. cit. p193.

<sup>27</sup> Healey, L. (2013). *Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities*. Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria. Healey, L (2014). Melbourne. p30

<sup>28</sup> AIHW (2019a). op. cit. p119; Senate Finance and Public Administration References Committee, Parliament of Australia, *Inquiry into Domestic Violence in Australia* (2015), cited in State of Victoria (2014-16). Vol V. op. cit. p181.

violence, ‘such as reproductive control; forced or withheld medical treatment; forced isolation or restraint’<sup>29</sup>. Further, the PSS “does not provide support for people who need assistance to complete the survey and therefore does not represent the experiences of all people with disability”<sup>30</sup>. Whilst noting that work is underway to address gaps in data collection, the AIHW advised that current prevalence data “relating to people with disability should be interpreted with caution”<sup>31</sup>.

We highlight the existing gaps in data as a reminder that the available prevalence data included in this submission tells ‘a’ story, but does not tell ‘the’ story of victim-survivors with disabilities who:

- remain invisible to systems, services and decision-makers because they are excluded from the statistics due to the current limitations in how surveys are structured, what questions are asked or the way data is collected,
- face significant barriers which make it impossible for them to report violence they are experiencing or seek help, and
- don’t identify as ‘victims’ because they have been disbelieved or the violence normalised throughout their lives.

As stated by the RCFV, it is only when we strengthen the “collection, analysis and availability of data...that family violence against people with disabilities comes out from the shadows and sits at the heart of our planning and prioritising of prevention and response”<sup>32</sup>. Noting these limitations, we provide a summary of available prevalence data below to illustrate the extent and scope of family violence experienced by people with disabilities.

## Prevalence of family violence against people with disabilities

Current research shows that people of all genders with disabilities are more likely to experience family violence than people without disabilities<sup>33</sup>. Further, women and girls with disabilities experience higher rates of violence (including family violence) than men with disabilities, are more likely to experience family violence than women without disabilities, leading to the conclusion that the “intersection of gender and disability increases the risk of violence against women and girls with disabilities”<sup>34</sup>. Recent research highlights that “women with disabilities are 40 percent more likely to experience DFV

<sup>29</sup> Frohmader et al. 2015 cited in AIHW (2019a). op. cit. p91.

<sup>30</sup> Centre of Research Excellence in Disability and Health (2020). *Fact Sheet 1: Violence against people with disability in Australia*. Melbourne. <<https://credh.org.au/nature-and-extent-of-violence/>>

<sup>31</sup> Australian Institute of Health and Welfare (2019a). op. cit. p91.

<sup>32</sup> State of Victoria (2014-16), Vol V. op. cit. p192.

<sup>33</sup> AIHW (2019a). op.cit. p8; State of Victoria (2014-16). *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132. Melbourne, VIC. p36.

<sup>34</sup> Family Safety Victoria (2019). *MARAM Practice Guides: Foundation Knowledge Guide*. Melbourne, VIC: State of Victoria. p51; Family Safety Victoria (2018). *Family Violence Multi-Agency Risk Assessment and Management Framework: A Shared Responsibility for Assessing and Managing Family Violence Risk*. Melbourne, VIC: State of Victoria. p35: “people with disabilities, both adults and children, are at higher risk of experiencing family violence [and] women and girls with disabilities experience even high rates of abuse and violence than men with disabilities, who are at higher risk than men in the general population”; Australian Bureau of Statistics (2017)

[domestic and family violence] than other women and that more than 70 percent of women with disabilities have been victim-survivors of sexual violence”<sup>35</sup>.

The PSS conducted in 2016 found that when compared with people without a disability, people with a disability are:

- 1.8 times as likely to have experienced physical and/or sexual violence from a partner in the previous year (2.5% women | 1.1% men).
- 1.7 times as likely to have experienced sexual violence (including assault and threats) since the age of 15, with women more likely to experience sexual violence from a partner/ex-partner and men a stranger (1 in 4 women | 1 in 20 men).
- 1.5 times as likely to have experienced emotional abuse from a partner and more likely to report having experienced emotional abuse from multiple previous partners (1 in 3 women | 1 in 5 men)<sup>36</sup>.

As noted above, prevalence data for victim-survivors with disabilities who identify as members of other marginalised groups including victim-survivors from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and LGBTIQ+ communities is very limited. Below is a summary of some recent research and data that has emerged in relation to the co-occurrence of disability and family violence in these communities:

- Recent research undertaken by Equality Australia and Drummond Street (2020) found that for “LGBTIQ+ survey respondents who had a disability or chronic health condition were 1.9 times more likely than those who did not to be at risk of domestic and family violence”<sup>37</sup>.
- Research conducted during the initial stages of the COVID-19 pandemic found that Aboriginal and Torres Strait Islander women with a restrictive long-term health condition were more likely to experience physical or sexual violence or coercive control, the onset of these types of violence and the escalation of physical or sexual violence than non-indigenous women with a restrictive long-term health condition<sup>38</sup>; and
- Women from culturally and linguistically diverse backgrounds with a restrictive long-term health condition were more likely to experience physical or sexual violence or coercive control and the onset of physical or sexual violence or coercive control than women from English-speaking backgrounds with a restrictive long-term health condition<sup>39</sup>.

<sup>35</sup> Backhouse, C., & Toivonen, C. (2018). *National Risk Assessment Principles for domestic and family violence: Companion resource. A summary of the evidence-base supporting the development and implementation of the National Risk Assessment Principles for domestic and family violence* (ANROWS Insights 09/2018). Sydney, NSW: ANROWS; p19.

<sup>36</sup> AIHW. (2019a). op. cit.

<sup>37</sup> Madeline Gibson, Ghassan Kassisieh, Alic Lloyd and Beth McCann (2020). *There’s No Safe Place At Home: Domestic and family violence affecting LGBTIQ+ people*. Equality Australia: Sydney and Melbourne, and the Centre for Family Research and Evaluation, Drummond Street Services: Melbourne. <<https://equalityaustralia.org.au/resources/dvreport/>>

<sup>38</sup> Boxall, H., Moran, A. and Brown, R. (2021). *Experiences of domestic violence among women with restrictive long-term health conditions*. Australian Institute of Criminology.

<sup>39</sup> *ibid*

As noted above, given the current limitations in the way surveys are conducted and data collected and the barriers many victim-survivors face reporting family violence, these figures are likely to be an underestimate of the extent of family violence experienced by people with disabilities with the scope and extent being much higher than reflected in available statistics<sup>40</sup>.

## Recommendations

**Recommendation 1:** Improve data collection so that it includes all victim-survivors of family violence with disabilities.

**Recommendation 2:** Design and systematically collect disaggregated data to better capture the experiences of victim-survivors from marginalised groups.

**Recommendation 3:** Include people with lived experience of disability and family violence in the design of future data collection tools and surveys to ensure they are accessible and that the right questions are asked to accurately capture and document their experiences.

## Nature and dynamics of family violence experienced by victim-survivors with disabilities

### Issues Paper - Question 3

Referring specifically to the experiences of women, Maher et al note that “the prevalence, type, and impacts of violence against women with disability are different in comparison to women in the broader population”<sup>41</sup>. While women with disabilities can experience the same types of family violence as those experienced by women without disabilities, they also experience different and additional types of violence (referred to as ‘disability-based’ or ‘disability-specific’ violence) which may include: reproductive control, forced or withheld medical treatment or administration of inappropriate medication, forced isolation or restraint, withholding medication or aids, limiting access to support services, threats to withdraw care, denial of impairments and abuse of enduring Power of Attorney<sup>42</sup>.

Intimate partner violence is the most common form of violence perpetrated against women with disabilities but it “may take on different forms in the context of disability”<sup>43</sup>. The complex dynamics between women with disabilities and their partners where they have a dual role of partner and carer make it even more difficult for victim-survivors to report violence and leave the relationship as they are dependent on the perpetrator and the relationship for practical support<sup>44</sup>. A perpetrator can use this increased dependence as a means of further controlling a victim-survivor.

Research also shows that for women with disabilities, family violence is perpetrated within a broader range of relationships (i.e. other family members, paid carers etc), in a broader range of settings (e.g.

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<sup>40</sup> Australia’s National Research Organisation for Women’s Safety. (2020). *Improving family violence legal and support services for Aboriginal and Torres Strait Islander peoples: Key findings and future directions* (Research to policy and practice, 25–26/2020). Sydney: ANROWS: “90 percent of incidents of violence perpetrated against Aboriginal and Torres Strait Islander women go undisclosed”.

<sup>41</sup> Maher et al (2018). op cit. p26.

<sup>42</sup> Healey, L (2013). *Voices Against Violence: Paper 2*. op. cit. pp38-40; Frohmader et al. 2015 cited in AIHW (2019a). op. cit. Maher et al (2018). op. cit.; Backhouse, C., & Toivonen, C. (2018). op. cit.

<sup>43</sup> State of Victoria (2014-16), Vol V, p176.

<sup>44</sup> Ibid, p191

institutional/residential setting) and may be inflicted for longer periods of time by a greater number of perpetrators than for women without disabilities<sup>45</sup>. For a comprehensive summary of the nature of violence against women with disabilities and examples of perpetrator’s use of violence specific to women with disabilities, we refer the Commission to the *Voices Against Violence* report<sup>46</sup>.

DV Vic note that further research is required to understand the dynamics and experiences of gender diverse and non-binary victim-survivors with disabilities, and those from other marginalised and excluded groups, such as victim-survivors from Aboriginal and Torres Strait Islander communities. Although recent research conducted by the Australian Institute of Health and Welfare found that these populations are some of the most impacted by family violence, information on the direct experiences of victim-survivors from these marginalised groups requires ongoing exploration<sup>47</sup>.

### Nature and dynamics of family violence risk for victim-survivors with disabilities

As noted above, victim-survivors with disabilities are at higher risk of experiencing family violence and experience family violence more intensely and frequently than other people<sup>48</sup>. Given the prevalence of family violence among people with disabilities, and that people with disabilities are at increased risk of experiencing family violence, it is essential that the additional types of family violence experienced by victim-survivors with disabilities (referred to as ‘disability-based abuse’) and the **unique nature of dynamics of family violence risk** is understood by services and systems that provide responses to people with disabilities. This will ensure that family violence risk is identified and assessed at every opportunity and promote consistent, safe and nuanced responses for victim-survivors. Safe responses are critically important as victim-survivors who experience trauma resulting from family violence, “often live in fear of, and/or experience ongoing threats or acts of violence which severely compromise their physical and emotional safety”<sup>49</sup> and may not be able to move forward until they have a sense of safety and security<sup>50</sup>.

Family violence risk assessment frameworks such as the *Multi-Agency Risk Assessment and Management Framework* (MARAM)<sup>51</sup> in Victoria are utilised by services working with people experiencing or using family violence to identify, assess, and manage family violence risk. Risk assessment frameworks and international and Australian evidence such as the *National Risk Assessment Principles*<sup>52</sup> developed by ANROWS, document evidence-based risk factors that are associated with a greater likelihood and/or severity of family violence. Further, they emphasise that these ‘risk factors’ may present differently for victim-survivors with disabilities due to perpetrators

<sup>45</sup> Family Safety Victoria (2019). op. cit. p51-53; State of Victoria (2014-16), Vol V, pp173-174; Healey, L. (2013). Paper 2. Op. cit.; Women with Disabilities Victoria (2015). op. cit. p4.

<sup>46</sup> Healey, L (2013). *Voices Against Violence: Paper 2*. pp38-41.

<sup>47</sup> Australian Institute of Health and Welfare (2019c). *Family, domestic and sexual violence in Australia: continuing the national story 2019—In brief*. Cat. no. FDV 4. Canberra: AIHW.

<sup>48</sup> Backhouse, C., & Toivonen, C. (2018). op. cit.; Family Safety Victoria (2019). op. cit.

<sup>49</sup> Blue Knot Foundation. (n.d.). *Trauma-informed care and practice when working with domestic and family violence* <<https://www.blueknot.org.au/Training-Services/Calendar-of-Events/Public-TICP-Domestic-Family-Violence-Services>>.

<sup>50</sup> Maher et al (2018). *Women, disability and violence: Barriers to accessing justice. Key findings and future directions*. Sydney: (ANROWS Compass, Issue 02/2018)

<sup>51</sup> Family Safety Victoria (2018). op. cit.

<sup>52</sup> Backhouse, C., & Toivonen, C. (2018). op. cit.

utilising different types of violence and tactics to exert power and control over a victim-survivor. For example,

1. The risk factor ‘**isolation**’ may present differently if a victim-survivor is reliant on a perpetrator for care and/or mobility and the perpetrator withholds care to further isolate a victim-survivor.
2. The risk factor ‘**controlling behaviours**’ may manifest in a perpetrator withholding medication or administering inappropriate medication, abusing an enduring Power of Attorney or ‘speaking for’ a victim-survivor when they attempt to access support and safety.

For family violence risk to be identified and assessed at every opportunity it is reliant on the development of a shared understanding of the nature and dynamics of family violence and risk across service systems and this common understanding underpinning responses to victim-survivors of family violence with disabilities (discussed in more detail below). This will also ensure that services and systems are responsible for assessing and managing risk and safety rather than this responsibility resting with an individual victim-survivor.

## Impacts of family violence - adults

Family violence has broad and long-lasting impacts on a victim-survivor's “emotional, psychological, spiritual, financial, physical, sexual and reproductive health and well-being”<sup>53</sup>. Research shows that intimate partner violence contributes to more death, disability and illness in adult women than any other preventable risk factor<sup>54</sup>. Women can acquire a disability because of family violence perpetrated against them, with research conducted in Victoria finding that 40% of women victim-survivors presenting at Victorian hospitals over a 10-year period had sustained a brain injury as a result of the family violence perpetrated against them<sup>55</sup>. The association between acquired brain injury (ABI) and family violence is “likely to be more significant than research suggests, as data is unlikely to reflect all cases as most victim-survivors will not seek medical attention or attend hospital and even if they do, their brain injury may not be detected”<sup>56</sup>. This reflects comments made by DV Vic members who note that they support many victim-survivors with cognitive disabilities who have not been diagnosed and suspect there is a high prevalence of undiagnosed ABIs amongst victim-survivors<sup>57</sup>.

As noted above, victim-survivors with disabilities may stay in violent relationships for longer due to the structural and systemic barriers that delay and/or prevent them from reporting or disclosing family violence and seeking help, which can result in them experiencing the impacts of family violence for a

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<sup>53</sup> Domestic Violence Victoria (2020). op. cit. p18.

<sup>54</sup> VicHealth (2004). *The health costs of violence. Measuring the burden of disease caused by intimate partner violence. A summary of findings*. State Government Victoria.

<sup>55</sup> Brain Injury Australia (2018). *The prevalence of acquired brain injury among victims and perpetrators of family violence*. New South Wales; see also AIHW (2019b) op.cit. p32: in 2016-2017, 63% of hospitalisations of women due to assault by a spouse or domestic partner were for treatment of injuries to the head and/or neck (including 7% due to brain injuries); partners were the most common perpetrators of assault-related brain injury for women.

<sup>56</sup> Family Safety Victoria (2019). op.cit. p54; Tracey Bowdon (2015). *The 7.30 Report: Three women every week hospitalised with traumatic brain injury caused by DV*. <<https://www.abc.net.au/7.30/three-women-every-week-hospitalised-with-traumatic/6693174>>

<sup>57</sup> DV Vic (2019) Specialist Family Violence Leadership Group Consultation: 6 November 2019; DV Vic SFVLG Survey 2019.



prolonged period<sup>58</sup>. Further, a victim-survivor may stay in a violent relationship because they are fearful that:

- if the perpetrator is removed, they will not be able to care for themselves<sup>59</sup> (in situations where the person perpetrating violence against them has the dual role of partner and carer),
- the ‘system’ will not be able to support them,
- the perpetrator may seek retribution,<sup>60</sup>
- she may lose custody of children if Child Protection is notified of the violence. This fear is well-founded, with removal of children from parents with disabilities happening at a much higher rate than for parents without disabilities<sup>61</sup>.

For a detailed overview of the impacts of family violence on victim-survivors we refer the Commission to DV Vic’s *Code of Practice: Principles and Standards for Specialist Family Violence Services for Victim-Survivors* (pp25-28) and for impacts on victim-survivors with disabilities, *Voices Against Violence, Paper 2*, (pp28-41)<sup>62</sup>.

## Impact on children and young people

### Issues Paper: Question 7

The impacts of family, domestic and sexual violence on children and young people can be significant and long-lasting. Even when children are not the direct target of violence, they can be exposed to family violence at home, and this will impact on their physical and mental development and wellbeing. The definition of family violence in the Victorian *Family Violence Protection Act* (2008) recognises direct and indirect family violence perpetrated against children which includes “behaviour by a person that causes a child to **hear** or **witness**, or **otherwise be exposed to** the effects of behaviour” that is physically, sexually, emotionally, psychologically, or economically abusive or is threatening, coercive or in any way controls another family member<sup>63</sup>. Family violence “affects the safety, stability and development of unborn children, infants, children and young people [with] risk and impact of violence related trauma on safety, stability and development experienced by children and young people”<sup>64</sup> changing across age groups. For a comprehensive overview of the impacts family violence has on children and young people we refer the Commission to the *Code of Practice: Principles and Standards for Specialist Family Violence Services for Victim-Survivors*<sup>65</sup>.

According to the Personal Safety Survey (2016), around 418,000 women and 92,200 men who had experienced violence from a previous partner said the children in their care had witnessed this violence<sup>66</sup>. Further, research indicates that children with disability are at very high risk of experiencing

<sup>58</sup> State of Victoria (2014-16), Vol V; Healey, L. (2014). op. cit. Paper 1 & 2.

<sup>59</sup> State of Victoria (2014-16), Vol V, p191.

<sup>60</sup> ibid. p183.

<sup>61</sup> Ibid. p183; Healey, L. (2014). *Paper Two*. p52.

<sup>62</sup> Domestic Violence Victoria (2020). op. cit. Healey, L. (2014). op.cit. Paper 2.

<sup>63</sup> *Family Violence Protection Act 2008* (Vic) s.5. op. cit.

<sup>64</sup> Family Safety Victoria (2018). Op. cit.

<sup>65</sup> DV Vic (2020). Op cit. p28

<sup>66</sup> ABS (Australian Bureau of Statistics) 2017. Personal safety, Australia, 2016. ABS cat. no. 4906.0. Canberra: ABS.

violence<sup>67</sup>. According to Jones et al. (2012), children with disability have a 2.88 times higher risk of sexual violence than children without disability<sup>68</sup>. Anecdotal evidence from DV Vic members indicates that children can also continue to experience domestic and family violence during and after parental separation due to decisions made by the family court that may privilege both parents 'rights' to spend time with children over safety.

Although SFVSSs have always provided support to children, recently greater attention has been given to recognising and assessing their unique needs and risks. The *Code of Practice: Principles and Standards for Specialist Family Violence Services for Victim-Survivors* emphasises child-centred practice where “infants, children and young people are recognised as victim-survivors in their own right, and their safety and well-being are prioritised in every stage of service provision”<sup>69</sup>. Risk factors specific to children’s circumstances have been included in the MARAM Framework “in recognition that children experience some unique risk factors, and that their risk must be assessed independently of adult victim survivors”<sup>70</sup>.

The following sections of the submission focus on barriers to accessing services and systems. Although victim-survivors of family violence with disabilities face barriers to accessing a myriad of supports and services, in this submission we focus on systems that are critical to the safety and long-term recovery of victim-survivors. These include the justice system, housing and homelessness system and disability and family violence service systems.

## Barriers to accessing the justice system and legal processes

### How do victim-survivors of family violence with disabilities come into contact with the justice system in Victoria?

#### Issues Paper – Questions 9-10

As outlined in our response to the *Criminal Justice Issues Paper*, “cases involving family violence are heard in many different legal jurisdictions”<sup>71</sup> resulting in many victim-survivors of family violence with disabilities having intersecting and multijurisdictional legal matters. In Victoria, victim-survivors of family violence are most likely to encounter the justice system because of police intervention. A victim-survivor may go to court to apply for a family violence intervention order (FVIO) themselves, but given the physical, procedural, and structural barriers in court processes and structures (discussed further below), this is not as common<sup>72</sup>.

<sup>67</sup> Jones, L., Bellis, M. A., Wood, S., Hughes, K., McCoy, E., Eckley, L., Officer, A. (2012). *Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies*. *Lancet*, 380 (9845)

<sup>68</sup> *ibid*, p. 899

<sup>69</sup> DV Vic (2020). *Op. cit.*

<sup>70</sup> Family Safety Victoria (2018). *Op. cit.* p26

<sup>71</sup> State of Victoria (2014-16). *Royal Commission into Family Violence: Report and recommendations, Vol III*. Parl Paper No 132. p118.

<sup>72</sup> Crime Statistics Agency, Family Violence Dashboard. <https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/magistrates-court>: in 2018-2019, nearly 75% of FVIO/FVSN applications were made by Victoria Police on behalf of victim-survivors of family violence.

If family violence is reported to Victoria Police by a victim-survivor or a third party, police are required to undertake certain actions outlined in the [Code of Practice for the Investigation of Family Violence](#)<sup>73</sup> which may include applying to the Magistrates' Court for protection for the victim-survivor(s) if future risk is present. This results in a victim-survivor of family violence having a matter in the **civil jurisdiction of the Victorian Magistrates' Court** for a FVIO or Family Violence Safety Notice (FVSN) and potentially in the **criminal jurisdiction** if their partner has been charged by police or if the victim-survivor has been charged with a criminal offence. If child protection become involved a victim-survivor may have matters before the **Children's Court** and if there are parenting/property matters a victim-survivor's legal matters may extend into the Federal jurisdiction in the **Family Court**.

Navigating multiple jurisdictions can be extremely confusing and complicated and the 'gaps' that currently exist between jurisdictions provide opportunities for perpetrators to manipulate the legal system to maintain and 'reassert their power and control over the victim' (referred to as 'systems abuse'<sup>74</sup>). For people with disabilities this complexity can create additional barriers to accessing the justice system and participating in legal processes. The [Supporting Justice System Map](#) produced by the Centre for Innovative Justice (CIJ) as part of the Supporting Justice project provides a visual representation of the myriad of factors that impact on people with disabilities who engage with the criminal justice system<sup>75</sup>. Whilst only representing interaction with one legal jurisdiction, the map provides a sense of how complex it would be for a victim-survivor who is required to simultaneously navigate multiple parts of the justice system.

As noted in our response to the *Criminal Justice Issues Paper*, it is difficult to quantify how many victim-survivors of family violence with disabilities interact with the various parts of the justice system as available statistics speak to whether a person has a disability **or** has experienced family violence but is relatively silent on the co-occurrence of the two<sup>76</sup>. What is well established in the available research and reports is that victim-survivors with disabilities experience significant barriers in accessing protection from the justice system and in being able to fully participate in legal processes<sup>77</sup>.

## Barriers to accessing justice and fully participating in legal processes

Maher et al (2018) note that "there have been several high-level studies and reports produced over the last five years that include a focus on access to justice for people with disability who have experienced violence"<sup>78</sup> and detail critical barriers victim-survivors with disabilities face in accessing justice after sexual or family violence. For victim-survivors of family violence with disabilities, there are systemic, structural and attitudinal barriers that result in family violence and disability support needs not being systematically identified when they engage with the justice system, and which make it extremely difficult for victim-survivors to seek protection or report family violence to police and/or courts and to equally participate in legal processes. This can render victim-survivors invisible to the

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<sup>73</sup> Victoria Police (2019). *Code of Practice for the Investigation of Family Violence*. Edition 3 V4.

<sup>74</sup> The Australian Institute of Judicial Administration. (2019). *National Domestic and Family Violence Benchbook*. <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>

<sup>75</sup> Centre for Innovative Justice. (2019). *Systems Map*. (<https://cij.org.au/research-projects/supporting-justice-system-map/>).

<sup>76</sup> AIHW. (2019). *People with disability Australia 2019: in brief*. Cat. No. DIS 74. Canberra. AIHW. p23: currently there is no reliable data to measure "how much contact people with disability have with the justice and child protection systems, both as victims and as offenders".

<sup>77</sup> Maher et al (2018). op cit.

<sup>78</sup> Ibid, p22

justice system and lead to poor, inappropriate, inadequate and retraumatising responses that impact on their ability to live safely and free from violence.

We refer the Commission to our response to the *Criminal Justice Issues Paper* for a detailed discussion of the multiple and complex barriers victim-survivors of family violence with disabilities face in accessing justice. Although many of the comments in our response to the *Criminal Justice Issues Paper* relate to the criminal justice system, they arguably apply to the broader justice system given the intersecting and multijurisdictional legal needs of many victim-survivors. This section of the submission provides a summary of the key points raised in our response to the *Criminal Justice Issues Paper* to draw attention to the lack of systemic identification of family violence or disability across the justice system, barriers victim-survivors face in disclosing and reporting family violence and structural/systemic barriers that prevent victim-survivors with disabilities from equally participating in legal processes.

## Identifying, Disclosing and Reporting Family Violence

### Identifying Family Violence

Currently, there is no systematic way of identifying family violence or disability across the justice system. For victim-survivors of family violence with disabilities to have equitable access to the justice system and the opportunity to fully participate in legal processes, the justice system must contain mechanisms to systematically identify family violence and disability support needs at the point a person engages with the justice system. This necessitates those working in the justice system having a contemporary understanding of the nature and dynamics of family violence perpetrated against victim-survivors with disabilities so family violence can be identified at the earliest opportunity and reasonable adjustments and required supports put in place.

As detailed in our response to the *Criminal Justice Issues Paper* (pages 8-9), current barriers to systematically **identifying** family violence in the justice system include:

- **Attitudes, biases and stereotypes held by some professionals in the justice system** result in victim-survivors with disabilities being viewed with suspicion, facing a culture of disbelief, not being perceived as credible or reliable witnesses and stereotyped as “incompetent, voiceless, hypersexualised and inherently vulnerable”<sup>79</sup>.
- **A lack of understanding of the nature and dynamics of family violence perpetrated against people with disabilities**<sup>80</sup>. This can lead to professionals working in the justice system misidentifying victims as perpetrators<sup>81</sup>, may result in a perpetrator being viewed as a ‘support’<sup>82</sup> or the situation being assessed as ‘carer fatigue...or a response to challenging behaviour by the person with disabilities, rather than [identifying it as] family violence’<sup>83</sup>.
- **A lack of understanding of what constitutes a ‘family-like’ relationship**. This can be particularly problematic for people living in residential accommodation where professionals may not

<sup>79</sup> State of Victoria (2014-16), Vol V, p184,

<sup>80</sup> Maher et al. (2018). op. cit. p26

<sup>81</sup> See DV Vic response to the *Criminal Justice Issues Paper* for additional commentary on misidentification.

<sup>82</sup> Women with Disabilities Victoria (2015). op. cit. p4.

<sup>83</sup> Judicial College of Victoria (2011). *Family Violence Bench Book*. Melbourne. Section 5.8.5-Barriers to reporting family violence <<https://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34143.htm>>.

identify family violence if they do not have a thorough understanding of what constitutes a *family-like relationship*.

- **A reliance on verbal communication results in a lack of inclusion and access to communication supports (e.g. Auslan interpreter, communication support professional, communications device and other communication aids etc)** – this can lead to a victim-survivors with a variety of physical, cognitive and psychological disabilities being unable to adequately express their views and tell their story which can result in family violence not being identified.

### Disclosing and Reporting Family Violence

Victim-survivors with disabilities encounter significant barriers to disclosing and reporting family violence<sup>84</sup>. These barriers result in family violence being underreported, leading to the true extent of family violence experienced by people with disabilities remaining hidden<sup>85</sup>. As noted in our response to the *Criminal Justice Issues Paper*, choosing to disclose family violence is an extremely personal decision for each victim-survivor and is a time of increased risk of harm for victim-survivors<sup>86</sup>. When a victim-survivor chooses to disclose family violence, they need to be believed, their courage acknowledged and a response provided that ensures their safety and the safety of any children in their care. This is particularly important given that research shows that the response received by a victim-survivor when they seek help will impact on future help-seeking behaviour<sup>87</sup>.

Barriers to reporting and disclosing family violence outlined in our response to the *Criminal Justice Issues Paper* (pages 10-11) include:

- Victim-survivors with disabilities who have experienced a lifetime of discrimination, may not recognise that what is happening to them is family violence or they may be reluctant to disclose that they have a disability and associated support needs<sup>88</sup>.
- If a victim-survivor's life has been characterised by demeaning experiences and discrimination, they may see what is happening to them as 'normal' and they may blame themselves for what is occurring<sup>89</sup>.
- If a victim-survivor is isolated because of the family violence being perpetrated against them, they may not have access to information or support which may further limit their ability to recognise what is happening to them as not 'normal' and as family violence.
- As noted above, if a victim-survivor is reliant on a perpetrator for care and/or mobility, a perpetrator can use this as leverage to further isolate a victim-survivor and prevent them from seeking help.

<sup>84</sup> Judicial College of Victoria (2011). Section 5.8.5; Healey, L. (2014). *Voices Against violence: Paper 2*; State of Victoria (2014-16), Vol V.

<sup>85</sup> AIHW (2018). *Family, domestic and sexual violence in Australia 2018*. Cat. No. FDV 2. Canberra. p5; RACGP White Book: <https://www.racgp.org.au/clinical-resources/clinical-guidelines/key-racgp-guidelines/view-all-racgp-guidelines/white-book/partner-abuse;> Laing, L (2010). *No way to live: Women's experiences of negotiating the family law system in the context of domestic violence*. University of Sydney <<https://ses.library.usyd.edu.au/handle/2123/6255>>

<sup>86</sup> Family Safety Victoria .2018; Toivonen, C., & Backhouse, C (2018). *National Risk Assessment Principles for domestic and family violence: ANROWS Insights 07/2018*. Sydney, NSW.

<sup>87</sup> State of Victoria (2014-16), *Summary and Recommendations*.

<sup>88</sup> State of Victoria (2014-16), Vol V, p183

<sup>89</sup> Healey, L (2014). *Voices Against Violence: Paper 1—Summary Report and Recommendations*. (Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria).

- For some victim-survivors, fear of reporting family violence may be compounded if the perpetrator has a dual role as partner/carer or is someone on whom the person is dependent<sup>90</sup>.
- Women with disabilities fear losing custody of their children if Child Protection is notified of the violence and this fear is well-founded with removal of children from parents with disabilities happening at a much higher rate than for parents without disabilities<sup>91</sup>.
- The attitudes, biases and stereotypes held by some professionals in the justice system combined with a lack of adequate training to identify family violence can result in victim-survivors not having enough confidence in the ‘system’ to disclose or report family violence.
- In institutional settings, a lack of understanding of what constitutes a ‘family-like’ relationship, a culture of acceptance of abuse and an atmosphere of fear can be additional barriers to victim-survivors reporting violence<sup>92</sup>.

We note that the co-occurrence of these barriers can have a cumulative impact on the ability of a victim-survivor to disclose/report family violence and to seek support and safety.

### Barriers to Participating in Legal Processes

To fully participate in legal processes, victim-survivors require access to information in a format that they can understand so they can make an informed decision. Unfortunately, court terminology, language and legal ‘jargon’ used by those working in the justice system is extremely confusing and difficult to understand for any person who is ‘outside’ the system. Further, for a person with cognitive impairment and intellectual disability, the use of legal ‘jargon’ and complex language can make it impossible to understand the legal process and result in them being excluded from legal processes that affect them and from being a part of decisions that will have a major impact on their lives<sup>93</sup>. This issue is compounded by a justice system that focusses on ‘throughput’ rather than on ‘process’ due to inadequate resourcing and the large number of matters that need to be heard<sup>94</sup> which leaves minimal time and opportunity for processes to be explained. This can result in victim-survivors being excluded from the legal process and not understanding orders that are made<sup>95</sup>. Research suggests that this also impacts on whether people engaging with the legal system view the legal process as ‘fair’ and whether they comply with court orders that are made<sup>96</sup>.

Other barriers that exclude victim-survivors with disabilities from legal processes include limited access to the court buildings or internal infrastructure such as witness stands, lack of access to Auslan interpreters, poor acoustics and/or no hearing loop in court and a lack of information and resources in a range of accessible formats<sup>97</sup>. People with a disability are also at a disadvantage when appearing in

<sup>90</sup> State of Victoria (2014-16), Vol V, p191

<sup>91</sup> Ibid. p183; Healey, L. (2014). *Paper Two*. P52

<sup>92</sup> Victorian Ombudsman (2015). *Reporting and Investigation of Allegations of Abuse in the Disability Sector: Phase 1—The Effectiveness of Statutory Oversight*: Victorian Government; State of Victoria (2014-16), Vol V, p182.

<sup>93</sup> Centre for Innovative Justice. (2019a). *Supporting Justice*. RMIT University. Melbourne. <<https://supportingjustice.net/>>

<sup>94</sup> State of Victoria (2014-16), Vol III, p168

<sup>95</sup> Centre for Innovative Justice. (2019a). op. cit.

<sup>96</sup> Centre for Innovative Justice. (2019b). op.cit. *Resources for lawyers, judicial officers and court professionals*.

<<https://supportingjustice.net/resources/for-lawyers-judicial-officers-court-professionals/effective-communication>

<sup>97</sup> State of Victoria (2014-16), Vol V, p189.

court as processes for giving evidence in family violence matters can be challenging particularly for people with cognitive impairment and intellectual disabilities<sup>98</sup>.

If victim-survivors of family violence do not have control of their own decision making within the adversarial court system, this replicates the power and control dynamics of an abusive relationship and can be retraumatising, resulting in victim-survivors being unable to continue to engage in the legal process or can result in them making a choice not to engage at all. As noted by Kenzelman & Stavropoulos (2016), many people who have experienced trauma, “have been re-traumatised by the very services they have accessed for assistance [and] such re-traumatisation occurs across the full spectrum of sectors, practices and services, including within and across the legal and justice sectors”<sup>99</sup>. It is critical that ‘trauma-informed’ practices are implemented across the justice system to ensure that if a victim-survivor decides to seek help they receive a safe response that identifies and acknowledges the trauma they have experienced and recognises the impact trauma has on them and the support they require to engage with legal processes.

### Systems Abuse

In addition to confronting a myriad of barriers that may result in family violence not being identified and make it very difficult to report and/or disclose family violence and engage in legal processes, victim-survivors of family violence may also be exposed to ‘systems abuse’ if their legal matters extend into multiple jurisdictions. A recent study undertaken by Coumarelos (2019) to examine the legal and broader life impacts of family violence found that people “who had experienced DFV in the previous 12 months...were 10 times more likely than others to experience other legal problems, including a wide range of family, civil and criminal law issues” and the legal problems were “more severe with greater adverse impacts on broader life circumstances”<sup>100</sup>.

The jurisdictional ‘gaps’ that currently exist between Federal and state jurisdictions and the civil and criminal legal systems provide opportunities for perpetrators to manipulate the legal system to maintain and ‘reassert their power and control over the victim’ (referred to as ‘systems abuse’<sup>101</sup>). Tactics used by perpetrators may include “attempting to have a partner arrested; taking legal action against a partner; making false reports of neglect or abuse to child protection agencies; and applying for intervention orders against a partner”<sup>102</sup>.

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<sup>98</sup> Ibid, p189.

<sup>99</sup> Kenzelman, C. A. & Stavropoulos, P. (2016). *Trauma and the Law: Applying Trauma-informed Practice to Legal and Judicial Contexts*. Blue Knot Foundation. Sydney. p5.

<sup>100</sup> Coumarelos, C. (2019). *Quantifying the legal and broader life impacts of domestic and family violence*. Justice Issues Paper 32. Law and Justice Foundation of NSW. p1.

<[http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/\\$file/JI\\_32\\_DFV\\_legal\\_needs.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/61BD5751775FA93B852584090007B5B9/$file/JI_32_DFV_legal_needs.pdf)>

<sup>101</sup> The Australian Institute of Judicial Administration. (2019). *National Domestic and Family Violence Benchbook*.

<<https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>>; see also Monash Gender and Family Violence Prevention Centre (2018). *Research Brief: Systems Abuse*. Monash University. Victoria. [https://bridges.monash.edu/articles/Systems\\_Abuse/8379125](https://bridges.monash.edu/articles/Systems_Abuse/8379125).

<sup>102</sup> Miller & Smolter (2011) cited in Monash Gender and Family Violence Prevention Centre (2018). op. cit. p1; also notes that the family law system is often a site of systems abuse.

Systems abuse is perpetuated by ‘siloed’ legal responses that focus on one legal issue rather than simultaneously addressing the multiple legal issues faced by victim-survivors of family violence and can be facilitated by structures and systems that do not:

- have a shared understanding of the nature and dynamics of family violence and risk,
- recognise and address barriers to accessing justice for people with disabilities,
- systematically identify family violence as an issue for court users as soon as they engage with the justice system,
- recognise and identify when legal processes and systems are being manipulated to perpetrate family violence,
- appropriately share ‘risk relevant’ information across jurisdictions boundaries.

Victim-survivors with multiple legal problems need a holistic legal response that incorporates family violence specialisation and support to reduce opportunities for systems abuse to be perpetrated and to ensure that they are not required to tell their story multiple times. We note that in response to recommendations made by the RCFV in Victoria, Specialist Family Violence Courts (SFVC) have been established to provide easy access to the court, promote safety for victim-survivors, increase accountability for perpetrators and increase the protection of children<sup>103</sup>. All staff working at SFVC locations attend family violence training and the SFVCs can hear matters from other jurisdictions including bail applications in criminal cases, family law parenting order matters and victims of crime applications. We suggest it would be useful for the Royal Commission to look at the evidence emerging from monitoring and evaluation of the SFVCs to see if they are reducing barriers to access and resulting in safer processes and outcomes for victim-survivors, including those with disabilities.

If, when a victim-survivor seeks help they are met by a system that does not identify, believe and acknowledge their experiences of family violence, it can reinforce the messaging that they are to blame, will discourage any future reporting or help-seeking behaviour and may also result in a victim-survivor returning to or staying longer in an unsafe situation.

## Recommendations

The following recommendations seek to address structural and systemic barriers that currently result in victim-survivors of family violence with disabilities not having equal access to the justice system or being able to fully participate in legal processes. Adopting these recommendations would ensure that victim-survivors are not individually responsible for navigating complex legal systems and help to ensure that all reasonable adjustments are made to ensure victim-survivors can equally and safely participate in legal processes.

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<sup>103</sup> Magistrates Court of Victoria (2020). *Family violence courts and counselling orders*. <<https://www.mcv.vic.gov.au/about/family-violence-courts-and-counselling-orders>>



**Recommendation 4:** Establish/strengthen processes for systematic identification of family violence by practitioners with specialist family violence practice expertise at the first point of contact with the justice system.

**Recommendation 5:** Establish/strengthen mechanisms to identify if a victim-survivor has a disability and to recognise how this is likely to impact on their engagement with the justice system and what additional supports are required.

**Recommendation 6:** Establish/strengthen referral pathways between the justice system and specialist family violence services.

**Recommendation 7:** Compulsory training for professionals in the justice system to ensure they have a contemporary understanding of the nature and dynamics of family violence (including ‘disability-based’ abuse).

**Recommendation 8:** A long-term, whole-of-government commitment to closing jurisdictional gaps and ongoing State and Commonwealth funding to implement trauma-informed, nuanced and tailored justice responses for victim-survivors with disabilities to ensure that all reasonable adjustments are made to facilitate full and equal participation.

## Barriers to accessing safe and sustainable housing

### Issues Paper: Question 11

Family violence is the leading cause of homelessness and housing stress and victim-survivors experiencing intersecting forms of oppression and marginalisation such as racism, ableism and homophobia are even less likely to be able to access safe, affordable and long-term housing<sup>104</sup>. As noted in DV Vic and DVRCV’s *Submission to the Inquiry into Family, Domestic and Sexual Violence*, in 2018-2019, 40% of Specialist Homelessness Services’ (SHS) clients across Australia listed family and domestic violence as their reason for seeking support<sup>105</sup>. Safe, accessible, affordable, long-term housing is critical for victim-survivors of family violence with disabilities who have escaped family violence or are contemplating leaving a violent relationship. If a victim-survivor does not have access to appropriate housing, they may be forced to return to a violent relationship because they have nowhere to live or they may feel trapped in a violent relationship if they have no other housing option<sup>106</sup>. A victim-survivor should never be placed in a position where they feel they cannot leave a violent relationship or return to a violent relationship because they cannot access appropriate housing.

For victim-survivors with disabilities, access to appropriate housing and ongoing support can be crucial to their long-term recovery. As noted by Maher et al (2018), “without a secure living situation in which they could feel confident, referrals and other forms of response to support transitions away from

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<sup>104</sup> Domestic Violence Victoria (2020). *DV Vic’s Submission to the National Inquiry into Homelessness*. Melbourne: DV Vic.

<sup>105</sup> AIHW (2019) Specialist Homelessness Services annual report 2018–19 cited in DV Vic and DVRCV (2020). *Submission to the National Inquiry into Family, Domestic and Sexual Violence*. <<http://dvvic.org.au/publications/dv-vic-and-dvrcv-submission-to-the-national-inquiry-into-family-domestic-and-sexual-violence/>>

<sup>106</sup> State of Victoria (2014-16), Vol V, p187

violence [have] little chance of succeeding”<sup>107</sup>. Having ongoing support can ensure that a victim-survivor can connect or reconnect with formal and informal support networks and services that will support her ongoing safety and recovery.

While a variety of housing options are needed to address the unique needs and risks for each victim-survivor, the chronic lack of affordable properties across Australia remains a significant barrier to safety for victim-survivors. DV Vic welcome the public release of the final report of the *Parliamentary Inquiry into Homelessness in Victoria* and support its call for urgent and ongoing attention to the homelessness crisis. We hope to see the Victorian Government commit to those recommendations that will immediately improve the safety and wellbeing of victim survivors generally and those living with disability, who experience or are at risk of homelessness<sup>108</sup>.

DV Vic also supports the asks in the national *Everybody’s Home Campaign*<sup>109</sup> and the Victorian *Make Social Housing Work* framework as both focus on the government developing long-term housing strategies/plans to address the shortfall in social and affordable housing. The Victorian *Make Social Housing Work* framework also asks for additional investment in support services to ensure people get the support they need to sustain tenancies. This includes expanding permanent supportive housing teams that provide flexible, wholistic and ongoing support to people with complex needs<sup>110</sup>.

As a principle DV Vic believes that a *Safe at Home* response should be the preferred housing response for victim-survivors of family violence as it allows them to stay in existing housing and maintain connections with formal and informal supports. However, we acknowledge that a *Safe at Home* response is not appropriate for everyone, particularly those at high risk or victim-survivors who do not currently have stable or safe housing. Further, we note that victim-survivors who experience intersecting forms of oppression and marginalisation are even less likely to be able to access a *Safe at Home* response because they are profoundly excluded from the workforce and private housing market<sup>111</sup>.

In Victoria access to **Flexible Support Packages** (FSPs) can assist victim-survivors to safely stay at home and the flexibility of these packages makes them one of the few policy responses that can work well for a diverse group of victim-survivors and meet a variety of needs that can help a victim-survivor maintain or gain housing. FSPs can facilitate victim-survivors staying safe at home through the purchase of security measures via the Personal Safety Initiative, thus avoiding clients having to go into crisis accommodation and/or rely on insecure housing arrangements. FSPs can also be used to pay for costs associated with moving if a victim-survivor needs to relocate to alternate housing. For victim-survivors

<sup>107</sup> Maher et al. (2018). *Women, disability and violence: Barriers to accessing justice. Key findings and future directions*. Sydney: ANROWS, p4

<sup>108</sup> Legislative Council Legal and Social Issues Committee (2021). *Inquiry into homelessness in Victoria. Final report: Summary booklet*. Parliament of Victoria: see for example Recommendations 9-12, 35 and 47

<sup>109</sup> Everybody’s Home (2018). *Our Asks*. <<https://everybodyshome.com.au/our-campaign/more-social-and-affordable-homes/>>: includes including developing a National Housing Strategy to meet Australia’s identified shortfall of 500,000 social and affordable homes

<sup>110</sup> *Make Social Housing Work* (2020). The Housing Peak Alliance. <https://chp.org.au/wp-content/uploads/2020/05/Make-Social-Housing-Work.pdf>

<sup>111</sup> Domestic Violence Victoria (2020). *DV Vic’s Submission to the National Inquiry into Homelessness*. Op cit. p11

with disabilities, FSPs could be used to purchase disability aids and equipment, or disability supports to stay safely at home or in the community.

DV Vic have recommended in numerous submissions that the Australian Government funds a National FSP scheme to ensure that all victim-survivors across Australia have access to the same flexible brokerage support. This would address the current discrepancy between the level of support available to victim-survivors in Victoria compared to the rest of the country<sup>112</sup>. We welcome the recognition in the recent *Final Report of the Inquiry into Homelessness in Victoria* of the important role FSPs play in the Victorian Government's response to family violence and the recommendation in the report to provide ongoing funding for the FSP Program<sup>113</sup>.

In Victoria, for victim-survivors who do need access to safe, specialist family violence accommodation, the redevelopment of communal specialist family violence refuges (resulting from a Recommendation made by the RCFV) into a core and cluster model is improving physical access to family violence refuge for victim-survivors with a disability. However, a narrow understanding of disability by Government planners (i.e. as physical disability) and lack of ongoing consultation with specialist family violence service providers and/or people with disabilities has resulted in the refuge redevelopments falling short of disability inclusiveness. Though being built to a recognised standard for disability accessibility, many of the new units mostly address accessibility for only victim-survivors using wheelchairs, yet the areas outside of the units (i.e. communal areas, pathways) *are not* suitable/accessible for wheelchair users due to the ground surface and curbing used on footpaths. This is a good example of what further work is to be done to meet both disability and safety rights and needs at the intersection of housing, homelessness, family violence and disability.

For additional information on these matters we refer the Commission to [DV Vic's Submission to the Homelessness Inquiry in Victoria](#), the [National Homelessness Inquiry](#) and the joint submission made by DV Vic and DVRCV to the [National Inquiry into Family, Domestic and Sexual Violence](#)

## Recommendations

**Recommendation 9:** The Australian Government adopt the *Everybody's Home Campaign* asks, including developing a gender-informed National Affordable Housing Strategy and National Plan to End Homelessness.

**Recommendation 10:** The Royal Commission review the recommendations from the *Victorian Inquiry into Homelessness: Final Report* and review the *Make Social Housing Work* Framework.

**Recommendation 11:** The Australian Government funds a National Flexible Support Package scheme at a level equal to, or above, the current Victorian scheme, to be administered through specialist family violence services.

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<sup>112</sup> See: DV Vic and DVRCV (2020). *Submission to the National Inquiry into Family, Domestic and Sexual Violence*. Op cit.; Domestic Violence Victoria (2020). *DV Vic's Submission to the National Inquiry into Homelessness*. Op cit.

<sup>113</sup> Legislative Council Legal and Social Issues Committee (2021). *Inquiry into homelessness in Victoria. Final report: Summary booklet*. Parliament of Victoria: Recommendation 9.

# Barriers created by fragmented and siloed service responses

## Bridging the gap between the family violence and disability service systems

### Issues Paper: Question 5

As noted above, victim-survivors who overcome the myriad of barriers and seek help for the violence that has been perpetrated against them are likely to have multiple support needs that span numerous and often ‘siloed’ service systems, as responses provided by each system often focus on a specific need or issue in isolation. The fragmentation created by ‘siloed’ service system responses presents critical safety risks for victim-survivors of family violence with disabilities and results in responsibility for navigating extremely complex systems resting with an individual rather than the systems that create the complexity (see above discussion re complex systems vs complex clients)<sup>114</sup>.

This section of the submission will focus on the family violence and disability service systems, and in particular the National Disability Insurance Scheme (NDIS), as these are two service systems that victim-survivors with disabilities are likely to encounter if they report family violence to police or seek help. The interface between these two service systems is complex and dynamic as a result of the roll-out of the NDIS which has created specific challenges and barriers for victim-survivors of family violence in accessing the services and supports they need. Whilst noting that the NDIS has also had many positive impacts and outcomes, it is only through examining current issues and concerns that we can build a better and safer response for victim-survivors of family violence.

Given the evidence that clearly shows that people with disabilities are at increased risk of experiencing family violence and when they do it is more frequent and severe, it is critical that these two service systems provide a coordinated continuum of support to victim-survivors to manage family violence risk and address safety concerns and disability support needs. If the family violence and disability service systems do not provide a coordinated response, the risk to victim-survivors with disabilities is great and can result in them:

- falling through the service gaps created by siloed service responses,
- having to navigate confusing and complicated service systems on their own,
- having to undergo numerous assessments and retell their stories which can result in re-traumatisation (also known as ‘secondary victimisation’); and
- being exposed to further family violence from the perpetrator as it can present perpetrators with opportunities to exploit any gaps to perpetrate further violence and abuse (see above discussion on ‘systems abuse’).

Although victim-survivors of family violence with disabilities experience higher levels of violence than those without disabilities, they are “under-represented as users of family violence, sexual assault,

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<sup>114</sup> Australia’s National Research Organisation for Women’s Safety. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice: Key findings and future directions* (Research to policy and practice, 16/2020). Sydney: ANROWS; Salter et al. (2020). Op cit.

counselling and victim support services”<sup>115</sup>. This was also reflected in comments made by DV Vic members who note that not many women with disabilities are contacting SFVSSs<sup>116</sup>. The underrepresentation of victim-survivors in part is due to barriers to reporting and disclosing family violence (discussed above) but is also due to issues/challenges that exist at the interface of family violence and disability service systems. This includes inclusion and capability issues within the SFVSS and disability sector which results in victim-survivors not being able to access services, referrals not being made between the two systems and consequently, the two service systems not providing a coordinated and collaborative response to victim-survivors.

As noted in recent research conducted by ANROWS into violence and early intervention for mothers and children with disability, “as recommendations are developed and implemented from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability (2019-2022), careful attention should be paid to bridging existing gaps between policies, strategies, funding arrangements and services that address DFV and those that address disability”<sup>117</sup>. To bridge the existing gaps, long-term cross-sector capacity building and high-level leadership and collaboration across State and Federal government departments is required.

We note recent positive developments as a result of advocacy DV Vic and DVRCV have undertaken with the NDIA and we understand that a final report will be developed which will provide recommendations for how the NDIS can better assist victim-survivors of family violence with disabilities. We hope that the report will reflect some of the recommendations made in the following section of the submission as this will lead to safer and more consistent responses for victim-survivors.

## Challenges at the interface of the family violence and disability service systems

### Different types of intervention – the ‘crisis response’ gap

Victim-survivors who experience family violence often become known to the family violence service system at a point of crisis where they are at an increased risk of harm and an immediate and timely response is critical to mitigate risk and enhance their safety. For victim-survivors with disabilities this may include situations where a victim-survivor:

- Needs to relocate to a refuge in another area because it is too dangerous for them to stay near the perpetrator.
- Has been dependent on the perpetrator for care and the perpetrator is removed from the home by the police and they are left in the home on their own without support.

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<sup>115</sup> DVRCV & WDV. 2018. *Working with women with disabilities: Tip Sheet*.

[http://www.dvrcv.org.au/sites/default/files/Advocate\\_201808\\_p15\\_Working%20with%20women%20with%20disabilities%2002.pdf](http://www.dvrcv.org.au/sites/default/files/Advocate_201808_p15_Working%20with%20women%20with%20disabilities%2002.pdf).

<sup>116</sup> DV Vic SFVSS Survey 2020. Op. cit.

<sup>117</sup> Australia’s National Research Organisation for Women’s Safety. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice: Key findings and future directions* (Research to policy and practice, 16/2020). Sydney: ANROWS. p1.

- May have been told by Child Protection that if she does not relocate/leave the perpetrator her children may be removed.
- Must attend court soon after a family violence incident because the police have applied for a FVIO/FVSN.

Consequently, the family violence service system has been established to be responsive to crisis to ensure that a victim-survivor's immediate support and safety needs can be met. Within funding and resource limitations, a SFVS can provide crisis accommodation/refuge, brokerage, risk assessment and management and safety planning, immediately at the point of crisis to mitigate and manage risk.

In comparison, the NDIS was not established or intended to provide a crisis response and consequently is not agile or flexible enough to immediately meet the needs of a victim-survivor of family violence at a time of crisis. The legislated timeframes for determining a participant's eligibility for the NDIS (21 days<sup>118</sup>) or conducting an unscheduled review of a participant's existing plan (14 days to decide whether to conduct a review plus time for the review to be completed<sup>119</sup>) are inadequate to respond to changes in a victim-survivors disability support needs resulting from a family violence crisis. Whilst there are provisions in the *NDIS Operational Guidelines* for reducing the timeframe for determining eligibility if an application is deemed 'urgent', the definition of 'urgent' is not well-defined, 'family violence' is not listed as an 'urgent circumstance' and by using the word 'may' rather than 'must' in Section 4.11 of the *Access to the NDIS Operational Guideline* it arguably does not 'compel' decision makers to make decisions sooner<sup>120</sup>.

There is also no clear process for prioritising unscheduled plan reviews and no legislative requirement for 'urgency' to be taken into consideration. This is reflected in comments made by DV Vic members who have assisted clients to apply for unscheduled plan reviews who note that there does not seem to be a systematic approach to determining urgency which results in SFVSs having to spend a great deal of time and resources advocating for victim-survivors with disabilities to have their plans reviewed more quickly. Further, whether an application or plan review is considered urgent often depends on the knowledge of the NDIA decision-maker about family violence and the risk and urgency it presents to victim-survivors. The absence of a 'crisis' response in the current NDIS framework is problematic, challenging and potentially compromises safety for victim-survivors as at the time they seek help from the service system they need an immediate crisis response to reduce the risk they are experiencing and to enhance their safety. Currently, the specialist family violence service system must fill the 'crisis response' gap and meet a victim-survivor's family violence and disability support needs until the disability service system can respond (assuming a victim-survivor is in contact with the SFVS system).

<sup>118</sup> *National Disability Insurance Scheme Act 2013* (Cwlth) s20 <[http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol\\_act/ndisa2013341/s20.html](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ndisa2013341/s20.html)>

<sup>119</sup> *Ibid.* s48(2)

<sup>120</sup> *Access to the NDIS Operational Guideline – General matters relating to access requests*. Section 4.11: Prioritising prospective applicants with urgent circumstances: refers to "In urgent circumstances, the NDIA **may** determine whether a prospective participant meets the access criteria sooner than the timeframe set out in the NDIS Act." <https://www.ndis.gov.au/about-us/operational-guidelines/access-ndis-operational-guideline/access-ndis-operational-guideline-general-matters-relating-access-requests#4.8>>

In Victoria, the *Disability Family Violence Crisis Response Initiative* (DFVCRI)<sup>121</sup> provides support to a victim-survivor with disabilities at times of crisis. This initiative fills an important gap for victim-survivors with disabilities because the funds can be distributed quickly and flexibly at short notice to pay for support workers, equipment, accessible transport etc to enhance a victim-survivor's safety. While the DFVCRI is not ongoing, we welcome the recent extension of funding until 2024 but note that the DFVCRI cannot cover the period of time it may take for an NDIS plan to be approved and/or reviewed. Whilst the DFVCRI is a vital and crucial support for victim-survivors with disabilities who experience family violence it cannot alone address the 'gap' that exists at a 'systemic' level due to the absence of a 'crisis' response in the current NDIS framework. Further, if a victim-survivor does not engage with the family violence service system, they may not be aware of or access the DFVCRI. It is therefore important that the disability support system/NDIS recognises itself as a service that responds to victim-survivors of family violence and adopts family violence crisis intervention approaches, as it may be the first and only support for victim-survivors of family violence.

For victim-survivors of family violence with disabilities there is a pressing need to address the "crisis response" period so that services can respond to a victim-survivors support and safety needs quickly. The time it takes for an NDIS plan to be approved/reviewed must not act as a barrier to a victim-survivor escaping family violence and a victim-survivor must never have to make the impossible choice between safety and going back to the perpetrator to get the care/support they need.

## Recommendations

**Recommendation 12:** The interface between the NDIA, the disability sector, and the family violence service system is addressed in close consultation with both sectors to bridge the 'crisis response' gap in the NDIS system.

**Recommendation 13:** NDIS plans and/or reviews that result from a change in circumstances due to family violence must be categorised as 'urgent' requests.

**Recommendation 14:** Establish clear, formalised and transparent processes for prioritising and triaging 'urgent' requests for people with 'urgent' support and safety needs.

**Recommendation 15:** Reduce the amount of time allowed for the NDIA to process and approve an urgent request (either for a new plan or an unscheduled plan review) that result from a victim-survivor experiencing family violence.

**Recommendation 16:** Strengthen referral pathways and collaborative service delivery arrangements between SFVSs and disability support services.

## Different understandings of family violence

It is critically important that all services that respond to victim-survivors of family violence have a common understanding of family violence. If services do not apply the same lens, the response victim-survivors receive will be inconsistent. In Victoria, SFVSs apply the broad definition of family violence contained in the *Family Violence Protection Act* (FVPA) (2008) in their daily work and when this

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<sup>121</sup> Disability and family violence crisis response (n.d.) <<https://providers.dhhs.vic.gov.au/disability-and-family-violence-crisis-response>>

definition is not utilised and/or understood by other service systems, it can create barriers for victim-survivors who need access to family violence services or engage with multiple service systems.

The RCFV noted that there was “a lack of awareness among disability services of the needs of women and girls with disability who experience family violence and a lack of appropriate responses of family violence and sexual assault services to people with disabilities”<sup>122</sup> and more recently Robinson et al (2020) noted that “there is a lack of skilled knowledge in services to address the specific needs that arise from the intersection of disability and domestic and family violence (DFV)”<sup>123</sup>. The lack of awareness and knowledge about family violence in the disability sector is reflected in comments made by DV Vic members who describe NDIS and support workers coming from a different approach regarding family violence which results in family violence workers doing awareness raising with these workers<sup>124</sup>. Further, DV Vic members have also reported that when they contact the NDIA the person they speak to does not seem to understand the nature, dynamics and impact of family violence or the urgency of the situation and the elevated risk of future harm the victim-survivor is at if support is not provided immediately.

In Victoria, the MARAM framework is crucial in creating a shared understanding of family violence across different service systems to ensure that no matter where a victim-survivor enters the service system, they receive a consistent, safe and family violence informed response. The MARAM also emphasises that it is everybody’s responsibility to identify and respond to family violence within the boundaries and responsibilities of their role and establishes clear referral pathways from mainstream services to SFVS. Over time there will be a legislated requirement<sup>125</sup> for relevant organisations to align their policies, procedures, practice guidance and tools to MARAM (which will contribute to developing a shared understanding of family violence across different service systems) including requirements for workforces to meet certain levels of family violence knowledge and capability<sup>126</sup>. In time, this requirement will apply to State-funded disability services, but our understanding is that this requirement does not apply to Federally funded NDIS services, thereby creating a discrepancy between the two.

This presents a major concern as currently there is a lack of consistency in the way family violence is conceptualised and understood by the family violence and disability service systems which can create barriers to the two systems working collaboratively and can impact on referrals being made between the two service systems. For victim-survivors who do access both service systems, the lack of a shared understanding of family violence across the two service systems can result in them receiving an inconsistent response and not being referred to appropriate services. For example,

- if a disability support worker does not have an understanding of family violence, they may not identify family violence or family violence risk factors that mean that a victim-survivor is at imminent risk of harm and make appropriate referrals to SFVSs.

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<sup>122</sup> State of Victoria (2014-16), Vol V, p187

<sup>123</sup> Robinson et al. cited in Australia’s National Research Organisation for Women’s Safety. (2020). op. cit. p1.

<sup>124</sup> DV Vic SFVLG Survey 2020. Op. cit.

<sup>125</sup> *Family Violence Protection Act* (2008). Part 11-Family Violence Risk Assessment and Risk Management Framework. s190: “A framework organisation that provides services relevant to family violence risk assessment and family violence risk management must ensure that its relevant policies, procedures, practice guidance and tools align with the Framework”.

<sup>126</sup> Family Safety Victoria (2017). *Responding to Family Violence Capability Framework*. Victorian Government.



- if an NDIA decision maker does not have an understanding of family violence and risk, they may not assess a plan review request from a victim-survivor as ‘urgent’.

If the disability system cannot identify and respond to family violence it may result in referrals not being made to SFVSs who can comprehensively assess risk and develop safety plans with victim-survivors. Further, without an understanding of the nature and dynamics of family violence perpetrated against victim-survivors with disabilities, it may result in disability services not acting urgently and therefore leaving the victim-survivor in an unsafe, dependent relationship with the perpetrator. It could also result in disability service providers unintentionally colluding with perpetrators (i.e. by assuming perpetrator is a support and/or believing the perpetrator and not the victim-survivor) which can lead to increased risk for victim-survivors and result in them not getting the support they need to be safe.

Whilst this section is focussed on developing a shared understanding of family violence between service systems, it is also important that victim-survivors with disabilities feel safe and confident to disclose their disability and other support needs when they seek help from SFVSs. This requires SFVS practitioners to:

- be skilled in asking questions about disability,
- have an awareness of disability-based abuse and how family violence risk factors may present for people with disabilities,
- have a detailed understanding of the ways a perpetrator can use a disability against a victim-survivor, and
- the barriers victim-survivors face in trying to access support and safety.

Having these skills will allow SFVS to respond appropriately to the disability **and** safety needs of victim-survivors with disability, ensure appropriate supports are put in place for the victim-survivor to engage with the service and ensure that they are referred to appropriate disability supports and services. Long-term sector-wide capacity building is required to ensure that the unique risks and needs of victim-survivors with disabilities remain at the forefront of responses provided by SFVS. This is particularly important given that the service system landscape is continuing to evolve as the NDIS is refined and adapted and SFVS practitioners need ongoing support to navigate what is often a complex service system environment.

To build the capacity of the specialist family violence workforce in responding to victim-survivors with disabilities, DV Vic in partnership with the Centre for Excellence in Child and Family Welfare (CECFW) have recently conducted training on *Working with the NDIS for specialist family violence and sexual assault practitioners supporting victim-survivors of family violence with disability*<sup>127</sup>. This training is part of the *NDIS Family Violence Workforce Capacity Building Project* funded by Family Safety Victoria and Department of Health and Human Services. A final report will be generated for the Project which will highlight challenges at the NDIS/SFVS interface. We suggest that it will be useful for the Royal Commission to refer to this report when it is available to inform Question 5 of the *Issues Paper*.

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<sup>127</sup> <https://www.eventbrite.com.au/e/ndis-training-for-family-violence-sexual-assault-workers-part-1-of-two-tickets-119974804871>

Whilst not the focus of this submission because SFVS are primarily a state-based responsibility, we note that disability capacity building is also important for Federally funded SFVSs such as 1800RESPECT to ensure practitioners can develop knowledge and awareness of the needs of victim-survivors with disabilities so they can provide appropriate support and referrals.

## Recommendations

For the disability service system to be ‘safe’ for victim-survivors it is crucial that the workforce is family violence and trauma informed and disability organisations/services have systems and structures in place to support ongoing capacity building. This is consistent with the two recommendations made by the RCFV which related to training and upskilling disability services workers in identifying and responding to family violence<sup>128</sup> to ensure professionals working in disability services have a contemporary and comprehensive understanding of family violence. Specific initiatives that may address the lack of a shared understanding of family violence include:

**Recommendation 17:** Client-facing NDIA staff (including NDIA planners and those with decision making delegation) and disability service workers funded by the NDIS complete mandatory training in identifying and responding to family violence (equivalent to the requirements for Tier 3 workforces under the Victorian *Responding to Family Violence Capability Framework*<sup>129</sup>).

**Recommendation 18:** Adequate funding for workforce development and ongoing cross-sector capacity building to ensure victim-survivors receive a consistent and safe response regardless of where they enter the service system and to strengthen referral pathways between the two service systems.

**Recommendation 19:** Ensure that adequate funding is available in the NDIS model for the workforce to attend training and capacity building activities. This would include providing additional funding so casual and contracted NDIS staff are paid for the time they attend training.

## Lack of prominence given to family violence in NDIS principles and guidelines

The prominence, recognition and priority given to family violence in NDIS principles and guidelines does not reflect the increased prevalence of family violence among people with disabilities and the increased risk victim-survivors with disabilities experience. This creates challenges and barriers at the interface of the two service systems, particularly in access to the NDIS for victim-survivors with disabilities and collaborative practice and referrals between the two service systems (outlined above). Examples of the lack of prominence given to family violence principles, processes and guidelines include:

- The *Principles to Determine the Responsibilities of the NDIS and other Service Systems*<sup>130</sup> do not list the family violence service system as a separate service system. Rather, family violence is only mentioned in the “Child Protection and Family Support” section. By including family

<sup>128</sup> State of Victoria (2014-16). *Royal Commission into Family Violence: Summary and recommendations*. op. cit. p91. Recs 172 and 173: We note that in response to Recommendation 173 of the RCFV an ‘identifying and Responding to Family Violence Risk Unit’ has been developed and is available in Victoria but this does not seem to have been incorporated into the National curriculum for community services training packages relevant to the NDIS.

<sup>129</sup> Family Safety Victoria (2017). Op cit.

<sup>130</sup> Principles to determine the responsibilities of the NDIS and other service systems (2015).

<https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>

violence in this section, it potentially excludes victim-survivors who do not have children and/or do not engage with child protection or family support services, diminishes the importance of disability and family violence services working together and makes it difficult to establish how these principles apply to how the family violence and NDIS work together to improve responses to victim-survivors with disabilities.

- In the *NDIS Operational Guidelines*, ‘experiencing family violence’ is not recognised as ‘urgent’ in relation to accessing a new NDIS plan or when requesting an unscheduled plan review (see discussion above).

To adequately address the significant risk that victim-survivors of family violence experience and the increased prevalence of family violence experienced by people with disabilities it is crucial that greater recognition and prominence of family violence risk and safety is included in NDIS principles and guidelines. With all professionals in the disability system being trained in identifying and responding to family violence (see above), and family violence being given greater prominence in NDIS principles and guidelines, there is greater opportunity for timely, consistent, safe and appropriate responses for victim-survivors of family violence.

## Recommendations

**Recommendation 20:** Include the family violence service system as a discrete service system in the *Principles to Determine the Responsibilities of the NDIS and other Service Systems*.<sup>131</sup>

**Recommendation 21:** List family violence as an ‘urgent’ circumstance in the ‘*Access to the NDIS*’ and ‘*Planning*’ sections of the *NDIS Operational Guidelines* as this would be of great benefit to victim-survivors of family violence with disabilities in facilitating quicker access to the support and services they need.

## The impact of COVID-19 pandemic

Research conducted in Victoria into the connection between gender and disaster has found that family violence incidents increase during and after catastrophic events.<sup>132</sup> Further, recent research found that the pandemic has led to “an increase in the frequency and severity of violence against women”, “an increase in the complexity of women’s needs” and new forms of intimate partner violence emerging<sup>133</sup>. For people with disabilities, the COVID-19 pandemic has exacerbated existing inequities which has resulted in higher rates of family violence, unemployment, and financial hardship during the pandemic.

We note that in August 2020, the Royal Commission began a week of urgent hearings into the impact coronavirus was having on people with disabilities and found that people felt ‘expendable’ and were

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<sup>131</sup> *ibid*

<sup>132</sup> Parkinson, D., & Zara, C. (2013). The hidden disaster: Domestic violence in the aftermath of natural disaster. *Australian Journal of Emergency Management*. <https://ajem.infoservices.com.au/items/AJEM-28-02-09>

<sup>133</sup> Pfitzner, N., Fitz-Gibbon, K. and True, J. (2020). *Responding to the ‘shadow pandemic’: practitioner views on the nature of and responses to violence against women in Victoria, Australia during the COVID-19 restrictions*. Monash Gender and Family Violence Prevention Centre, Monash University, Victoria, Australia. p6.

experiencing higher rates of family violence.<sup>134</sup> In the initial stages of the pandemic, the needs of people with disability were mostly overlooked and targeted measures to support people with disability during COVID-19 were delivered after concerns were raised by various disability support organisations in the country. In an open letter to the National Cabinet, national, state and territory disability organisations urged government to ensure effective measures were put in place to recognise and respond to violence, abuse, exploitation and neglect of people with disability during the pandemic.<sup>135</sup>

The recent Australian Institute of Criminology report on the experiences of domestic violence among women with disability during the early stages of the pandemic found that women with a restrictive long-term health condition experienced a range of physical and non-physical forms of violence during the initial stages of the COVID-19 pandemic, “three in four (72.9%) experienced the onset or escalation of physical or sexual violence, and 71.3 percent experienced the onset or escalation of emotionally abusive, harassing and controlling behaviours.”<sup>136</sup>

Due to COVID-19 restrictions people with disabilities had reduced access to support workers and planners, healthcare workers, and community groups. With limited access to these essential support services during the lockdown, victim-survivors were forced to isolate in potentially unsafe situations. This is particularly the case for women who have relied on disability support services to intervene on their behalf in actual or potential violent situations.<sup>137</sup> Further, during ‘lockdown’ restrictions, disability support workers may have been the only people to have contact with a victim-survivor. This highlights the need for disability support workers to be trained in identifying and responding to family violence as during ‘lockdown’ restrictions they may have been the only people to have contact with a victim-survivor.

We note that innovations that were rapidly introduced during the pandemic such as increased use of online communication platforms and the enhanced ability for remote service delivery increased accessibility to SFVSS for some people with disabilities. Consideration of whether these innovations should be mainstreamed going forward to increase ongoing accessibility to supports and services need to be balanced against the impact of the digital divide for people with disabilities<sup>138</sup>.

## Recommendations

**Recommendation 22:** The Australian government ensures the needs of all people with disability are included in strategies for responding to the pandemic.

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<sup>134</sup> Zhou, N., 2020. Covid-19 terrifies Australians with disabilities, who feel they are 'expendable'.

<https://www.theguardian.com/australia-news/2020/aug/18/covid-19-terrifies-australians-with-disabilities-who-feel-they-are-expendable>

<sup>135</sup> AN OPEN LETTER TO THE NATIONAL CABINET: Immediate Actions Required for Australians with Disability in Response to Coronavirus (COVID19). (2020). <https://dpoa.org.au/an-open-letter-to-the-national-cabinet-immediate-actions-required-for-australians-with-disability-in-response-to-coronavirus-covid19/>

<sup>136</sup> Boxall, H., Morgan, A. & Brown, R. (2021). *Experiences of domestic violence among women with restrictive long-term health conditions: Report for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. Statistical Report no. 32. Canberra: Australian Institute of Criminology. p13. <https://www.aic.gov.au/publications/sr/sr32>

<sup>137</sup> Baird, J. (2020, 20 March). Domestic abuse advocates warn of an increase in violence amid coronavirus crisis. ABC News. <https://mobile.abc.net.au/news/2020-03-20/domestic-violence-spike-amid-coronavirus-crisis/12074726?nw=0>

<sup>138</sup> Hussein, S. (2020). *People with disabilities left behind in Covid-19 response*. The Saturday Paper. No. 316: August 29-September 4 2020.

**Recommendation 23:** Pay greater attention to ableist assumptions in policy making and ensure that a disability and family violence lens is applied in disaster response and recovery planning/response.

## Conclusion

Every victim-survivors' experience of family violence and disability support needs are unique and consequently, targeted and tailored responses are required to ensure that a victim-survivors' needs are consistently and comprehensively assessed. Given that people with disabilities are at increased risk of experiencing family violence, it is essential that the additional types of family violence experienced by victim-survivors with disabilities (referred to as 'disability-based abuse') and the unique nature of dynamics of family violence risk and safety inform responses provided.

Services must provide multidisciplinary, coordinated and collaborative responses to victim-survivors with disabilities that are underpinned by a shared understanding of family violence and risk to ensure that victim-survivors receive consistent and safe responses and that the responsibility for navigating complex service systems is not misplaced at an individual level but rests with the systems and structures that create and maintain the complexity.

Continued attention needs to be paid to the gaps at the interface between disability and other service systems that victim-survivors may interact with to address barriers and ensure that services are fully accessible and inclusive for all victim-survivors.