Issues impacting populations with increased susceptibility to experiencing sexual violence

Yellow pansy butterfly (female) with a broken wing. Hari K Patibanda, '**Yellow Pansy Butterfly With a broken Wing and An Ant**' Creative Commons Attribution 2.0

Dr Amanda-Jane George et al

Acknowledgment

Acknowledgment of country: I would like to acknowledge the Traditional Owners and Custodians of the lands on which we gather, the Gadigal land of the Eora Nation, and pay my respects to Indigenous Elders past, present and emerging. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

Acknowledgment

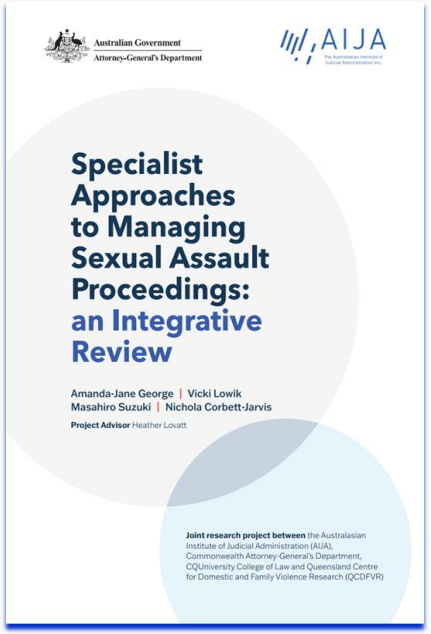
I would also like to acknowledge all victims and survivors with us today, and acknowledge those who did not survive. I pay respects to their family and friends.

In the spirit of transparency, cultural humility and allyship, I also acknowledge my privilege as a white, educated person as well as my lived experience as a survivor of child sexual abuse, teen sexual violence and domestic and family violence.

Introduction

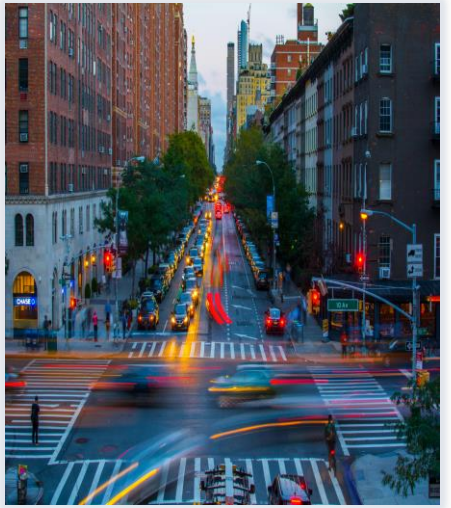
Integrative literature review (2023) – several jurisdictions – to understand:

- Cues in the criminal justice process causing re-traumatisation, barriers to reporting
- Victim-survivors' justice needs, how specialist measures can assist in reducing re-traumatisation and barriers to reporting
- **Chapter 2** – short overview of issues impacting "priority" populations with increased susceptibility to sexual violence.
- (Click on graphic to link to the report)



‘Priority’ populations - increased susceptibility to sexual violence

- **Terminology** – marginalised, underrepresented, or overrepresented in experiencing sexual violence. **(‘Priority’ populations)**
- **Sexual violence is gendered** – most V/S are women and girls
- **Intersecting factors** – aspects of social identity that can impact in advantageous or disadvantageous ways (Crenshaw, 1989) – can increase susceptibility to violence
  - **LGBTIQA+ communities**
  - **CALD communities**
  - **sex workers**
  - **people with disability**
  - **children**
  - **older people**



Hesus Miron Garcia, ‘Timelapse photography of vehicles on road’

LGBTIQA+ community

- Latest Census – **773,000 people identifying as LGBTIQA+**
- **Literature on prevalence** is emerging, but **fragmented** – different measures (sexual orientation and/or gender), different terminology, definitions of 'sexual violence' are used

Study	Measure	%
Simpson et al	'Sexual coercion' as defined, lifetime prevalence (benchmarked against general population finding of 22.4%)	53.4%
Layard et al	'Sexual violence' using particularised indicators in Table 1, lifetime prevalence Lifetime prevalence, non-binary people, trans men, cisgender women	35%-82% 54.5%-64.3%
Private Lives 3	'Sexual assault' as defined, lifetime prevalence	48.6%
Private Lives 3	'Sexual assault' as defined, past-year prevalence	8.9%
Layard et al	'Sexual violence' using particularised indicators in Table 1, past-year prevalence	24%

LGBTIQA+ community

- **Barriers** – internal, social, systemic:
  - Shame and embarrassment (for many victims and survivors)
  - Fear of re-traumatisation (for many victims and survivors)
  - Fear of retribution by the perpetrator (for many victims and survivors)
  - **Fear of being 'outed'**
  - **Fear of 'hate crime'** and hate incidents overlapping with the sexual abuse
  - **Minimising** - they 'did not think the experience was serious enough to tell anyone about'
  - **Homophobia, transphobia, fear of discrimination, stigmatisation**
  - **Myths** that sexual assaults do not occur outside of heterosexual relationships, **victim-blaming**
  - **Lack of access to LGBTIQA+ inclusive services** (particularly for trans women of colour)
  - **A lack of trust in both the state and police** due to historical harms against LGBTIQA+ peoples

LGBTIQA+ community

- **Criminal justice system** –
  - **Police**: literature consistently indicates negative experiences with reporting (Layard et al):

> *I ended up trying to take my own life because the reporting process was so traumatic, I was constantly doubted, interrogate[d]… not believed and felt really unsafe.*

  - **Prosecutors**:
    - US study – **female victim?** 65% prosecutors ↑ **severe penalty**, 61.5% ↑ **severe plea deal**; 51% ↑ most severe criminal charge if **opposite-sex/hetero parties** rather than same-sex
    - UK studies – problematic acceptance of myths, '**bookmaker's test**' rather than merit test New **RASSO toolkit** designed to counter LGBTIQA+ stereotypes, requires personal reflection, and addressing them in a jury
  - **Court environment**: early US study shows 56% saw/heard negative treatment towards LGBTIQA+ people in the court environment; 22% felt threatened due to their sexual orientation

CALD communities

- 'Culturally and linguistically diverse' (CALD) communities make up a **quarter** of the Australian population (apart from UK, ANZ
- Again, prevalence data → inconsistencies in methodology and mixed findings. Some studies (ABS) indicate a *lower prevalence* than Australian-born women, others indicate significantly higher:

Study	Measure	%
ABS Personal Safety	'Sexual violence' as defined, 2-year period (benchmarked: 3.4% of Australian women)	2.0%-2.1%
Townsend et al (ANROWS)	'Sexual violence' as defined, lifetime prevalence	22.5%-48.7%
Segrave, Wickes and Keel	'Sexual assault' as defined, during COVID (March to November 2020)	42%

Sources: as indicated

CALD communities

- **Barriers** – internal, community, systemic:
  - **Language** barriers, unavailability of an interpreter
  - **Isolation**, being rejected by their community or family
  - **Religious or cultural beliefs** about divorce
  - **Normalisation**, low-level identification of violent acts as assault
  - **A lack of understanding about legal rights**
  - **Distrust of authorities** due to experiences before migration
  - **Lack of culturally appropriate services**
  - **Concerns re partner finding out** → exacerbating violence, **being deported or losing children**
  - **Fears about losing their visa**, being deported, and/or being refused Australian residency

> "I was scared, I didn't know what to do. When I left my house, I didn't know how to take money from cash machine, how to take a bus …"

CALD communities

- **Immigration law abuse** – exploitation of women's precarious visa status to control, perpetuate violence (including sexual violence), or engage in exploitation and modern slavery (George et al):

> *I started working at brothels who [forced] me into seeing clients against my will [and] prevented [me] from leaving my workplace. After leaving … I ended up in a situation that resembled debt-bondage and forced labor conditions on a farm.*

- **Intersectionality** – 'double' and 'triple minority status' (racial/ethnic, sexual and/or gender minority (Lopez)) → especially vulnerable
- **Cultural and racial stereotyping** – when disclosing, women with CALD backgrounds often not believed by social workers, police

Sex workers

- No official datasets on sex work; best estimates are **around 25,000 sex workers** in Australia
- Australian and international studies indicate a wide range of prevalence rates: **13% to 78.8%.**
- **Street workers → most at risk**. More likely to experience:
  - Multiple incidents
  - Aggravated or particularly brutal sexual assaults
  - Kidnapping and unlawful imprisonment
  - **Most (73%) report violence with sexual assault**
  - More than 1 in 8 reported assaults **lasting 1-4 hours**
  - **Half** had symptoms satisfying DSM-IV criteria for PTSD; one third reported current PTSD

> People feel like … if they're paying for services, they own you and can do what they want with you.

Sex workers

- **Stigma** is a **major barrier to disclosure**, help-seeking, reporting (Scarlet Alliance, 2015, 2020):
  - **96%** of sex worker participants → **stigma or discrimination** in the last 12 months
  - **91%** of sex workers → **negative treatment** by health workers (24% often or always)
  - **31%** of health workers self-reported → would **behave negatively** towards sex workers
  - **64%** of the general public self-reported → would **behave negatively** towards sex workers
  - US study of college undergraduates (female, white, heterosexual). After reading randomized vignettes on sexual assault, participants displayed **significantly less empathy** and **more victim-blaming** when they knew the victim was a sex worker (Sprankle et al, 2018)

Sex workers

- **Stigma,** discrimination by police towards sex workers is consistently indicated in the literature:
  - Not treating claims seriously, not considering their experience as 'legitimate' sexual assault
  - Expecting free services in return for not charging them for sex work offences (Decker, 2015)
- **Migrant sex workers** in particular experience police reluctance to document or investigate, and/or threats to report to immigration. They **report far less (12.7%)** than non-migrant sex workers (38.2%)
- Some sex workers report they would **never** report to police:

> *"I wouldn't call the cops if I was being bashed to death"*

- Literature on sex workers' experience in court is sparse; Walker et al indicate that of all types of sexual offence cases, **sex worker-client sexual assault was least likely to progress through the criminal justice system.**
- Notably **none of the Australian bench books on equal treatment** devote a section to **sex workers**.

People living with disability

- **Just over one in 6 (18%)** Australians live with disability, around **one third of these severe/profound** disability. Again, data collection for sexual violence is inconsistent and challenging
- Again, prevalence rates are inconsistent, not comparable and must be treated with some caution:

*Excluded: those who needed communication support, people residing in non-domestic closed environments of care and containment

Study	Measure	%
ABS *PSS*, 2016	Women with disability, lifetime prevalence since age 15 years	16%
Disability Royal Commission	Evidence from witnesses, women with cognitive disability	46%
Disability Royal Commission	Evidence from witnesses, women with psychological disability	50%
Dowse et al	Women with disability <50 years	62%

People living with disability

- People with disability may face '**severe and numerous**' barriers to disclosing or reporting:
  - living in **residential care**; 'crimes occur "behind closed doors"'
  - the victim-survivor may **depend** on the perpetrator for care
  - a fear of being **institutionalised**
  - a fear of having **children** removed from their care
  - being ignored by others due to **communication** barriers
  - **impacts** from the sexual assault being **mistakenly associated with the disability**
  - **lack of sexual health/consent/relationship education**, unable to identify conduct as sexual violence
  - lack of knowledge about **how to report** sexual violence
  - **poor and/or dismissive police responses**, such as sexism, ableism, and questioning the reliability of the victim-survivor – which has led to a 'historic trust deficit' in police (Victorian EO&HR Commission)

People living with disability

- **Experiences in the criminal justice system often negative** (Disability Royal Commission)
- **Police culture** of 'derogatory language, negative or paternalistic stereotypes', 'what's the point?' attitude, lack of trauma-informed conduct, misidentification of victim as a perpetrator

> [A victim-survivor] was gang raped … When he went to the police they said "**are you spastic?**" He said he will never speak to the police again.

- Victims and survivors commonly report a **fear police will not believe them**
- Research with police confirms they 'often' do not proceed with charges. Two consistently held myths: **(i) women with disability are promiscuous**; (ii) their story is not **credible** (VEOHRC)
- VS with cognitive disability or mental health problems **least likely to result in charge** and **twice as likely to be determined false**; **only 13%** were considered **genuine**

People living with disability

- **Police** sometimes resistant to engaging mandated supports: Auslan/First Nations sign language interpreters. Sometimes family are used to interpreted, even if highly inappropriate:

> “I have seen cases where the person’s husband is used as the interpreter, even when he was the perpetrator.”

- **Court staff** may display a fundamental misunderstanding of disability

> “… a person with cerebral palsy, who had a cramped hand being told to lie it flat on the bible rather than curled …”

- **Jurors** may be influenced by stereotypes around disability and credibility

> “[the jury] saw me as disabled and a liar, and he got off …”

Older women

- **Around 2.2 million 'older' Australian women**
- **Intersectional**: more than **half** have a **disability** (10% with dementia), one third **(37%)** have a **CALD** background, one in 17 **(5.9%)** that reported a **diverse sex and/or gender identity**
- **Prevalence rates data**:

*Excluded: those without telephone access, in institutional care, incapable due to physical condition, affected by drugs or alcohol

Study	Measure	%
Qu et al (AIFS) (2021)	Women 65+ years, 'sexual abuse' as defined, past year	1.2%
Yon (2017)	Meta-analysis; adults 60+ years, pooled prevalence estimate, 'sexual abuse', past year	0.9%
Patterson (2023)	Adults 65+ years, 'sexual assault and related offences', one year	2.25%
Hill and Katz (2019)	Women 55+ years, 'sexual violence' as defined, past year	0.4%
Bows (2022), citing Bows (2018)	Adults 60+, intimate partner violence, 'sexual violence' (not defined), past year	Up to 15%
Bows (2022), citing Cook et al (2011)	Adults 65+, 'interpersonal violence' (not defined), older people, community dwellings, lifetime	6%-59%

"Best national data source at present"

"About 50 per week in aged care homes"

Older women

Barriers – social, cultural, systemic:

- **weak support networks, dependency on caregivers**
- **cognitive impairments** that may affect the victim's ability to report the abuse, poor physical or mental health, substance misuse
- **the 'hidden' nature** of sexual violence against older women, incl. reticence of family to 'interfere'
- generational patriarchal norms perceiving **non-consensual sexual activity as 'wifely duties'** rather than assault
- generational patriarchal norms to **stay with an abusive partner**, or **deterring disclosure**
- **Issues with the community, aged care system, justice system…**

Older women

> **Who would sexually assault an 80-year-old woman**? … I daren't think that one of our workers here [a long-term care facility] has such a disorder …

Experiences in community, aged care, and the criminal justice system:

- **Ageism** → doubts about reliability, claims taken less seriously
- **Sexism** → plus ageism, leads to **stereotyping of older women**:
  - 'Frigid and asexual … sexually undesirable'
  - If sexual assault occurs, likely older women are 'relatively unharmed'
  - If a woman has dementia, unlikely to remember the assault so it 'doesn't matter'
- KPMG study → **over half (58%) of aged care providers** rated Type 1 unlawful sexual conduct incidents as having **'no impact' on the victim**
- Older women can *internalise* such stereotypes, leading to minimising the assault, deterring help-seeking → sexual abuse was 2nd most likely (after neglect) to be **rated 'not serious' by V/S**
- **Dismissal by police**: where VS do report to police, studies show **less likely to have a report a deemed a crime, and 82% less likely to be referred for charge.**

Children and young people

- Around a third (33.1%, 7.6 million) of Australians are children or young people up to 24 years of age, with women and girls making up half the population (**around 3.8 million**)
  - **Prevalence rates** for child sexual abuse are again concerning, albeit inconsistent:

Study	Measure	%
ACMS (2023)	Females aged 16-24 years, 'child sexual abuse', broadly defined (35.2%), all participants aged 16-65 years, 'child sexual abuse' broadly defined (28.5%)	28.5%-35.2%
ABS *PSS* 2021-22	Women experiencing 'child sexual abuse', as defined, before 15 years of age	11%
ABS *Recorded crime* (for 2023)	Recorded sexual assaults, female (84%), aged between 10-17 years (42%)	42%
AIFS	Girls 16-17 years of age, 'unwanted sexual behaviour', broadly defined	50%

Children and young people

- **Barriers to disclosure and reporting for children and young people:**
  - **Power differentials** – **interpersonal**, and **structural vulnerability at societal level**
  - **Lack of developmental** ability to make disclosure
  - Coercion; intimidation; **persistent peer pressure**
  - **Fear of social consequences** of reporting
- ***Very* wide range of misconceptions about child sexual abuse**, including those documented in use by defence counsel during sexual abuse trials
- One US study found **10% of all defence lines of questioning going to credibility involved myths**, with at least **one reference to a myth in 90% of all cases**
- ANZ study found that **defence counsel cross-examination** (including victim-blaming) was **'largely responsible'** for children's distress

Children and young people

Of all priority populations, significant reform efforts have been made to improve matters for children and young people who experience sexual violence

- Most jurisdictions now operate an **intermediary service**, to facilitate developmentally/cognitively appropriate questioning of children
- **Ground rules hearings** (mandatory for all sexual offences in Victoria) → the questions, or themes of questions, are pre-agreed (if an intermediary is appointed, with the intermediary)
- **Most comprehensive court initiative** is the Child Sexual Offence Evidence Program commenced in Sydney, Newcastle District Courts in 2016, including:
  - **Pre-recording** of evidence for all children under 16 years, as early as practicable
  - Child witnesses **not to give further evidence** except with leave of the court
  - Appointment of a specialist child witness **intermediary**

Across the priority populations …

The literature indicates common issues/areas of need across the priority populations:

- **Further research** with more consistent methodology, terminology, more granular data collection and analysis → enable understanding of the size and shape of drivers of gendered violence (particularly acute need for First Nations women and girls), **dearth of Australian literature on experiences at court**
- **Stigma** → an acute problem across all priority populations. Community attitudes are a critical component of understanding experiences, and also reform. **Within the criminal justice system**:
  - **At police disclosure stage**, stigma is a major factor in low rates of reporting, attrition
  - Studies show **LGBTIQA+, CALD V/S** can experience **unequal, negative, threatening treatment at court**
  - Literature on sex workers is thin, and **absent from judicial bench books**
  - **… *symptomatic* of a wider underlying issue …**

Across the priority populations …

The literature indicates the following issues/areas of need across the priority populations:

- **Stereotyping, misconceptions and myths** → consistently indicated across populations
  - **Deeply socially embedded driver of bias** that **underpins racism, stigma, prejudice**
  - Difficult to address, as stereotypes serve to justify and legitimise power relations within society
  - Literature shows wide variety of stereotypes, misconceptions employed, both in the **community** and within the **criminal justice system**: **police, defence counsel, influencing juror decision-making**
  - Recommendations? **Jury directions, specialist training** for police, justice professionals
  - Our 2023 *Specialist* report also recommended further research on **juryless trials**

Across the priority populations …

The literature indicates the following areas of need across the priority populations:

- **Access to specialist support services** → specialist support needed for primary health care as well as increasing reporting and decreasing attrition from the criminal justice system
- Studies show **LGBTIQA+,** V/S with **CALD** background, with **disability** and **older women** are all chronically underserved by specialist sexual assault support systems, **BUT V/S who receive support**:
  - Significantly more likely for police to deem their reported incident a **crime**, and lay **charges**
  - Charges were almost **two times as likely to result in conviction**
  - Charges were **42% less likely** to result in '**no further action**' closure
  - V/S were **49% less likely to withdraw** from the criminal justice process (halved the attrition rate)
  - **Thuthuzela Care Centres in South Africa show courts attached to TCCs enroll and finalise more cases, with higher conviction rates**.

Thank you

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Healthy yellow pansy butterfly.
Sandipoutsider, '**Open wing Basking of Junonia hierta (Fabricius, 1798) – Yellow Pansy (Female)'** Creative Commons Attribution-Share Alike 4.0