

Access to domestic violence law for people with disabilities: Frequently asked questions

Background

The ACT *Domestic Violence and Protection Orders Act 2008* provides victims of violence in domestic relationships a “greater level of protective response”. Although people with disabilities experience high rates of violence, this Act does not recognise the relationships common among people with disabilities as “domestic”. For example, relationships in disability supported accommodation and informal arrangements such as home-sharing¹. People with disabilities are excluded from the “greater level of protective response” afforded to other members of the community. Domestic violence legislation must extend protection to people with disabilities living in a range of domestic settings.

We recommend that the ACT adopts the meaning of “domestic relationship” in Section 5 of the NSW *Crimes (Domestic and Personal Violence) Act 2007*:

For the purposes of this Act, a person has a “**domestic relationship**” with another person if the person:

- (d) is living or has lived in the same household as the other person, or
- (e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*), or
- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person.

Frequently asked questions addressed

Q: If the places people with disabilities live don’t involve family or intimate partner relationships, why should they be considered “domestic relationships”?

A: People with disabilities live in these settings on a permanent basis. They often live with one or more co-residents for a number of years, interact daily, build highly personal relationships, share living space, groceries, and jointly own furniture. These are undoubtedly domestic relationships, which can become violent. Just because these domestic relationships are ‘unconventional’ and might meet particular disability support need, this should not disqualify a person from equal protections from domestic violence. This discriminates on the basis of disability.

¹ Home-sharing is where a person with disability shares with one or more unrelated people who provide informal supports in exchange for benefits such as reduced rent. This type of arrangement is becoming increasingly common.

Q: Won't people with disabilities be inappropriately criminalised, particularly when they might not understand their actions, or where they have been placed in the home without choice?

A: It is often (but not always) inappropriate to criminalise a person with disability using violence in a disability specific service setting. Violence is often systemically induced by the lack of control and choice afforded to people with disabilities in these settings.

The domestic violence law in NSW covers disability specific home settings and general share-house arrangements. Our colleagues in NSW tell us they rarely use the legislation to pursue criminal charges unless the victim wishes to do so. Any person experiencing domestic violence should be able to make that choice, regardless of whether they live in a disability specific arrangement or not. As in all other cases brought to court, the court is responsible for determining whether the user of violence should be held criminally responsible, and how the user of violence should be appropriately relocated and supported.

The legislative framework in NSW has promoted greater recognition of domestic violence in disability specific settings. This has led to better responses by service providers and by government, including the funding of appropriately targeted programs and resources. This is sorely lacking in the ACT, with many people with disabilities ineligible for appropriate services due to the definition in the legislation, such as the Domestic Violence Crisis Service.

Q: Is this really an issue for the legal system? Shouldn't the disability service providers deal with it?

A: The answer to this question is multifaceted.

1. Having disability support needs and living in disability specific settings due to these support needs should never be the basis to exclude a person from accessing justice. This is discrimination.
2. People with disabilities face enormous power inequalities in disability specific service settings and informal caring relationships. They rely on the support provider to access day-to-day necessities. In supported accommodation, they usually have little say over household routines, the provision of support, or who lives in their household. It is the job of the law to help balance out power inequalities when power is abused and when relationships within these settings become unsafe.
3. Research shows that violence thrives in places where outsiders are kept out. For a range of reasons, many disability service providers have failed to identify and resolve issues of violence in service settings. This includes due to a lack of understanding and awareness and it also includes the deliberate use of violence and cover-ups. This is not for the disability sector to deal with outside of the law and without community scrutiny.

Summary

The purpose of legislative reform would be to ensure that people with disabilities are protected from violence at home on an equal basis to people without disabilities. The legislative framework in NSW has promoted greater recognition of domestic violence in disability specific settings. This has led to better responses by service providers and by government, including the funding of appropriately targeted programs and resources. This is sorely lacking in the ACT, with many people with disabilities ineligible for appropriate services due to the definition in the legislation, such as the Domestic Violence Crisis Service.

People with disabilities need the general community to recognise that just because their living arrangements looks a little different to the mainstream idea of "domestic", they too feel the full impact of domestic violence and need to be safe in their homes. The framework in NSW should be adopted in the ACT to afford people with disabilities the same safeguards against domestic violence as non-disabled people.