
Towards a culturally safe and trauma-informed court: a scoping review of populations that experience increased susceptibility to sexual violence

**Amanda-Jane George | Vicki Lowik |
Sarah Rosenberg | Yumi Lee | Nanushka | Sandra Noble**

Joint research project between CQUniversity College of Law and
Queensland Centre for Domestic and Family Violence Research (QCDFVR)

Suggested citation: Amanda-Jane George et al, *Towards a culturally safe and trauma-informed court: a scoping review of populations that experience increased susceptibility to sexual violence* (Report, 2024).

CONTENT WARNING

This report contains material that can be confronting and disturbing. We acknowledge that everyone has their own unique life experiences. These experiences can contribute to how the material will impact upon you. If you feel sad or distressed, please be aware that free and confidential support is available 24 hours a day through:

1800 RESPECT, call 1800 737 732 or visit www.1800Respect.org.au

Lifeline, call 13 11 1 or visit www.Lifeline.org.au

13YARN, call 13 92 76, this service provides confidential, national, 24/7 support for Aboriginal and Torres Strait Islander people, by Aboriginal and Torres Strait Islander Crisis Supporters

DV Connect Womensline, call 1800 811 811

DV Connect Mensline, call 1300 789 978

Beyond Blue, call 1300 224 63

If you are, or someone else is, in immediate danger, call 000.

If you are deaf and/or find it hard hearing or speaking with people on the phone, the National Relay Service (NRS) can help. Contact via your preferred [option](#) or call 1800 555 660.

ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the Traditional Custodians of this Country. We pay our respects to First Nations peoples past and present, and their continuing connection to the land, waters, community, and cultures.

CO-PRODUCTION STATEMENT

No effective solutions can be developed without the people most affected by them ...

Victim-survivors must be at the heart of solutions.

Victim-survivors have specific and contextual expertise that comes from lived experience of abuse and violence.

They have intimate firsthand knowledge of services, systems, and structures that are meant to support them but have sometimes failed them.

They know from experience the weaknesses and strengths of interventions in practice.

– *National Plan to End Violence against Women and Children 2022-2032*, p. 68.

The authors of this report recognise the value of lived experience in informing appropriate and effective initiatives, with several authors being a survivor of either or all of child abuse, sexual violence and intimate partner violence.[†]

[†] We acknowledge and thank the following members of the Expert Advisory Group to the Australian Law Reform Commission's inquiry into the justice responses to sexual violence: Pip Brennan, Karen Iles, Chris Coombes, Danielle Villafaña, Sarah Odoni, Nicole Edwards, Dr Tasha Riley. We are grateful for your insights and discussions.

Executive summary

Background and context

Sexual violence is gendered: around one in 5 women (22%) experience sexual violence as compared to one in 16 men (6.1%) over 15 years of age. It is also increasing at an alarming rate. The 2023 Australian national recorded crime statistics indicate the highest ever victimisation rate, with an increase of 11% or 3,547 sexual assaults from 2022. The recent Commonwealth Government-initiated *Report of the Rapid Review of Prevention Approaches* ('Rapid Review') states that gender-based violence has moved beyond a national crisis and should now be considered a national emergency.

The Rapid Review highlights how women and girls' experiences of sexual violence are exacerbated by twin interrelated factors: being part of intersectional communities at greater risk, and harmful social norms and stereotypes. However, it notes that policymaking and law reform often fails to involve those with intersectional lived experience in co-designing initiatives to improve the justice response to sexual violence. A 2023 report, *Specialist Approaches to Managing Sexual Assault Proceedings* ('Specialist Report'), also called for further research with these cohorts as a matter of priority.

In January 2024, the Commonwealth Attorney-General referred to the Australian Law Reform Commission ('ALRC') an inquiry into the justice responses to sexual violence. The inquiry must consider in particular the impacts of laws and legal frameworks on populations that are overrepresented in sexual violence statistics, and on populations with intersecting identities. It is due to report in January 2025.

This report provides a timely overview of the Australian literature on a selection of these intersectional 'priority populations' at greater risk of sexual violence:

- First Nations communities;
- LGBTIQ+¹ communities;
- CALD² communities, including migrants with insecure visa status;
- People engaged in sex work;
- People with disabilities;
- Older people; and
- Young people, including adult victim-survivors of child sexual abuse.

A scoping review was considered the most appropriate methodology as it is designed to swiftly identify key concepts from the evidence in a field and gaps in knowledge. It is particularly useful where the literature is fragmented and different study designs are encountered, as with these priority populations. While Australian literature was the predominant focus of the review, international literature was also included to augment the Australian research, given its paucity in many areas. Due to the pace of policy-making and potential law reforms in the sexual violence context, a rapid approach was adopted for this review to ensure that the above populations and their unique needs are acknowledged, pending further research being undertaken with victim-survivors and criminal justice system stakeholders.

Findings and recommendations

Data collection, definitions

For all populations included in this review (perhaps with the exception of children), recent and reliable prevalence rates of sexual violence are unavailable. National data disaggregation is limited, and

¹ This acronym ('LGBTIQ+') stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning and asexual; the '+' sign 'holds space for the expanding and new understanding of different parts of the very diverse gender and sexual identities': Princeton Sexuality Resource Center, *LGBTQIA+ 101* (website). <<https://www.gsrc.princeton.edu/lgbtqia-101>>. See also AIHW, 'LGBTIQ+ people', *Family, domestic and sexual violence* (Summary Report, 12 April 2024) ('AIHW LGBTIQ+ Report') <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtqia-people>>.

² This acronym ('CALD') stands for culturally and linguistically diverse.

collections often fail to even identify the size of the population (particularly LGBTIQ+, sex workers). More generally, data collection is patchy and unreliable (First Nations, LGBTIQ+, people with disabilities, older women). The recent Senate inquiry on consent laws also identified prevalence research and data collection on sexual violence as a priority need.

In addition to incomplete or missing data, the *National plan to end violence against women and children 2022-2032* identifies inconsistent definitions as a whole-of-system issue for program design, public and private sector policies, and legislation. The literature in this review clearly indicates that inconsistent definitions also hamper the research with priority populations that should underpin program design, policies and legislation.

The lack of reliable evidence on sexual violence in relation to these populations impedes an accurate understanding of the scale of the challenge they face, and the ability to take a longitudinal perspective on perpetration, trends, victim-survivors' experiences, reform initiatives and outcomes.

Recommendation 1

That Commonwealth, state and territory governments work with victim-survivors, stakeholders and researchers as a key priority to progress the *National Plan* recommendations and develop nationally consistent definitions regarding sexual violence, wherever possible, for research, program design, policies and legislation.

Recommendation 2

That the Commonwealth government prioritise the collection of disaggregated data in national data collections such as safety surveys and recorded crime statistics regarding sexual violence, and its intersection with priority populations, including First Nations communities, LGBTIQ+ and CALD communities, people with disability, sex workers, older women and children.

Recommendation 3

That Commonwealth, state and territory governments consult with relevant heads of jurisdiction to ensure that courts collect consistent, disaggregated data to enable an understanding of the criminal justice experiences of sexual violence victim-survivors, including First Nations communities, LGBTIQ+ and CALD communities, people with disability, sex workers, older women and children.

Stigma, stereotypes

Negative community attitudes, including stigma and harmful social norms driven by stereotypes and misconceptions, are consistently reported in the literature on all priority populations. Stigma and stereotyping contribute to the entrenched nature of sexual violence and its resistance to reform at all stages of the criminal justice process.

Internalised stereotypes and social norms, as well as a lack of information around what constitutes sexual violence, can prevent many victim-survivors from identifying sexual violence as a concept applicable to their own life situation. These stereotypes and norms often raise insurmountable barriers to victim-survivors disclosing their experience to health workers and support services, and reporting to the criminal justice system.

When victim-survivors do report, the literature consistently indicates that the responses of police are not culturally safe or trauma-informed, and are commonly influenced by the prevalent stereotypes and harmful social norms that cluster around each priority population. This engagement experience can result in the re-traumatisation of victim-survivors and attrition from the criminal justice system. If charges are laid, there is evidence to indicate that prosecutors' assessment of whether or not to proceed with the case can be influenced by stereotypes, and use of the bookmaker's test (where prosecutors weigh the jury's potentially prejudicial reaction to a victim-survivor).

There is little literature reporting on the direct lived experience of members of these priority populations at court, likely because so few cases proceed to court. However, studies of trial transcripts show that stereotypes and misconceptions are routinely employed by defence counsel, even when cross-examining children. Legislative safeguards, as well as subsequent amendments to those safeguards, have failed to curb improper questioning or encourage judicial intervention to prevent it.

The extent to which jurors are influenced by improper questioning and argument based around stereotypes and misconceptions has been studied with mock juries, although given the opaque nature of jury decision-making in real life and legislative barriers to research with former jurors, such investigations are largely beyond the reach of researchers. Nevertheless, there is evidence to indicate that the higher an individual's level of rape myth (stereotype) acceptance, the more likely they will blame the victim-survivor and acquit the accused.

In relation to judicial attitudes, there is a dearth of research on the prevalence of stereotypical attitudes and norms. However, as indicated in the Specialist Report, studies do indicate a lack of consistent judicial intervention to prevent improper questioning by defence counsel. Again, the legislative safeguards intended to address improper questioning are generally ineffective.

The Specialist Report recommended specialist training for the judiciary and all legal professionals (prosecutors, defence counsel) involved in sexual violence proceedings, as well as court staff. It also recommended greater consistency in and utilisation of jury directions, and further research on the various models of juryless trials. Juryless models are currently being considered and/or have been implemented in several jurisdictions; they aim to reduce victim-survivors' re-traumatisation by reducing the number of people before whom they must retell their lived experience, minimising the risk of defence counsel engaging in improper questioning based on stereotypes or misconceptions, and potentially influencing jury deliberations and outcomes.

The ALRC inquiry is currently considering specialist training and other measures including jury directions, expert evidence, and juryless trials to address the use of stereotypes. Given the prevalence in the literature of stigma and stereotyping for every priority population, this review supports the implementation of, and/or further research to determine the evidence base for, measures to address this issue as a matter of priority.

Recommendation 4

That calls for the Commonwealth, state and territory Attorneys-General to consult with relevant heads of jurisdiction to implement nationally consistent specialist training for all legal professionals dealing with sexual offences proceedings be considered and progressed as a matter of priority. Such training should include sexual violence and its sequelae including trauma, associated harmful social norms and stereotyping; it should be culturally safe, co-designed with victim-survivor experts including representatives from priority populations and relevant stakeholders, and refreshed on an ongoing basis. Further, that additional measures to address the use and/or reliance on stereotyping and misconceptions by legal professionals, jurors and justice system stakeholders be considered and/or research to determine the evidence base for such measures be progressed as a matter of priority; such measures should include jury directions, expert evidence, and juryless trials.

Information

The other consistent message in the literature on priority populations is the urgent need for greater information, education and awareness campaigns – co-designed and co-delivered with those having lived experience. The literature indicates that victim-survivors' lack of understanding of the law and their rights can mean they either fail to identify sexual violence or they downplay and normalise it – and therefore continue to endure it in silence. Embedding knowledge about sexual violence in the community assists with identification of sexual violence, as well as contributing to its prevention and improving social norms generally. The ALRC is presently considering this informational need and measures to address it.

Recommendation 5

That calls for Commonwealth, state and territory governments' investment in co-designed community education programs be progressed to build community awareness and skills, and to facilitate victim-survivors' identification and disclosure of sexual violence including provision of information and options around seeking support and/or reporting violence.

Support

The value of culturally safe and trauma-informed support services cannot be overstated. Perhaps surprisingly, the literature on priority populations (sex workers, older women) indicates that, of the frontline workers that receive disclosures of sexual violence, health workers may respond in ways that re-traumatise and encourage silence; there is some evidence this may also be true for some support services in the sexual violence sector. Apart from the beneficial impacts on victim-survivor health and wellbeing, having a support service closely connected and coordinated with a specialist court can dramatically improve victim-survivors' experience in the criminal justice system.

Recommendation 6

That Commonwealth, state and territory governments provide culturally safe and trauma-informed training on sexual violence across the health sector, particularly for those in primary and mental health settings.

This review indicates there is an urgent need for further research on the justice needs of priority populations, to inform evidence-based decision-making. It highlights significant research gaps in important policy areas, and paves the way for further work on the evidence base required for culturally safe and trauma-informed courts in sexual violence proceedings.

Contents

1.	Introduction	1
	1.1 Prevalence of sexual violence in Australia	1
	1.2 Intersectionality	2
	1.3 The justice response	2
	1.4 Culture and cultural humility	3
	1.5 Populations in this review	6
2.	First Nations communities	7
	2.1 Context	7
	2.2 Prevalence	9
	2.3 Identifying and disclosing sexual violence	11
	2.4 The criminal justice system	12
3.	LGBTIQA+ communities	14
	3.1 Context and prevalence	14
	3.2 Identifying and disclosing sexual violence	19
	3.3 The criminal justice system	21
	3.4 Health and support	22
4.	‘CALD’ communities	23
	4.1 Defining ‘CALD’	23
	4.2 Context and prevalence	23
	4.3 Identifying and disclosing sexual violence	25
	4.4 Immigration law abuse	26
	4.5 The criminal justice system and ‘justice’	28
5.	Sex workers	29
	5.1 Terminology and stigmatisation of sex workers	29
	5.2 Context and prevalence	30
	5.3 Identifying and disclosing sexual violence	32
	5.4 Criminalisation of sex work, safety and reporting	35
6.	People with disabilities	36
	6.1 Context and prevalence	36
	6.2 Identifying and disclosing sexual violence	39
	6.3 The criminal justice system	40
	6.3.1 Law enforcement	40
	6.3.2 The court environment	42
	6.3.3 Reform	43
7.	Older women	43
	7.1 Context and prevalence	43
	7.2 Identifying and disclosing sexual violence	46
	7.3 Health impacts	49

7.4	The criminal justice system	49
7.4.1	Law enforcement	49
7.4.2	The court environment	50
7.4.3	Reform	50
8.	Children and young people	51
8.1	Context and prevalence	51
8.2	Health impacts	53
8.3	Identifying and disclosing sexual violence	53
8.4	The criminal justice system	54
8.5	Policy and criminal justice system initiatives	56
9.	Common issues across populations	56
9.1	Data collection, definitions	56
9.2	Stereotypes	57
9.2.1	Stigma, shame and silence	58
9.2.2	Limited impact of legislative safeguards on stereotyping in court	58
9.2.3	History of legislative safeguards	59
9.2.4	Studies indicating the operational ineffectiveness of s 41	60
9.2.5	Reforms	62
9.3	Information for victim-survivors	62
9.4	Access to specialist support services	63
10.	Conclusion	63
11.	Recommendations	66
12.	Appendix 1: Methodology	67
12.1	Scope of this review, problem identification	67
12.2	Inclusion/Exclusion Criteria, search strategy	67
12.3	Data evaluation	68
12.4	Data analysis and presentation	68
13.	Appendix 2: Data extraction table	69

1. Introduction

1.1 Prevalence of sexual violence in Australia

On 23 August 2024, the Australian Government received the Commonwealth initiated, expert-led rapid review report on gender-based violence – *Report of the Rapid Review of Prevention Approaches* (‘Rapid Review’). The Rapid Review states that domestic, family and sexual violence has moved beyond a national crisis, and should be considered a ‘national emergency’.³ This scoping review focuses more narrowly on sexual violence, which is broadly defined in the *National Plan to End Violence against Women and Children 2022-2032* (‘National Plan’) as:

... sexual activity that happens where consent is not freely given or obtained, is withdrawn or the person is unable to consent due to their age or other factors. It occurs any time a person is forced, coerced or manipulated into any sexual activity. Such activity can be sexualised touching, sexual abuse, sexual assault, rape, sexual harassment and intimidation and forced or coerced watching or engaging in pornography. Sexual violence can be non-physical and include unwanted sexualised comments, intrusive sexualised questions or harassment of a sexual nature. Forms of modern slavery, such as forced marriage, servitude or trafficking in persons may involve sexual violence.⁴

In 2021-22, the Australian Bureau of Statistics (‘ABS’) *Personal Safety Survey* (‘PSS’) revealed that one in 7 (14%) of the general population in Australia aged 18 years and over had experienced sexual violence since the age of 15.⁵ Sexual violence was experienced by more women than men, with one in 5 women (22%) experiencing sexual violence since the age of 15 as compared to one in 16 men (6.1%) since the age of 15.⁶

Sexual violence, for the PSS study, is defined differently to the National Plan – as ‘the occurrence, attempt or threat of sexual assault experienced by a person since the age of 15’, while sexual assault is defined as ‘an act of a sexual nature carried out against a person’s will through the use of physical force, intimidation or coercion, including any attempts to do this’.⁷ The issue of inconsistent definitions persists across the research and data collections for all priority populations in this review.

In 2023, across Australia, police recorded 36,318 victim-survivors of sexual assault, an increase of 11% or 3,547 from 2022.⁸ Sexual assault, as defined in the Recorded Crime statistics, includes:

Physical contact, or intent of contact, of a sexual nature directed toward another person where that person does not give consent, gives consent as a result of intimidation or deception, or consent is proscribed (i.e. the person is legally deemed incapable of giving consent because of youth, temporary/permanent (mental) incapacity or there is a familial relationship).⁹

The 2023 victimisation rate was the highest ever recorded, with an increase from 126 to 136 victims per 100,000.¹⁰ The highest increases were recorded in New South Wales, with a 19% increase (2,296) and Queensland with a 14% increase (1,011).¹¹ Most victims of sexual assault were female, with more than 38%

³ Elena Campbell et al, *Unlocking the Prevention Potential: Accelerating action to end domestic, family and sexual violence - Report of the Rapid Review of Prevention Approaches* (Report, 2024) 6
<<https://www.pmc.gov.au/sites/default/files/resource/download/unlocking-prevention-potential.pdf>>.

⁴ Australian Government, *National plan to end violence against women and children 2022-2032* (Report, 2022) 37 (‘National Plan’) <https://www.dss.gov.au/sites/default/files/document/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf>; see also Australian Institute of Health and Welfare (‘AIHW’), ‘Sexual violence’, *Types of violence* (Summary Report, 19 July 2024) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/sexual-violence>>.

⁵ Australian Bureau of Statistics (‘ABS’), *Personal safety, Australia* (Summary Report, 15 March 2023) (‘PSS’) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>

⁶ Ibid.

⁷ ABS, *Personal safety, Australia Methodology* (Methodology Report, 15 March 2023) <<https://www.abs.gov.au/methodologies/personal-safety-australia-methodology/2021-22>>.

⁸ ABS, ‘Recorded crime – victims’, *Crime and Justice* (Summary Report, 27 June 2024) (‘ABS Recorded Crime’) <<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release>>.

⁹ ABS, *Recorded Crime – Victims Methodology* (Web Page, 11 August 2024) <<https://www.abs.gov.au/methodologies/recorded-crime-victims-methodology/2023#glossary>>.

¹⁰ Australian Bureau of Statistics (n 8).

¹¹ Ibid.

(13,667) aged between 10 and 17 years at the time of reporting the assault to police and 42% aged between 10 and 17 years at the time of the incident.¹²

1.2 Intersectionality

As indicated above, while people of all genders experience sexual violence, the statistics show that victim-survivors of sexual violence are overwhelmingly women and girls. Their experiences of sexual violence may be influenced by ‘intersecting’ factors,¹³ which are the many aspects of one’s social identity that might impact in either advantageous or disadvantageous ways. Intersecting factors can include culture, gender identity, ethnicity, religion, disability, age, and/or sexual orientation. Other less discussed factors include living in rural, regional and remote locations, being convicted of crimes and having been incarcerated, being employed in sex work, and being an older person, especially those in residential aged-care settings.¹⁴

Intersecting factors may increase the risk of experiencing sexual violence and add a layer of complexity to the decision on whether to report sexual violence and engage with the criminal justice system. However, policymaking and law reform often fails to involve those with lived experience, particularly intersectional experience, in co-designing initiatives to improve the justice response to sexual violence:

The lack of an intersectional analysis and multi-sectoral collaboration means that specific concerns for Aboriginal and Torres Strait Islander communities, long term and recently arrived migrant and refugee communities, women and children with disabilities, LGBTIQ+ communities, older women and people in regional and remote communities remain inadequately identified and addressed.¹⁵

Culturally safe practice therefore requires actively listening to the experiences of intersectional communities that have an increased susceptibility of violence, to consider the communities’ justice needs, the drivers of harm, and to work with them in determining how best to respond. This task can be complicated by the fact that each victim-survivor’s experience is unique, and the very nature of intersectionality means that it is difficult to delineate ‘communities’ and attendant harms. As Kimberlé Crenshaw explained:

[I]f a Black woman is harmed because she is in an intersection, her injury could result from sex discrimination or race discrimination ... But it is not always easy to reconstruct an accident: sometimes the skid marks and the injuries simply indicate that they occurred simultaneously, frustrating efforts to determine which driver caused the harm.¹⁶

1.3 The justice response

The *Standing Council of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027* (‘Work Plan’) states that all jurisdictions will seek to take collective and individual action to improve the experiences of victim-survivors of sexual assault in the criminal justice system.¹⁷ The Work Plan sets out its own definition of ‘sexual assault’, but again notes that legal definitions, defences for the accused, penalties, the operation of courts, police and agencies vary across jurisdictions.¹⁸ The Work Plan outlines that most states and territories in Australia are actively working on individual reform agendas, and have produced a number of reports recommending a wide range of initiatives designed to reduce the risk of

¹² Ibid.

¹³ Kimberlé Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum* 139.

¹⁴ AIHW, *Family, domestic, and sexual violence in Australia: continuing the national story* (Report, 2019) (‘AIHW Continuing the Story’). See also Lixia Qu et al, *National elder abuse prevalence study: final report* (Report, 2021) 32 (‘AIFS Elder Abuse Study’) <<https://aifs.gov.au/publications/national-elder-abuse-prevalence-study-final-report>>; Antonia Quadara, *Sex workers and sexual assault in Australia: Prevalence, risk and safety* (Report, 2008) 4 <https://aifs.gov.au/sites/default/files/publication-documents/acssa_issues8_0.pdf>.

¹⁵ Campbell et al (n 3) 28.

¹⁶ Crenshaw (n 13) 149.

¹⁷ Attorney General’s Department (Cth), *Sexual Violence* (Web Page) <<https://www.ag.gov.au/crime/publications/work-plan-strengthen-criminal-justice-responses-sexual-assault-2022-27>>.

¹⁸ The Work Plan defines sexual assault as: ‘a type of criminalised sexual violence or harm that involves any physical contact, threat, or intent of contact, of a sexual nature against a person’s will’.

re-traumatisation for victim-survivors and lower barriers to reporting.¹⁹ New specialist sexual violence lists are being established in the Australian Capital Territory²⁰ and Queensland,²¹ in addition to the existing specialist lists in Victoria and New South Wales.²² The increasingly accepted goal is to work towards trauma-informed, culturally safe courts.

At the national level, in January 2024 the Commonwealth Attorney-General referred to the Australian Law Reform Commission ('ALRC'), for inquiry and report, an inquiry into justice responses to sexual violence. The terms of reference require that the Commissioners take a 'trauma-informed, holistic, whole-of-systems and transformative approach'.²³ In particular, the inquiry must consider the impact of laws and legal frameworks on population cohorts that are 'disproportionately reflected in sexual violence statistics, and on those with identities intersecting across cohorts'.²⁴

It is noted that this concern to understand the experiences of priority populations and inform the justice response is not new, however, with the Judicial Commission of New South Wales launching its *Equality before the Law Bench Book* in 2006,²⁵ and the Supreme Court of Western Australia launching its *Equal Justice Bench Book* in 2009.²⁶ Yet more than a decade later these populations generally remain little understood, especially in relation to their experiences of sexual violence, and a 2023 report informing the current ALRC inquiry identified that further work in this area was 'urgently' needed.²⁷ This scoping review is intended as a preliminary step in that process. The ALRC is due to report and make recommendations in January 2025.

1.4 Culture and cultural humility

To discuss intersectionality and any of the populations disproportionately affected by sexual violence with clarity, one must first inquire as to the nature of culture, ethnicity, social identity and race. 'Culture' has been described as 'one of the two or three most complicated words in the English language'.²⁸ There is no widely accepted definition, although a recent World Health Organisation report categorises its two main concepts as:

- Aesthetic and intellectual culture, including cultural artefacts such as narratives and art as 'communicative means'; and

¹⁹ ACT Government, *Listen. Take Action to Prevent, Believe and Heal Report* (Sexual Assault Prevention and Response Program Steering Committee Final Report, 2022) ('ACT Report') <https://www.communityservices.act.gov.au/__data/assets/pdf_file/0006/1915332/CSD_SAPR_approved_WCAG_plus.pdf>; Queensland Women's Safety and Justice Taskforce *Hear her voice - Report two – Women and girls' experiences across the criminal justice system, Volume 1*, Queensland (1 July 2022) ('WSJT Report') <<https://www.womenstaskforce.qld.gov.au/publications>>; New South Wales Law Reform Commission (2020) *Consent in relation to sexual offences* ('NSW Report') <<https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report%20148.pdf>>; Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences Report* (Report, 2021) ('VLRC Report') <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/04/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>; Law Reform Commission of Western Australia, *Project 113: sexual offences* (Final Report, October 2023) <<https://www.wa.gov.au/media/46342/download?inline>>.

²⁰ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 27 June 2024 (Shane Rattenbury, Attorney-General).

²¹ Brian Devereaux, 'Practice Direction No 3 of 2024: Sexual violence case management' (Information Notice, 19 July 2024).

²² Amanda-Jane George et al, *Specialised approaches to managing sexual assault proceedings* (Report, 2023) 14-15 ('George et al 2023') 102, 106 <https://aija.org.au/wp-content/uploads/2023/10/Specialist-Approaches-to-Managing-Sexual-Assault-Proceedings_An-Integrative-Review_05.pdf>.

²³ Mark Dreyfus, *Inquiry into justice responses to sexual violence* (Terms of Reference, 23 January 2024).

²⁴ *Ibid.*

²⁵ Judicial Commission of New South Wales, *Equality Before the Law* (Bench Book, 2024) <<https://www.judcom.nsw.gov.au/publications/benchbks/equality/index.html>>.

²⁶ Supreme Court of Western Australia, *Equal Justice Bench Book* (Bench Book, 2nd ed, 2024) <https://www.supremecourt.wa.gov.au/files/Equal_Justice_Bench_Book.pdf>.

²⁷ George et al (n 22) 223.

²⁸ Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (Oxford University Press, 1983) 87.

- Anthropological culture or ‘shared systems of behaviour, meanings and beliefs’.²⁹

Terrance adds that culture can act like a value map, telling people ‘how to live and what kind of person to be to see ourselves as having value and significance’.³⁰ Definitions of culture are explored further below.³¹

‘Ethnicity’ denotes a group of people with ‘shared culture (eg language, food, music, dress, values and beliefs) related to ancestry and shared history’.³² It is multi-dimensional and takes a self-perception approach: ‘the group regards itself and is regarded by others, as a distinct community by virtue of certain characteristics’.³³ ‘Social identity’ focuses on how individuals identify themselves as group members, both socially and personally, ‘as a means of providing status and enhancing (or not) self-esteem’.³⁴

In contradistinction to these terms, ‘race’ is a social construct that results in maintenance of a sociopolitical hierarchy – it principally classifies people based on perceived shared physical traits (such as skin colour), but sometimes loosely refers to geographic, cultural, religious, or national groups.³⁵ Race has been called humanity’s ‘most dangerous myth’, with the suggestion it be ‘relegated to the dustbin of dangerous and useless terms’.³⁶

This scoping review is not designed as an exercise in ‘cultural competence’, which implies that one can be ‘across’ the issues facing ‘marginalised communities’ on sexual violence. Much ink has been spilled about cultural competence³⁷ – both advocating education as a mechanism to implement knowledge about diversity and inclusion,³⁸ and also questioning its implicit ethnocentricity.³⁹ For example, it is said that cultural competency focuses on becoming “‘comfortable” with *others*’.⁴⁰ It implies that ‘culture’ (as a proxy for ethnic identity) is static and can be mastered in a context where the ‘locus of normalcy is white, Western culture’.⁴¹ It sends the message that social identity (ethnicity, gender, sexual identity and so on) is ‘monolithic and knowable’, relying more on stereotyping than acknowledging ethnicity or social identity as dynamic, individual and intersectional.⁴²

²⁹ Eivind Engebretsen et al, In what ways do cultural contexts influence the knowledge translation process for health decision-making and what are the implications for policy and practice? (Report, 2022) 6.

³⁰ Traci C Terrance, ‘Grappling with Race, Power, and Privilege: Experiences of Critical Self-Reflection and Cultural Humility Among Counseling Trainees’ (Thesis, University of Rochester, 2021) 2.

³¹ See section 4.1.

³² American Psychological Association, *APA Dictionary of Psychology* (Website, 2024) ‘ethnicity’ <<https://dictionary.apa.org/>> (emphasis added).

³³ Such as long shared history; cultural traditions; geographic origin; common language, literature (written or oral); common religion: ABS, *Australian Standard Classification of Cultural and Ethnic Groups* (2019) <<https://www.abs.gov.au/statistics/classifications/australian-standard-classification-cultural-and-ethnic-groups-ascceg/latest-release>>.

³⁴ Judith A Howard, ‘Social psychology of identities’ (2000) 26 *Annual Review of Sociology* 367, 368; see also generally R Jenkins, *Social identity* (Routledge, 3rd ed, 2008).

³⁵ American Psychological Association (n 32), ‘race’.

³⁶ Nicholas Hudson, ‘From "Nation to "Race": The Origin of Racial Classification in Eighteenth-Century Thought’ (1996) 29(3) *Eighteenth Century Studies* 247, 259.

³⁷ Melanie Tervalon and Jann Murray-García, ‘Cultural humility versus cultural competence: A critical distinction in defining physician training outcomes in multicultural education’ (1998) 9(2) *Journal of health care for the poor and underserved* 117 (‘Tervalon and Murray-García’); Marcie Fisher-Borne, Jessie Montana Cain and Suzanne L Martin, ‘From Mastery to Accountability: Cultural Humility as an Alternative to Cultural Competence’ (2014) 34(2) *Social Work Education* 165, 169 (‘Fisher-Borne’); Mona Al Sheddi, ‘Humility and Bridging Differences: A Systematic Literature Review of Humility in Relation to Diversity’ (2020) *International Journal of Intercultural Relations* 36 (‘Al Sheddi’); Cynthia Foronda et al, ‘Cultural Humility: A Concept Analysis’, (2016) 27(3) *Journal of Transcultural Nursing* 210; Cynthia Foronda, ‘A theory of cultural humility’ (2020) 31(1) *Journal of Transcultural Nursing* 7; Ransford Danso, ‘Cultural competence and cultural humility: A critical reflection on key cultural diversity concepts’ (2018) 18(4) *Journal of Social Work* 410 (‘Danso’).

³⁸ Danso (n 37).

³⁹ Fisher-Borne (n 37); see also Tervalon and Murray-García (n 37) 118.

⁴⁰ Fisher-Borne (n 37) 169. Emphasis added.

⁴¹ Fisher-Borne (n 37) 170. See also Terrance (n 30).

⁴² Fisher-Borne (n 37) 171. Intersectionality refers to the overlapping aspects of social identity that might expose someone to additional marginalisation: Kimberlé Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics’ (1989) 1 *University of Chicago Law Forum* 139.

In contrast, cultural *humility* is either a necessary adjunct to cultural competence,⁴³ or an alternative approach.⁴⁴ Humility as a broad psychological construct involves both intrapersonal and interpersonal dimensions.⁴⁵ The intrapersonal requires an ‘accurate view of the self, recognising one’s strengths and limitations’.⁴⁶ The interpersonal involves adopting an outward-oriented rather than self-focused approach. Studies show that humility is negatively correlated with prejudice and discrimination,⁴⁷ and a predictor for tolerance and trust in a discussion partner.⁴⁸ It is therefore emerging as an area increasingly important to organisational management as it underpins the ‘choice and capacity to approach one’s work (and life) from a larger, interdependent perspective that is productive, relational and sustainable’.⁴⁹

The hallmarks of cultural humility are a continuous commitment to self-reflection, recognising and challenging power imbalances, and institutional accountability.⁵⁰ One proponent of judicial humility writes:

In the judicial context, humility requires working across differences by engaging with different perspectives, especially in cases where age, religion, gender, race or indigenouness are at stake. Critically, the humble judge would make an effort to step out of [their] own viewpoint, accept the ‘healthy discomfort’ that comes with encountering difference, and assert other perspectives as equally worthy of respect.⁵¹

To seed the next generation of humble judges, the American Bar Association recently introduced Standard 303(c), a requirement for law schools to educate students on ‘bias, cross-cultural competency, and racism’.⁵² Early implementation efforts include the Buffalo Model, which emphasises cultural humility.⁵³ Such initiatives highlight the growing focus on the importance of culturally safe practices being embedded at the earliest stages of one’s legal career.

The construct of cultural humility sits also well with intersectional allyship, which has been defined as a lifelong process of:

- (a) ‘building authentic relationships across differences;
- (b) attending to the uniqueness and wholeness of each person based on their intersecting identities of privilege and marginalisation; and
- (c) using one’s privilege and power to support and be in solidarity with marginalised individuals and/or groups of people.’⁵⁴

Like cultural humility, intersectional allyship involves catching biases, seeking knowledge and self-awareness, and social transformation – ‘actions and behaviours that disrupt oppression and foster greater

⁴³ National Association of Social Workers, *Standards and Indicators for Cultural Competence in Social Work Practice* (Standards, 2015) <<https://www.socialworkers.org/LinkClick.aspx?fileticket=7dVckZAYUmk%3d&portalid=0>>.

⁴⁴ Fisher-Borne (n 37) 171.

⁴⁵ See generally Rob Nielsen, Jennifer A Marrone, ‘Humility: Our Current Understanding of the Construct and its Role in Organizations’ (2018) 20(4) *International Journal of Management Review* 805; Al Sheddi (n 37) 36.

⁴⁶ *Ibid.*

⁴⁷ Guy Itzchakov, Harry T Reis and Kimberly Rios, ‘Perceiving others as responsive lessens prejudice: The mediating roles of intellectual humility and attitude ambivalence’ (2024) 110 *Journal of Experimental Social Psychology* 104554.

⁴⁸ Al Sheddi (n 37) 37.

⁴⁹ Nielsen and Marrone (n 45) 805.

⁵⁰ *Ibid.*; Tervalon and Murray-Garcia 118; Terrance (n 30) 5.

⁵¹ Amalia Amaya, ‘Humility in Law’ in Mark Alfano et al (eds), *The Routledge Handbook of Philosophy of Humility* (Taylor & Francis Group, 2020) 453. See also Lindsay Borrows, ‘Dabaadendiziwin: Practices of Humility in a Multi-Juridical Legal Landscape’ (2016) 33(1) *Windsor Yearbook of Access to Justice* 149, 154-155.

⁵² American Bar Association, *2023-2024 Standards and Rules of Procedure for Approval of Law Schools* (Standards, 2024) <https://www.americanbar.org/groups/legal_education/resources/standards/>.

⁵³ See University at Buffalo Law School, *ABA Standard 303: Curriculum (c)* (Website, 2022)

<<https://www.law.buffalo.edu/beyond/aba303c.html>>; Kim Diana Connolly and Elisa Lackey, ‘The Buffalo Model: An Approach to ABA Standard 303(c)’s Exploration of Bias, Cross-Cultural Competency, and Antiracism in Clinical and Experiential Law’ (2022) 70 *Washington University Journal of Law and Policy* 71 <<https://journals.library.wustl.edu/lawpolicy/article/id/8739/>>. The Buffalo module incorporates a series of asynchronous online modules for students to complete, along with small group discussions on challenging topics (e.g. ‘What is systemic racism?’, ‘How to be a good ally’).

⁵⁴ Jennifer L Lovell and Randi E Scott-McLaughlin, ‘Intersectional allyship and the importance of relationships’ in Joseph L White, *Practical social justice* (Routledge, 2023) 28.

compassion'.⁵⁵ For the curious, feedback on one's personal perspectives are readily attainable by taking one of the many different Harvard *Project Implicit* tests.⁵⁶

The conceptual frameworks of cultural humility and allyship are particularly valuable to bring to a discussion of diversity, intersectional experiences of sexual violence, and victim-survivors' engagement with the criminal justice system. Adopting such frameworks requires recognition that only those with lived experience can articulate their particular intersectional social identity, and the impact of this on their lived experience.⁵⁷ It also requires acknowledgement that the burden of change is not on marginalised individuals, and recognises the need for systemic change.⁵⁸

1.5 Populations in this review

This scoping review examines barriers to identification, disclosure and reporting sexual violence, and experiences in the criminal justice system, for seven populations with increased susceptibility to sexual violence. It therefore complements a number of bench books that are designed as judicial information aids on such populations.⁵⁹

As discussed earlier, it should be borne in mind that each person's experience of sexual violence will be shaped by their own constellation of intersecting factors, and there are significant overlaps in these population groups. The populations discussed in this scoping review are:

- First Nations communities;
- LGBTIQ+⁶⁰ communities;
- CALD communities, including migrants with insecure visa status;
- People engaged in sex work;
- People with disabilities;
- Older people; and
- Young people, including adult victim-survivors of child sexual abuse.

These populations are variously referred to in the literature as priority populations, underrepresented or marginalised populations, or overrepresented populations in experiencing sexual violence. This review adopts the term 'priority populations' given its increasing use in the literature, although we acknowledge that this terminology will not resonate with all stakeholders.

A scoping review⁷⁶ was considered appropriate for this project as it enables the swift identification of key concepts, the volume of evidence in a field,⁷⁷ and knowledge gaps. It is particularly apposite where the literature is emergent and fragmented, where different study designs are encountered, as with these populations. The rapid process was also adopted because of the fast pace of Australian policy-making and potential law reforms in the sexual violence space, to ensure that these populations and their unique needs

⁵⁵ Ibid 29.

⁵⁶ Project Implicit, *Harvard implicit association test* (Website, 2024). There are various implicit bias tests available here: <https://implicit.harvard.edu/implicit/takeatouchtestv2.html>, including sexuality, gender, age, weight, race, transgender.

⁵⁷ Tervalon and Murray-Garcia (n 37) 121.

⁵⁸ Hasnaa Mokhtar and Tahani Chaudhry, 'Becoming allies: introducing a framework for intersectional allyship to Muslim survivors of gender-based violence' (2022) 4(1) *Journal of Islamic Faith and Practice* 34, 38.

⁵⁹ Judicial College of Victoria, *Victims of crime in the courtroom* (Handbook, August 2023)

<https://www.judicialcollege.vic.edu.au/resources/victims-crime-courtroom-guide-judicial-officers>; Supreme Court of Western Australia (n 26); Judicial Commission of New South Wales (n 25); Supreme Court of Queensland, *Equal Treatment Benchbook* (Queensland Supreme Court Library, 2nd 3d, 2016) https://www.courts.qld.gov.au/_data/assets/pdf_file/0004/94054/s-etbb.pdf; Australasian Institute of Judicial Administration ('AIJA'), *National Domestic and Family Violence Bench Book* (Bench Book) <https://dfvbenchbook.aija.org.au/contents>; Judicial College of Victoria, *Family Violence Bench Book* (Bench Book) <https://www.judicialcollege.vic.edu.au/index.php/eManuals/FVBBWeb/index.htm#34143.htm>.

⁶⁰ This acronym stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning and asexual; the '+' sign 'holds space for the expanding and new understanding of different parts of the very diverse gender and sexual identities': Princeton Sexuality Resource Center, *LGBTQIA+ 101* (website). <https://www.gsrc.princeton.edu/lgbtqia-101>. See also AIHW, 'LGBTIQ+ people', *Family, domestic and sexual violence* (Summary Report, 12 April 2024) ('AIHW LGBTIQ+ Report') <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtqia-people>.

are acknowledged in the reform processes pending further research being undertaken with victims, survivors and criminal justice system stakeholders (for further detail, see Appendix 1: Methodology). The preliminary results of this review were presented in August 2024 at a national conference convened by the Commonwealth Attorney-General's Department and Australasian Institute of Judicial Administration, *A National Justice Forum on Sexual Assault*.

2. First Nations communities

2.1 Context

As at June 2021, ABS data indicates there were 983,700 Aboriginal and Torres Strait Islander people living in Australia (3.8% of the population), with most identifying as Aboriginal.⁶¹ Around half are women and girls, although the First Nations population is significantly younger than the non-Indigenous population. Around a third (33.1%) were aged under 15 years compared with around one in 5 (17.9%) non-Indigenous Australians; First Nations people aged 65 years and over comprised only one in 20 (5.4%), compared with around one in 5 (17.2%) non-Indigenous Australians. These statistics reflect the higher birth rates and significantly lower life expectancy for First Nations Australians.⁶²

First Nations women and children experience harm and trauma from disproportionately high rates of sexual violence.⁶³ Sexual violence occurs within family and intimate partner relationships, and outside of these contexts. The drivers of violence against First Nations women and children are complex; intergenerational trauma and experiences of racism, both individual and systemic, have embedded structural inequalities and racist practices that contribute to this violence.

Evidence reveals that colonisation and government policies supporting 'assimilation, forced separation of children from families and institutionalisation' are responsible for creating an environment for this violence.⁶⁴ The denial of connection to land, family and culture has fostered intergenerational trauma in First Nations people, impacting on their social, economic, physical, psychological and emotional wellbeing.⁶⁵ The resultant unequal access First Nations people have to employment, housing and healthcare substantially contributes to the presence of violence.⁶⁶

The continuing influence of colonisation has also excluded First Nations women from exercising self-determination by not involving them in the development of legislation, policies and programs that impact on their experiences of violence. This exclusion has enabled corresponding structures and hierarchies of power (sexism, racism, ageism and ableism)⁶⁷ to entrench intersectional discrimination and oppression against First Nations women and children.⁶⁸ In March 2021, the Central Australian Aboriginal Congress informed the Federal Parliamentary Inquiry into Family, Domestic and Sexual Violence that:

⁶¹ Around 91.7% identifying as Aboriginal; 4.0% identifying as Torres Strait Islander people; 4.8% identifying as both: ABS, *Estimates of Aboriginal and Torres Strait Islander Peoples* (Summary Report, 30 June 2021) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/30-june-2021>>.

⁶² Ibid.

⁶³ Hannah McGlade and Stella Tarrant, 'Say her name: Naming Aboriginal women in the justice system', in Perera Suvendrini and Joseph Pugliese (eds.) *Mapping Deathscapes* (Routledge, 2021) 106.

⁶⁴ Department of Social Services (DSS), *Aboriginal and Torres Strait Islander Action Plan 2023-2025* (2023) ('ATSI Action Plan') 31.

⁶⁵ Ibid.

⁶⁶ Ibid 35.

⁶⁷ WSJT Report (n 19) 50.

⁶⁸ National Inquiry into Missing and Murdered indigenous Women and Girls (Canada), *Reclaiming Power and Place: the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Report, 2019) <<https://www.mmiwg-ffada.ca/final-report/>>.

... family, domestic and sexual violence within communities is related to the overall inequity and disadvantage experienced by Aboriginal people, as a result of colonisation and disempowerment.⁶⁹

There is a clear correlation between poverty and the use of violence,⁷⁰ and for First Nations women, experiencing violence can contribute to their impoverishment.⁷¹ The main reason women and children leave their home is because of violence, and First Nations women who have experienced violence are twice as likely to have experienced homelessness at some point in their life, when compared to women who have not experienced violence.⁷² The inadequate supply of safe, secure and affordable housing increases the vulnerability of First Nations women and children to ongoing violence as they are often compelled to either remain in the context of violence or become homeless; both scenarios sustaining their likelihood of experiencing further violence.⁷³ The connection between poverty, homelessness and sexual violence is further explained by Legal Aid Queensland:

... a higher percentage of First Nations women and girls hav[e] vulnerabilities including poverty, homelessness, addiction and mental health issues. Poverty can keep First Nations women and girls locked into situations where they are sexually abused, often violently.⁷⁴

Poverty compounded by the inadequate supply of affordable housing has left many First Nations people living in overcrowded housing. Overcrowding creates an environment where sexual violence against women and children can flourish in its various forms, including occurrences of familial sexual abuse and technology facilitated sexual violence.⁷⁵ First Nations women cite homelessness, overcrowding and the lack of access to safe housing as significant contributors to violence and exacerbators of trauma; all of which can lead to punitive interventions including the removal of children – further traumatising mothers and children.⁷⁶

Colonial patriarchy, with its gendered expectations, also contributes to the violence experienced by First Nations women.⁷⁷ Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss, following the release of findings from the Senate inquiry into murdered and missing First Nations women, commented that:

Violence against First Nations women and children is a major problem, and we need to be clear-eyed not only about the nature and extent of this violence, but also about the root causes of this violence, and that's prejudice, gender inequality and discrimination against women, lack of opportunity, personal trauma, intergenerational trauma and systemic racism.⁷⁸

When the Women's Safety and Justice Taskforce visited First Nations communities concerns were raised about young people being coerced into sexual activity and not understanding that what was happening to them was sexual abuse:

⁶⁹ Parliament of Australia, *Inquiry into Family, Domestic and Sexual Violence - 5. Violence in Diverse Communities*, [Central Australian Aboriginal Congress, Submission 142, 1] (Web page, 13 August 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Report/section?id=committees%2freportrep%2f024577%2f75464>.

⁷⁰ Tameka Gillum, 'The intersection of intimate partner violence and poverty in Black communities' (2019) 46 *Aggression and Violent Behavior* 37.

⁷¹ Marcia Langton et al, *Improving family violence legal and support services for Aboriginal and Torres Strait Islander women* (Report, 2020) 26.

⁷² Australia Bureau of Statistics (ABS), *Aboriginal and Torres Strait Islander women's experiences of family and domestic violence* (Report, 2019).

⁷³ Langton et al (n 71) 44.

⁷⁴ WSJT Report (n 19) (Submission 113).

⁷⁵ Rosemary Cant, Melissa O'Donnell, Scott Sims and Maria Harries, 'Overcrowded housing: One of a constellation of vulnerabilities for child sexual abuse' (2019) 93 *Child abuse & neglect* 239; Susan Rayment-McHugh, 'The uneven distribution of child sexual abuse', in India Bryce and Wayne Petherick (eds), *Child Sexual Abuse: Forensic Issues in Evidence, Impact, and Management* (Academic Press, 2020), 375.

⁷⁶ Kyllie Cripps and Daphne Habibis 'Another stolen generation looms unless Indigenous women fleeing violence can find safe housing', *The Conversation* (Online news, 20 September 2019).

⁷⁷ Australian Human Rights Commission, *Wiyi Yani U Thangani - First Nations Women's Safety Policy Forum* 68 (Outcomes Report, November 2022) ('Wiyi Yani U Thangani') <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani-6>>.

⁷⁸ Australian Human Rights Commission (AHRC), *AHRC commissioners call for action on findings of Senate report on murdered and missing First Nations women* (Web Page, 17 August 2024) ('AHRC Commissioners call for action') <<https://humanrights.gov.au/about/news/media-releases/ahrc-commissioners-call-action-findings-senate-report-murdered-and>>.

The extent of sexual violence in community was staggering. In one community, local service providers described sexual violence in the toilet blocks at a local school as being normalised and requiring a police officer be placed at the school for a time.⁷⁹

During consultation, one service recounted: ‘Sexual violence happens in a relationship – but the victim did not realise it was rape. We saw six girls yesterday at school – four of them the jaws dropped because [they] realised ‘Oh yeah, that happens to me with my boyfriend’.⁸⁰

2.2 Prevalence

Currently it is difficult to establish accurate prevalence rates for sexual violence experienced by First Nations people, as data is impacted by inconsistent collection methodologies. For example, victim-survivors are not able to identify their status as First Nations people in the ABS *Personal Safety Survey*⁸¹ and caution is required when interpreting the data regarding First Nations people in the ABS *Recorded Crime - Victims* series due to the small number of victim-survivors.⁸²

In addition, as noted previously, there is the further complication of inconsistent definitions of ‘sexual violence’ in these data collections. The underreporting of sexual violence by victim-survivors also impacts on gaining a clear understanding of the prevalence of this crime.

In 2022, police recorded crime data on First Nations victim-survivors of sexual assault in New South Wales, Queensland, South Australia and the Northern Territory revealed a rate ranging from 209 people per 100,000 (or 100) in South Australia to 375 people per 100,000 (or 1,100) in New South Wales.⁸³

In the Northern Territory, 89 people per 100,000 (or 70) were sexually assaulted by a family member, while in New South Wales, 156 people per 100,000 (or 456) were sexually assaulted by a family member.⁸⁴ Since 2018, the rate of sexual assault by a family member has been lowest in the Northern Territory, when compared to New South Wales, Queensland and South Australia.⁸⁵

Figure 1 details First Nations victimisation rates for sexual assaults between 2010 and 2022 and shows the variance over time between states and territories.

⁷⁹ WSJT Report (n 19) 73 [Meeting with NPA Family and Community Services Bamaga 21 April 2022].

⁸⁰ WSJT Report (n 19) 73 [Stakeholder consultation forum, Cherbourg, 23 March 2022].

⁸¹ Australian Institute of Health and Welfare, ‘Aboriginal and Torres Strait Islander people’, *Family, domestic and sexual violence* (Summary Report, 14 August 2024) (‘AIHW Aboriginal and Torres Strait Islander people’) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>>.

⁸² Australian Bureau of Statistics (‘ABS’), *Recorded Crime – Victims Methodology* (Report, 2023)

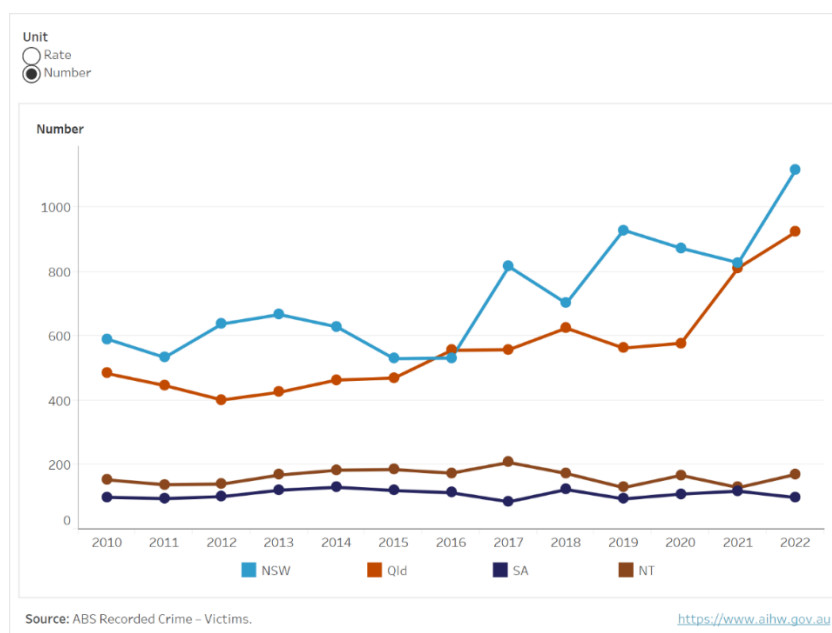
<<https://www.abs.gov.au/methodologies/recorded-crime-victims-methodology/2023#cite-window1>>.

⁸³ ABS Recorded Crime (n 8).

⁸⁴ Ibid.

⁸⁵ Ibid.

Figure 1 First Nations sexual assault victimisation rates between 2010 and 2022



Source: ABS, Recorded Crime - Victims⁸⁶

Further data acknowledges that First Nations women experience sexual violence at a rate which is 3.1 times higher than non-Indigenous women.⁸⁷ Around 3 in 5 First Nations women are physically or sexually assaulted by a male intimate partner,⁸⁸ and First Nations women are 34 times more likely to be hospitalised because of violence than non-Indigenous women.⁸⁹ Chmielowska and Fuhr's international systematic review cites an early study indicating that First Nations women in New South Wales were six times more likely to report partner abuse than non-Indigenous women.⁹⁰ Comparatively, the systematic review found heightened prevalence rates for Indigenous Indian women and girls' (47%) and also Maori women and girls' (57.6%) experience of intimate partner violence when compared to European and other ethnic groups of Aotearoa New Zealand (34.3%).

It is noted that violence against First Nations women is not only perpetrated by First Nations men, rather many First Nations women who live in cities experience violence from non-Indigenous partners.⁹¹ The National Plan thus acknowledges that addressing the disproportionate rates of violence against First Nations women and girls is an 'urgent national priority' for Australia.⁹²

The harm experienced by First Nations victim-survivors of sexual assault can be significant and complex. This harm is not only experienced at the personal level, but also at the family and community levels.⁹³ The outcomes of sexual violence for First Nations women and children can include incarceration, poor mental health, suicide and a lack of self-determination.⁹⁴ Research confirms cultural healing, through family, friends

⁸⁶ Ibid.

⁸⁷ Our Watch, *Changing the Picture 6* (Report, 2018) ('Changing the Picture') <<https://assets.ourwatch.org.au/assets/Key-frameworks/Changing-the-picture-background-paper-AA.pdf>>.

⁸⁸ Ibid.

⁸⁹ National Plan (n 4) 42, citing A Olsen and R Lovett, *Existing knowledge, practice and responses to violence against women in Australian Indigenous communities: State of knowledge paper* (Report, 2016).

⁹⁰ Marta Chmielowska and Daniela C. Fuhr, 'Intimate partner violence and mental ill health among global populations of Indigenous women: a systematic review' (2017) 52 *Social Psychiatry and Psychiatric Epidemiology* 689, 690, citing Katrina Grech and Melissa Burgess, 'Trends and patterns in domestic violence assaults: 2001 to 2010' (2011) *Crime and Justice Statistics* 1, 8.

⁹¹ *Changing the Picture* (n 87) 7.

⁹² National Plan (n 4) 42.

⁹³ Wiyi Yani U Thangani (n 77) 126.

⁹⁴ Kylie Cripps, 'Indigenous domestic and family violence, mental health and suicide' (2023) *AIHW* 8.

and community-led initiatives, plays an important role in a victim-survivor's recovery; culture is recognised as a protective factor for the wellbeing of First Nations people.⁹⁵

2.3 Identifying and disclosing sexual violence

First Nations women's exclusion from involvement in the development of policies that impact on their lives increases their vulnerability to abuse and embeds barriers that prevent victim-survivors from identifying sexual violence, seeking support and reporting.⁹⁶ Colonisation and intergenerational trauma has left First Nations people with 'profound levels of mistrust of government, the legal system, and [the] mainstream service system'.⁹⁷ Many First Nations people have been, and continue to be, traumatised through contact with police and welfare agencies.⁹⁸ The fear of having children removed from their family, along with the history of the Stolen Generations, creates significant barriers to reporting violence.⁹⁹ Other barriers include the fear of being misidentified as the perpetrator of violence and being incarcerated.¹⁰⁰

Media reporting on First Nations victim-survivors often relies on stereotyping, which is 'pervasive' in popular culture, 'grounded in a dominant hegemony deeming them racially inferior and as a "deviation from the ideal woman."' ¹⁰¹ Such is the case globally for many Indigenous women and girls, as recognised by Moldaver J in the Canadian case of *R v Barton*:

... we live in a time where myths, stereotypes and sexual violence against women – particularly Indigenous women and sex workers – are tragically common' ... our society has yet to come to grips with just how deep-rooted these issues truly are, and just how devastating their consequences can be.¹⁰²

Reporting sexual violence and seeking support to recover can therefore be extremely challenging for many victim-survivors of sexual violence. First Nations victim-survivors who live in geographically remote areas may not have access to local support services. Those who have transport or technology to access services in another town may find that distance inhibits the building of a trusting connection with support workers – a connection that could potentially assist to prevent exposure to ongoing violence.¹⁰³

While First Nations victim-survivors who live in remote communities require access to local culturally appropriate crisis support, privacy concerns and consequential retaliation¹⁰⁴ from the perpetrator or reprisal from family for 'tarnishing the family name'¹⁰⁵ are very present concerns. Community backlash against the victim-survivor for reporting violence also acts as a barrier to disclosure, for example:

⁹⁵ Corina Backhouse and Cherie Toivonen, *National risk assessment principles for domestic and family violence* (Report, 2018) 7 <<https://www.anrows.org.au/research-program/national-risk-assessment-principles/>>; AIHW Aboriginal and Torres Strait Islander people (n 81).

⁹⁶ Wiyi Yani U Thangani (n 77) 25.

⁹⁷ Antoinette Braybrook, 'Family violence in Aboriginal communities' (2015) 2 *Domestic Violence Resource Centre Advocate* 18, 20. Intergenerational trauma includes '[t]raumatic childhood experiences, such as those of Stolen Generations survivors, [that] may affect following generations through biological changes in stress responses and by the ability to parent and love freely without fear': The Healing Foundation, *Make Healing Happen* (Report, May 2021) 55 citing, among others, Bessel Van Der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (Penguin, 2014).

⁹⁸ Commonwealth of Australia, *Parliamentary Inquiry into Family, Domestic and Sexual Violence* (Report, 2021) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Report>.

⁹⁹ Langton et al (n 71) 13. ATSI Action Plan (n 64) 29. See also Cate Bailey et al, 'Evaluation of a collaborative operation to improve child sexual abuse reporting in Western Australian Indigenous communities' (2015) *Criminal Justice and Behavior* (2015) 42(12) 1303, 1304.

¹⁰⁰ Parliamentary Inquiry into Family, Domestic and Sexual Violence (n 98) 122.

¹⁰¹ Kylie Cripps, 'Media constructions of Indigenous women in sexual assault cases: reflections from Australia and Canada' (2021) 33(3) *Current Issues in Criminal Justice* 300, 304.

¹⁰² *R v Barton* [2019] SCC 33, 32 [1].

¹⁰³ Kylie Cripps and H McGlade, *Indigenous family violence and sexual abuse: Considering pathways forward*' (2008) 14(2-3) *Journal of Family Studies* 240, doi:10.5172/jfs.327.14.2-3.240; Our Watch, *Changing the picture, Background paper: Understanding violence against Aboriginal and Torres Strait Islander women* (Report, 2018).

¹⁰⁴ WSJT Report (n 19) 4, 97, 126.

¹⁰⁵ Ibid 72 [Meeting with Queensland Indigenous Family Violence Legal Service (QIFVLS), Bamaga 21 April 2022, Meeting with NPA Justice Services, Community Justice Group 21 April 2022; Meeting with Durumbal Youth Service, 16 March 2022, Rockhampton; Meeting with Woorabinda Council Members and Community Justice Group Members, 17 March 2022].

In Cherbourg, the Taskforce heard about a fear of retaliatory violence and the likely impact on a victim and her family being required to leave the community for her safety as a usual consequence of a complaint of sexual violence.¹⁰⁶

When victim-survivors do not understand their legal rights or the actions that constitute sexual violence, crimes go unreported and victim-survivors are not provided with the support they require for recovery.¹⁰⁷ The constraints of shame and embarrassment after experiencing sexual violence or the belief that the incident is a private matter impact on First Nations women's help-seeking,¹⁰⁸ with poverty and social isolation also acknowledged as major barriers to reporting violence or seeking help.¹⁰⁹ Hence, various factors can prevent First Nations victim-survivors from disclosing sexual violence, with the Women's Safety and Justice Taskforce determining that women and girls in communities experience a:

significant power imbalance ... when deciding whether to report what has happened to them and to communicate that they do not consent to sexual acts.¹¹⁰

2.4 The criminal justice system

The criminal justice system continues to intensify the harm and trauma First Nations women are seeking protection from.¹¹¹ As stated previously First Nations women face the prospect of being misidentified as the perpetrator of violence, having their children removed from their care or being incarcerated.¹¹² When First Nations women interact with police:

Racism operates in the way women are treated – white middle-class women get a Rolls Royce treatment from police but Aboriginal women or women with drug and alcohol problems are not treated nearly as well.¹¹³

When visiting communities (Cherbourg, Woorabinda, Bamaga and the Northern Peninsula Area) the Queensland Taskforce found few sexual violence cases progress as far as trial.¹¹⁴ Women in Cherbourg shared that:

The messages we are being asked to deliver in community are excellent, like enthusiastic consent, but it does not match the law. Mistake of fact is here in Queensland ... victims are put on trial themselves rather than the offender, that is the barrier.¹¹⁵

The Taskforce were also told that First Nations victim-survivors of sexual assault experience a:

... lack of culturally sensitive and relevant information and support regarding the legal process, her rights within that system as a complainant, and being supported to exercise her agency.¹¹⁶

It is for these reasons the *Aboriginal and Torres Strait Islander Action Plan 2022-2032* calls for the reform of the criminal justice system at each point of contact for a victim-survivor – police, courts and corrections. For example, the Plan recommends that trauma-informed, human rights, cultural and gender responsive training for police could improve First Nations women's access to justice.¹¹⁷ It is anticipated that such reforms could increase the likelihood of First Nations victim-survivors reporting their experiences of violence and prevent victim-survivors from having to use violence to protect themselves and their children.¹¹⁸

¹⁰⁶ Ibid 206 [Stakeholder consultation forum, 23 March 2022, Cherbourg].

¹⁰⁷ Langton et al (n 71) 65, 66.

¹⁰⁸ Ibid 70.

¹⁰⁹ Ibid 31.

¹¹⁰ WSJT Report (n 19) 206.

¹¹¹ Ibid 137.

¹¹² ATSI Action Plan (n 64) 34, 35.

¹¹³ WSJT Report (n 19) 153 [Taskforce submission 714131].

¹¹⁴ Ibid 206.

¹¹⁵ Ibid 206 [Stakeholder consultation forum, 23 March 2022, Cherbourg.]

¹¹⁶ Ibid 329 [Women's Legal Service Qld submission, Discussion Paper 3, 4.]

¹¹⁷ ATSI Action Plan (n 64) 56.

¹¹⁸ Patricia Cullen et al, 'Integrating trauma and violence informed care in primary health care settings for First Nations women experiencing violence: a systematic review' (2022) 23(4) *Trauma, Violence, & Abuse* 1204; ATSI Action Plan (n 64) 34.

Sex Discrimination Commissioner, Dr Anna Cody, commented in relation to the outcomes of the inquiry into murdered and missing women that:

... recommendations to improve how First Nations women access support and justice are also vital. We know that police and other service providers often respond with apathy, inaction, victim-blaming and perpetrator misidentification when First Nations women seek help with domestic and family violence. This creates mistrust and it prevents many First Nations women seeking help, leaving them with no support.¹¹⁹

The *Aboriginal and Torres Strait Islander Action Plan 2022-2032* proposes that:

All governments have a role to play in addressing the correlative and causal drivers of violence – including improving rates of economic participation, education and housing security – to support victims and perpetrators and their communities and families and in turn accelerate reductions in violence against women and children.¹²⁰

The Action Plan advocates that responses to the violence experienced by First Nations women and children should not focus on being a ‘one size fits all’; rather responses should be ‘holistic, culturally-safe and appropriate whole of family, community and society approaches’.¹²¹

Sex Discrimination Commissioner Dr Anna Cody emphasises that responses to the violence experienced by First Nations women and girls should:

... be developed and overseen by First Nations women and be tailored to specific community needs. Empowering communities through self-determination is crucial to effective and lasting change.¹²²

This approach is supported by Lindeman and Togni’s recent study, which indicates:

Aboriginal understandings of the nature and experience of sexual assault are critical to developing effective responses that meet Aboriginal women’s needs – how we understand an issue relates directly to the identification and development of a suitable response ... [Aboriginal] people must be regarded as the principal bearers of knowledge. ... Place-based, Indigenous-led initiatives to respond ... [in Aboriginal] communities are now understood to offer the best chance for developing effective responses.¹²³

As one First Nations co-researcher in this study stated:

We are feeling empowered by this process to explain that we need to slow down and think about this work more carefully and talk about it in the right way and this has been informed by the knowledge of these senior Uti Kulintjaku ladies...The Uti Kulintjaku team work in a very slow, careful way to really look at words and ideas and Anangu knowledge...To [know how to] say things in the right way, carefully. We know we can stop and slow down; we have the knowledge. [Non-Aboriginal staff] need to stop and listen to Anangu, working together as a team.¹²⁴

A First Nations co-author of this scoping review puts it this way (referring to First Nations people as Yapa and non-Indigenous people as Kardiya, terms used by her Walpiri people):

For any system to work it needs to be built on TRUST! TRUST takes time! Yapa do not hurry things. Where all justice systems are failing in Yapa communities is that they do not have the two things we have always hoped for RESPECT and UNDERSTANDING.

Yapa are used to struggle and long waiting. There is so much pain and struggle as we wait for respect and understanding. We are still waiting for the Kardiya to understand us better. Yapa have learned the Kardiya language. We have listened to what he had to say. This learning and listening needs to go both ways.

¹¹⁹ AHRC Commissioners call for action (n 78).

¹²⁰ ATSI Action Plan (n 64) 29.

¹²¹ Ibid 26.

¹²² AHRC Commissioners call for action (n 78). See also Bailey (n 99), on operation ‘RESET’.

¹²³ Melissa A Lindeman and Samantha J Togni, ‘Improving Services for Aboriginal Women Experiencing Sexual Violence: Working at the Knowledge Interface’ (2022) 75(3) *Australian Social Work* 372.

¹²⁴ Ibid 379.

A culturally-safe Court is desperately needed. But please do not make this another broken promise the Kardiya needs to understand that our culture IS different we are asking you to take the time to know us, listen to us and come closer.

Yapa women and girls with a disability have the highest rates of victimisation. Yapa women with disability experience higher levels of violence including intimate partner violence, domestic violence and sexual assault. This violence includes systemic and institutional violence.

Too often Yapa women and girls are silenced and marginalised in national conversations. ... Evidence shows that to stop men's violence against Yapa women we need women and men to be equal, the truth must be told about our colonisation history, the power imbalance between Kardiya and Yapa people needs to be mended. In short, the answer to the eternal question of "What are the solutions?" the answer is simple ... listen to the Yapa.

As Lindeman and Togni conclude, 'research into Australian Indigenous understandings of sexual violence its context, and how these understandings might inform needed support services are limited'.¹²⁵ The same is true for research needed to chart a way forward on the criminal justice response.

3. LGBTIQ+ communities

3.1 Context and prevalence

The latest ABS survey data indicates around 773,000 Australians (4.0%) have identified as gay, lesbian or bisexual.¹²⁶ There are two national datasets that provide information on sexual violence; neither had options for identifying lesbian, gay, bisexual, transgender ('trans'), intersex, queer/questioning or asexual ('LGBTIQ+') status¹²⁷ until a new standard for capturing these variables was recently introduced.¹²⁸ Most general population surveys in the field of family, domestic and sexual violence do not properly capture gender diversity or sexuality.¹²⁹

The Australian literature on sexual violence and people identifying as LGBTIQ+ is emerging but fragmented, as different measures (sexual orientation and/or gender)¹³⁰ and different definitions of 'sexual violence' are used.¹³¹ As discussed previously, this fragmentation and inconsistency is a significant challenge across the literature on all priority populations discussed in this scoping review. Current data for LGBTIQ+ communities do not capture its complexities, and particular groups such as trans, asexual and

¹²⁵ Ibid 373.

¹²⁶ Other sexual orientations are not investigated in this survey series. See ABS, *General social survey: summary results, Australia* (Report, 2020) <<https://www.abs.gov.au/statistics/people/people-and-communities/general-social-survey-summary-results-australia/2020>>.

¹²⁷ George et al 2023 (n 22) 15. The 'plus' sign + indicates the expanding diversity of sexual and gender identities.

¹²⁸ AIHW LGBTIQ+ Report (n 60).

¹²⁹ House of Representatives Standing Committee on Social Policy and Legal Affairs, Australian Parliament, *Inquiry into family, domestic and sexual violence* (Report, 2020) 186-187 ('FDSV Inquiry').

¹³⁰ There are now at least 72 recognised genders; the concept is recognised as a spectrum. Typical genders included in studies are cisgender women (from the Latin prefix *cis-*, 'on this side of', assumed this sex at birth, often shortened to 'cis'), cisgender men, transgender women, transgender men, non-binary. Other examples include genderfluid, gender neutral, agender, pangender: MedicineNet, *What re the other 72 genders?* (Website, 9 February 2024) <https://www.medicinenet.com/what_are_the_72_other_genders/article.htm>.

¹³¹ For example, Australian Bureau of Statistics (ABS), *Personal Safety, Australia – 2021-22* (Web Page, 15 March 2023) ('ABS PSS – 2021-22') <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>> utilised data for women 18 years and older experiencing sexual violence (including sexual assault and sexual threat), but is limited to cohabiting partner violence and abuse. Others examine different populations within the broader LGBTIQ+ community (note the growing literature on trans women), or use different measures including a less or more comprehensive description of the types of violence: Adam O. Hill et al, *Private Lives 3: A national survey of the health and wellbeing of LGBTIQ people in Australia* (Australian Research Centre in Sex, Health, and Society Report, 2020) ('Private Lives 3 Report'). The difficulties surrounding meaning and measurement of sexual violence, rape and sexual assault has also been noted in the United States literature: Adam M Messinger and Sarah Koon-Magnin, 'Sexual Violence in LGBTQ Communities' in William T O'Donohue, Paul A Schewe (eds), *Handbook of sexual assault and sexual assault prevention* (Springer, 2019), and more recently in Australia: Shaez Taya Mortimer, 'Queering survival: LGBTQ people's experiences of living through sexual violence' (Doctor of Philosophy Thesis, RMIT University, January 2022) 24-25.

intersex people are under-researched.¹³² Nevertheless, several Australian studies have found that members of the LGBTIQ+ community experience high levels of sexual violence.¹³³

Simpson et al’s 2024 study of 1,448 participants investigates trans and gender diverse people’s lifetime experiences of ‘sexual coercion’, defined as ‘practices that elicit unwanted sexual activity from verbal persuasion to physical force’.¹³⁴ They found a prevalence rate of 53.4%,¹³⁵ which is more than double the reported rate experienced by the general Australian population in a benchmarked study (22.4% for women; 4.2% for men).¹³⁶ Almost 1 in 6 respondents (15.8%) experienced multiple incidents.¹³⁷

A smaller scale 2022 study by Layard et al¹³⁸ analysed data from two surveys in New South Wales with 513 LGBTQ+ people regarding their experiences and perceptions of ‘sexual violence’¹³⁹ across the life course, in circumstances that could constitute sexual assault.¹⁴⁰ The findings were deeply troubling, as indicated in Table 1 below:

Table 1: Prevalence of unwanted sexual conduct, Layard et al

Has someone ever had sex with you or continued having sex with you when you:	[n]	%
Felt you could not say no	210	82%
Did not want them to	205	80%
Had asked them to stop	147	57%
Were too drunk or high to know what was happening	130	51%
Were unconscious or asleep	91	35%

Source: E Layard et al, LGBTQ+ people’s experiences and perceptions of sexual violence¹⁴¹

A further 40% of participants experienced violated sexual boundaries (e.g. partner did not listen to a ‘safe word’), 37% experienced physical force to engage in sex, 33% were tricked into sex without protection (‘stealth’) and 25% were choked or strangled during sex when this was unwanted.¹⁴² While multiple forms of violence could occur in a single event, the high number of multiple responses to the behaviours ‘help to create a picture of the fact that most participants have experienced more than one form of sexual violence in their lives’.¹⁴³ As for recent sexual violence, almost a quarter of respondents (24%) reported an experience in the previous 12 months, mostly younger people (18-25 years, 34%; 45-50 years, 12%).¹⁴⁴

In 2021, the periodic *Private Lives 3* survey of 6,835 participants identifying as LGBTIQ returned results similar to the Simpson et al study, indicating that almost half (48.6%) of the participants had ever been

¹³² AIHW LGBTIQ+ Report (n 60).

¹³³ See for example Marina Carman et al, *Pride in Prevention: A guide to primary prevention of family violence experienced by LGTIQ communities* (Report, 2020) 6.

¹³⁴ Paul L Simpson et al, ‘Factors Associated with transgender and gender diverse people’s experience of sexual coercion, and help-seeking and wellbeing among victims/survivors: Results of the first Australian trans and gender diverse sexual health survey’ (2024) 00(00) *LGBT Health* 1.

¹³⁵ Ibid 6.

¹³⁶ Ibid, citing RO de Visser et al ‘Experiences of sexual coercion in a representative sample of adults: The Second Australian Study of Health and Relationships’ (2014) 11(5) *Sex Health* 472.

¹³⁷ Simpson et al (n 135) 6.

¹³⁸ E Layard et al, *LGBTQ+ peoples’ experiences and perceptions of sexual violence* (Report, 2022).

¹³⁹ Ibid 14. ‘Sexual violence’ was particularised for participants in a list, which included unwanted sexual groping or touching, staring or ‘leering’, making offensive sexual comments, making repeated or unwanted attempts to flirt or have sex, kissing, showing sexual photos or videos, exposing genitals or masturbating in front of the participant, threatening to sexually assault, taking or sharing naked or sexual photos or videos without consent (at 14). Participants were also asked about listed circumstances which could indicate sexual assault, as outlined in Table 1.

¹⁴⁰ Ibid 12.

¹⁴¹ Ibid 4, 15.

¹⁴² Ibid 15.

¹⁴³ Ibid 16.

¹⁴⁴ Ibid 17.

coerced or forced into participating in sexual acts against their will, and almost 1 in 10 incidents (8.9%) occurred in the last 12 months.¹⁴⁵ The lifetime prevalence rates of ‘sexual assault’ for non-binary participants, trans men and cisgender women were, again, concerning (64.3%, 54.9% and 54.5% respectively), as were the rates for queer, pansexual and bisexual participants (66.5%, 62%, 57.1% respectively).¹⁴⁶ This study supports earlier Australian research by Collander et al which indicated non-binary people assigned female at birth experienced the highest levels of sexual violence (66.1%), followed by transgender men (54.2%).¹⁴⁷

It is noted that the *Private Lives 3* survey utilised more inclusive categories of family and partners, and a range of more diverse violence types.¹⁴⁸ In particular, ‘sexual assault’ was defined broadly as incidents where ‘anyone ever coerced or forced you into sexual acts you did not want to engage in’, including ‘kissing, touching, sexual intercourse or being forced to watch pornography or unwanted sexual acts’.¹⁴⁹

While the findings of these studies are not directly comparable, they are summarised in Table 2 for convenience, and provide a broad illustration of results in the literature:

Table 2: Summary Table: recent prevalence studies, LGBTIQ+ communities

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%

Sources: as indicated

As to context, the *Private Lives 3* study indicates that 21.8% of participants experienced sexual violence in the context of intimate partner violence, and 9.7% in the context of family violence.¹⁵⁰

Analysing the data on intimate partner sexual violence, by sexual orientation, pansexual and queer participants were most at risk. Participants identifying as pansexual experienced the highest lifetime prevalence rate (36.6%), followed by queer participants (33.4%), bisexual (28.7%), asexual (23.9%), something else (20%), lesbian (16.9%), and gay (11.1%) participants.

In the family violence context, pansexual participants again experienced the highest prevalence of sexual violence (14.9%), followed by queer (13.8%), something else (12.4%), lesbian (11.8%), bisexual (9.4%), asexual (7.8%) and gay (4.5%) participants.

¹⁴⁵ Private Lives 3 Report (n 131) 15, 75.

¹⁴⁶ Ibid.

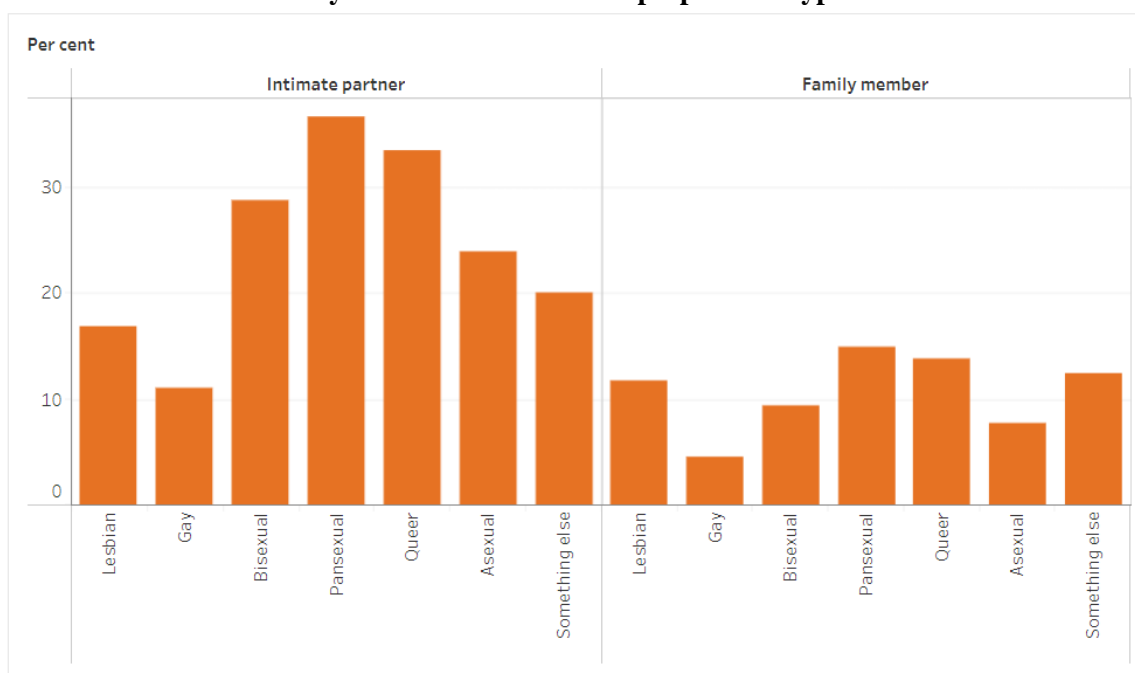
¹⁴⁷ Mortimer (n 131) 22, citing D Collander et al, *The 2018 Australian Trans and Gender Diverse Sexual Health Survey: Report of Findings* (Report, 2019).

¹⁴⁸ Private Lives 3 Report (n 131) 72.

¹⁴⁹ Ibid 75.

¹⁵⁰ Ibid 71.

Figure 1: Types of intimate partner and family sexual violence ever experienced by sexual orientation and perpetrator type



Source: La Trobe University Private Lives 3 survey.

<https://www.aihw.gov.au>

Source: Australian Institute of Health and Welfare, 'LGBTIQ+ People'¹⁵¹

Analysing the data on intimate partner sexual violence by gender, non-binary, trans men and cis women participants were most at risk. Those identifying as non-binary participants had the highest prevalence rate (35.6%), followed by trans men (30.5%), cisgender women (24.5%), trans women (17.4%) and cisgender men (11.2%).¹⁵²

For sexual violence in the family context, non-binary participants again experienced the highest prevalence rates (15%), followed by trans men (14.6%), cisgender women (11.4%), trans women (7.1%) and cisgender men (4.6%).

It is noteworthy that these results confirm the gendered nature of violence against people socialised as women.¹⁵³

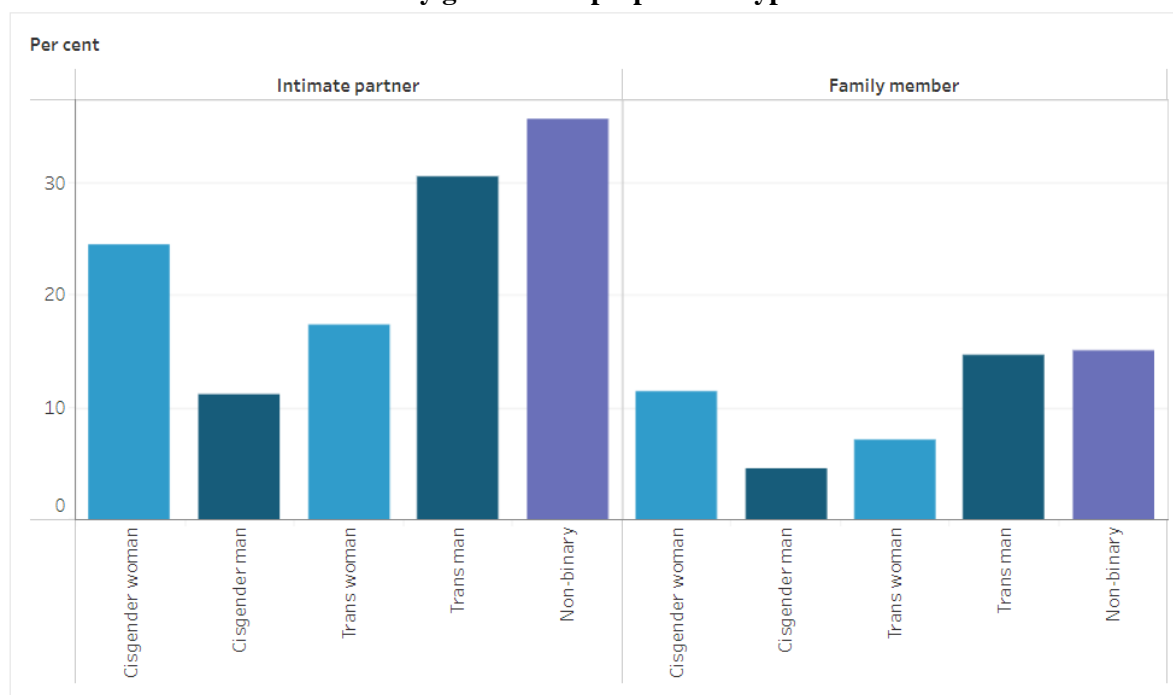
¹⁵¹ AIHW LGBTIQ+ Report (n 60). Reproduced under creative commons, 'CC BY' (attribution, credit) licence.

<<https://creativecommons.org/share-your-work/licenses/>>.

¹⁵² Private Lives 3 Report (n 131) 72.

¹⁵³ Ibid 77.

Figure 2: Types of intimate partner and family sexual violence ever experienced by gender and perpetrator type



Source: La Trobe University Private Lives 3 survey.

<https://www.aihw.gov.au>

Source: Australian Institute of Health and Welfare, 'LGBTIQA+ People'¹⁵⁴

Heterosexist violence was not uncommon for participants in this study, with 'one in ten [reporting a] sexual assault in the past 12 months due to their sexual orientation or gender identity'.¹⁵⁵ This finding is supported by the Layard et al study, where some participants suggested their perpetrators believed LGBTQ+ stereotypes, which led to "corrective rape" behaviours;¹⁵⁶ these are variously described as 'identity abuse',¹⁵⁷ 'transphobic violence'¹⁵⁸ or a subset of 'hate crime'.¹⁵⁹ There is a growing body of literature in this field.¹⁶⁰

The Layard et al study found that perpetrators of the most impactful experience were overwhelmingly cisgender men (86%), roughly evenly split between LTBTQ+ (51%) and non-LTBTQ+ (49%).¹⁶¹ This is comparable to other studies, including the *Private Lives 3* study, which indicated most (84.3%) perpetrators were cisgender men.¹⁶² Sexual violence perpetrated by members of the police force against members of the LGBTIQA+ community is also well documented in US literature.¹⁶³

¹⁵⁴ AIHW LGBTIQA+ Report (n 60). Reproduced under creative commons, 'CC BY' (attribution, credit) (including commercial) licence. <<https://creativecommons.org/share-your-work/ccllicenses/>>.

¹⁵⁵ Private Lives 3 Report (n 131) 41.

¹⁵⁶ Layard et al (n 138) 23.

¹⁵⁷ AIHW LGBTIQA+ Report (n 60).

¹⁵⁸ Mortimer (n 131) 23.

¹⁵⁹ JM Ussher et al, Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia (Report, 2020) 22.

¹⁶⁰ Charlotte Knight and Kath Wilson, 'Introduction' in Charlotte Knight and Kath Wilson, *Lesbian, Gay, Bisexual and Trans People (LGBT) and the criminal justice system* (Palgrave Macmillan, 2022) 6; regarding anti-LGBTIQA+ sexual hate crime specifically, see Messinger and Koon-Magnin (n 131) 666.

¹⁶¹ Layard et al (n 138) 21.

¹⁶² Private Lives 3 Report (n 131) 76.

¹⁶³ See, for example Amnesty International, 'Stonewalled – Still demanding respect: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the USA', *Focus sheets* (23 March 2006) <<https://www.amnesty.org/en/wp-content/uploads/2021/08/amr510262006en.pdf>>; Victoria A Brownworth, 'Police violence is LGBTQ history, past and present', *Philadelphia Gay News* (14 April 2021) <<https://epgn.com/2021/04/14/police-violence-is-lgbtq-history-past-and-present/>>.

The intersecting complexities in the LGBTIQ+ community are clearly evident from the literature. The *Private Lives 3* study shows more than a third (38.5%) of LGBTIQ+ participants reporting a disability – about one in 5 (20.4%) with a moderate disability and one in 10 (11.8%) with profound disability.¹⁶⁴ The proportion of participants experiencing intimate partner or family violence increased with the severity of disability.¹⁶⁵

For LGBTIQ+ participants with a multicultural background, levels of stress were generally higher (31.7%) than those with an Anglo-Celtic background (26.7%).¹⁶⁶ Ussher's qualitative study of trans women of colour also reports that two thirds (66%) of cisgender¹⁶⁷ and culturally and linguistically diverse (CALD) trans women had ever experienced sexual assault since the age of 16, in comparison to half (50%) of the non-CALD trans women.¹⁶⁸ In a subsequent study by Hawkey et al drawing on the same interview data from Ussher et al, two participants indicated that sexual violence was the norm:

Everybody has been sexually assaulted. (*Sefina*)

Being trans, has this weird thing that ... it's almost ... just part of the experience of being trans. It's almost a heartbreaking way to describe that. (*Selvi*)¹⁶⁹

3.2 Identifying and disclosing sexual violence

On the issue of normalisation, Bourne et al's study shows some LGBTIQ-identifying people may struggle to identify their experiences as violence, given patriarchal, heteronormative and cisgender framing of sexual violence and a 'lifelong, elevated experience of verbal, physical, and/or sexual assault'.¹⁷⁰ This has also been called a 'higher threshold to abuse'.¹⁷¹ Bourne et al's subsequent analysis of the *Private Lives 3* data focused on direct questions about family violence and intimate partner violence, and also a more nuanced question naming specific forms of abuse.¹⁷² When asked directly, the majority of participants reported experiencing family violence (78.8%), but for one in 5 (21.2%) this was identified only via the nuanced question, suggesting difficulty identifying violence except where acts were more specifically enumerated. Intimate partner violence was again identified by a majority (76%), but for almost a quarter (24%), this was only identified via the nuanced question.¹⁷³

Mortimer et al's study considers other factors impeding identification and disclosure of sexual violence, including social attitudes and understandings influenced by stereotypes and misconceptions, commonly called rape myths, surrounding the LGBTIQ+ community.¹⁷⁴ For example, gay, bisexual and queer men being impacted by 'discourses which construct them as "promiscuous" and leading "risky lifestyles" and "asking for" sexual violence', or queer women 'not having "real sex" function, [rendering] violence in queer women's relationships unthinkable and invisible'.¹⁷⁵ Without a discursive framework that accommodates a diversity of bodies and acts, some victim-survivors are silenced.¹⁷⁶ Messinger et al note that the most widely

¹⁶⁴ Private Lives 3 Report (n 131) 16.

¹⁶⁵ AIHW LGBTIQ+ Report (n 60), citing Private Lives 3 Report (n 131). For intimate partner violence: 73% with severe disability; 67% with mild disability, compared with 55% of LGBTQ+ adults without disability; for family violence: 81% with severe disability, 78% with moderate disability, 68% with mild disability.

¹⁶⁶ Private Lives 3 Report (n 131) 16.

¹⁶⁷ That is, 66% heterosexual, 66% LBQ: 131.

¹⁶⁸ Ussher et al (n 159) 131.

¹⁶⁹ Alexandra J Hawkey et al, 'Trans Women's Responses to Sexual Violence: Vigilance, Resilience, and Need for Support' (2021) *Archives of Sexual Behavior* 3201.

¹⁷⁰ Adam Bourne et al, 'Naming and Recognition of Intimate Partner Violence and Family of Origin Violence Among LGBTQ Communities in Australia' (2023) 38(5-6) *Journal of Interpersonal Violence* 4589, 4592.

¹⁷¹ FDSV Inquiry (n 129) 188.

¹⁷² Ibid 4596, which included 'sexual violence' – 'undesired sexual behaviour through force or other means'.

¹⁷³ Ibid 4597.

¹⁷⁴ Shaez Mortimer, Anastasia Powell and Larissa Sandy, 'Typical scripts' and their silences: exploring myths about sexual violence and LGBTQ people from the perspectives of support workers' (2019) 31(3) *Current Issues in Criminal Justice* 333, 337. See also AIHW LGBTIQ+ Report (n 60). In the United States context, see Erin C Miller et al, *Trauma-informed approaches for LGBTQ* survivors of intimate partner violence* (Report, 2016).

¹⁷⁵ Ibid 337; see also Jane M Ussher et al, 'Crossing boundaries and fetishization: experiences of sexual violence for trans women of color' (2022) 37(5-6) *Journal of Interpersonal Violence* NP3352, NP3569.

¹⁷⁶ Ibid 340. As such, this research could be considered a type of hermeneutical injustice, as discussed by Fricker, where experiences are not understood as they do not fit known concepts: Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press, 2007).

utilised rape myth research instruments focus on female victim-survivors and male perpetrators, and sexual orientations are not specified; a recent development of an identity-inclusive scale may assist.¹⁷⁷

Against the backdrop of normalisation, myths and victim-blaming, studies show low levels of reporting. The *Private Lives 3* survey revealed that just over one in 4 (28%) LGBTIQ participants reported sexual violence to a professional service, and when they did, it was usually in a counselling environment (18.7%) where they felt supported (89.4%).¹⁷⁸ Few (5.9%) participants reported to police, and less than one in two (45%) felt supported.¹⁷⁹ Tellingly, the reporting rate to police has almost halved from the 10% indicated in the first *Private Lives* survey.¹⁸⁰ The smaller Layard et al study also found modest disclosure levels, with around a third (32%) disclosing to counsellors/psychologists and one in 10 (11%) to police.¹⁸¹

The barriers that can prevent members of this community engaging with the criminal justice system include:

- shame and embarrassment;¹⁸²
- they ‘did not think the experience was serious enough to tell anyone about’ (significant in light of the Bourne et al findings about identification of sexual violence discussed above);¹⁸³
- victim-blaming;¹⁸⁴
- fear of retribution by the perpetrator;¹⁸⁵
- fear of being ‘outed’;¹⁸⁶
- fear of ‘hate crime’ and hate incidents overlapping with the sexual abuse;¹⁸⁷
- lack of access to LGBTIQ+ inclusive services (particularly for trans women of colour);¹⁸⁸
- homophobia, transphobia, fear of discrimination, stigmatisation;¹⁸⁹
- myths that sexual assaults do not occur outside of heterosexual relationships;
- a lack of trust in both the state and police due to historical harms against LGBTQIA+ peoples;
- fear of re-traumatisation.¹⁹⁰

First Nations LGBTQIA+ people can experience a significant number of intersecting points of discrimination, including difficulties in maintaining cultural ties, and the gap between First Nations-specific services and those accommodating broader LGBTQIA+ populations.¹⁹¹ There is no data available regarding LGBTQIA+ experiences in regional and remote communities.¹⁹²

As Miller et al caution, it is harmful to simply view barriers as ‘internal’ to survivors;¹⁹³ cultural humility requires constant questioning of power imbalances, and societal and institutional accountability. LGBTQIA+ communities consistently report being poorly understood or not accepted in society, lacking available resources that are LGBTQ-friendly, and that first responders – particularly police – need specialist, trauma-informed training.¹⁹⁴ One participant in the Layard et al study indicated:

¹⁷⁷ Messinger and Koon-Magnin (n 131) 670.

¹⁷⁸ *Private Lives 3* Report (n 131) 75.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid* 77.

¹⁸¹ Layard et al (n 138) 28. However, this study also included informal disclosures, and 66% first told their friend, partner and/or family member or relative (at 6).

¹⁸² *Ibid* 6. In the Layard study this was the most significant reason (65%, and for First Nations participants 100%).

¹⁸³ *Ibid* 32; see also SJ Walker et al, ‘Rape, inequality and the criminal justice response in England: the importance of age and gender’ (2019) 21(3) *Criminology and Criminal Justice* 297, 310.

¹⁸⁴ *Ibid.* See also Messinger and Koon-Magnin (n 131) 669.

¹⁸⁵ *Ibid.*

¹⁸⁶ Walker et al (n 183) 310.

¹⁸⁷ *Ibid.*

¹⁸⁸ Hawkey et al (n 169) 3213.

¹⁸⁹ AIHW LGBTQIA+ Report (n 60); FDSV Inquiry (n 129) 188; Walker et al (n 183) 310.

¹⁹⁰ Monica Campo and Sarah Tayton, *Intimate partner violence in lesbian, gay, bisexual, trans, intersex and queer communities – Key issues* (Report, 2020) 5-6.

¹⁹¹ AIHW LGBTQIA+ Report (n 60).

¹⁹² *Ibid.*

¹⁹³ Miller et al (n 174) 164.

¹⁹⁴ Messinger and Koon-Magnin (n 131) 669; AIHW LGBTQIA+ Report (n 60).

I ended up trying to take my own life because the reporting process was so traumatic, I was constantly doubted, interrogate[d]... and not believed and felt really unsafe.¹⁹⁵

3.3 The criminal justice system

As discussed above, members of the LGBTIQ+ community commonly report negative experiences with police. The literature is comparatively sparse in relation to LGBTIQ+ victim-survivors' experience further along in the criminal justice system,¹⁹⁶ during prosecution and at court. This is perhaps unsurprising given the formidable barriers to reporting, the negative history of police engagement, and high attrition rates generally for sexual violence.

However, in a 2022 US study on prosecutorial decision-making, Cox et al investigated 201 US prosecutors' decisions on whether and how to prosecute either straight or same-sex couples via a hypothetical but realistic case file (including medical records) on an intimate partner violence case.¹⁹⁷ They found that victim-survivor gender and sexuality impacted decisions – with prosecutors 65% more likely to prosecute under the severest penalty, and 61.5% more likely to select the most severe plea deal when the victim-survivor was female; they were also 51% more likely to select the most severe criminal charge when an opposite-sex rather than same-sex couple was involved. While the study did not find evidence of implicit biases related to the decisions, there were challenges relating to its choice of implicit association testing.¹⁹⁸

In a UK study of police and prosecutorial practice, participants noted a trend away from the merits-based test for prosecution, to 'whether the jury would deem victims' evidence less credible' (the so-called 'bookmaker's test'), with participants citing this as the 'key reason' for the drop in case numbers progressing to trial.¹⁹⁹

Earlier US studies by the Judicial Council of California indicated perceived bias against LGBTIQ+ legal professionals and their LGBTIQ+ clients, as well as perceived bias in the courts.²⁰⁰ In the court study, many participants (56%) 'reported seeing or hearing negative words or treatment towards gay men or lesbians and [more than one in 5 (22%)] reported feeling threatened in the courthouse due to sexual orientation.'²⁰¹

As to jury responses, a recent study by Carter et al of verdicts in response to a mock sexual assault trial transcript found that participants viewed an assault as less severe when the victim-survivor was transgender or cisgender male compared to cisgender female or trans female. Results on victim-blaming were mixed, with Carter et al's study failing to find significantly higher rates for transgender victim-survivors,²⁰² unlike earlier work by Davies and Hudson that confirmed higher rates of victim-blaming.²⁰³ Carter et al found that the judge's instructions to the jurors to ignore gender identity 'had no influence on any of the dependent measures.'²⁰⁴

¹⁹⁵ Layard et al (n 138) 34, trans man participant, queer.

¹⁹⁶ Knight and Wilson (n 160) 1.

¹⁹⁷ Jennifer Cox et al, 'Discretionary prosecutorial decision-making: gender, sexual orientation and bias in intimate partner violence' (2022) 49(11) *Criminal Justice and Behavior* 1699, 1710, 1713.

¹⁹⁸ Ibid 1714. Specifically, it implemented the Gender IAT, which measures association between 'gender and stereotypically gendered careers'; this may have imperfectly measured the effects. In addition, prosecutors may have been actively monitoring responses to minimise bias – other studies have failed to find bias despite clear evidence of disparate outcomes (at 1714).

¹⁹⁹ Rachel George and Sophie Ferguson, *Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales Research Report* (HM Government Report, June 2021) 47 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994817/rape-review-research-report.pdf>.

²⁰⁰ Judicial Council of California, *Sexual orientation fairness in the California courts* (Report, 2001) <<https://www.courts.ca.gov/documents/report.pdf>>.

²⁰¹ Lisa Olson, 'Assessing sexual orientation bias in witness credibility evaluations in a sample of student mock jurors' (2017) *Justice Policy Journal* 1, 4, discussing Judicial Council of California *ibid*.

²⁰² Lisa M Carter et al, 'The effects of victim gender identity, juror gender, and judicial instructions on victim blaming, crime severity ratings, and verdicts in sexual assault trials' (2022) *Journal of Homosexuality* 1187, 1204.

²⁰³ *Ibid* 1204-1205.

²⁰⁴ *Ibid* 1206.

In the UK, studies also suggest the Crown Prosecution Service is failing LGBTIQ+ victim-survivors.²⁰⁵ However, the *Rape and Serious Sexual Offences 2025* strategy includes a toolkit specifically designed to support prosecutorial decision-making in sexual violence cases involving same sex couples or where a complainant is bisexual or trans. The toolkit addresses a lengthy list of LGBTIQ+-related stereotypes, requiring a level of cultural humility and self-reflection by prosecutors: ‘it is important that prosecutors consider whether they themselves are applying any such myths and stereotypes, and then consider how best to address any myths and stereotypes held by a jury.’²⁰⁶ The extent to which such toolkit has been translated into practice is unclear. There is a dearth of Australian research regarding LGBTIQ+ victim-survivors’ experiences in court.

3.4 Health and support

The Simpson et al Australian study indicates that help-seeking behaviour after sexual coercion did not correlate with lower distress levels, indicating a complex relationship between help-seeking and outcomes requiring further research.²⁰⁷ Many (42%) participants in the Layard et al Australian study indicated sexual violence contributed to self-harm or attempting suicide,²⁰⁸ although UK research indicates an even higher level of suicidal ideation or self-harm (67%).²⁰⁹ The impacts are far-reaching;²¹⁰ the Layard et al study shows that while many (43%) victim-survivors experienced their most impactful event over 5 years ago, it continued to influence their lives.²¹¹

The *Private Lives 3* study indicates that if victim-survivors required support in future, more than a third (35.1%) of participants would prefer to disclose to a mainstream domestic violence service that is LGBTIQ-inclusive, and a further 20% indicated they would prefer services dedicated to LGBTIQ people. Significantly, one in 5 (21.3%) ‘did not know’ where they would go to for help.²¹²

A ‘key problem’ is that many support services are designed from a cis- and hetero-normative perspective which can lower trust and disincentivise help-seeking.²¹³ Mortimer documents one non-binary participant’s experience in seeking assistance from survivor support groups who refused to help, with one saying their attendance would ‘scare the women’.²¹⁴ Hawkey et al’s study indicates a need for ‘multi-faceted sexual violence prevention activities to encourage education, empowerment and cultural change across the general population and support services’.²¹⁵

Overall, the Layard et al study concludes participants viewed self-support and healing is deeply personal and diverse – ‘there is no right way to heal’.²¹⁶ This emphasises the importance of alternatives to the criminal justice system and increased funding, as well as visibility of, and access to LGBTIQ+ inclusive services, particularly peer-run survivor centres.²¹⁷ Further studies focusing more particularly on prosecution and court experiences, and specialist training initiatives,²¹⁸ stands out as a clear research need.

²⁰⁵ Tammi Walker et al, ‘The justice system is failing victims and survivors of sexual violence’ (2020) *The Psychologist* (Online Journal, 2020) <<https://www.bps.org.uk/psychologist/justice-system-failing-victims-and-survivors-sexual-violence>>.

²⁰⁶ Crown Prosecution Service, *Same sex sexual violence and sexual violence involving a trans complainant or suspect/defendant - Toolkit for Prosecutors* (Website, 2021) <<https://www.cps.gov.uk/legal-guidance/same-sex-sexual-violence-and-sexual-violence-involving-trans-complainant-or>>.

²⁰⁷ Simpson et al (n 134) 10.

²⁰⁸ Ibid 38. Re suicide, see also Jane M Ussher (n 175) NP3574.

²⁰⁹ Galop, *LGBT+ people and sexual violence* (Report, 2022) <<https://galop.org.uk/wp-content/uploads/2022/04/LGBT-People-Sexual-Violence-Report.pdf>>.

²¹⁰ AIHW LGBTIQ+ Report (n 60).

²¹¹ Layard et al (n 138) 5.

²¹² *Private Lives 3* Report (n 131) 75.

²¹³ Messinger and Koon-Magnin (n 131) 670.

²¹⁴ Mortimer (n 131) 166.

²¹⁵ Hawkey et al (n 169) 3201.

²¹⁶ Layard et al (n 138) 7.

²¹⁷ Ibid.

²¹⁸ Brenda Russell and Celia Torres, ‘Identifying and responding to LGBT+ intimate partner violence from a criminal justice perspective’ in Brenda Russell (ed) *Intimate Partner Violence and the LGBT+ Community* (Springer, 2020) 257.

4. 'CALD' communities

4.1 Defining 'CALD'

Picking up from the brief discussion of culture at the start of this scoping review, UNESCO, in its Universal Declaration on Cultural Diversity, defines culture similarly to the World Health Organisation:

... the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, that encompasses, not only art and literature, but lifestyles, ways of living together, value systems, traditions and beliefs.²¹⁹

In contrast, the ABS defines 'culturally and linguistically diverse' ('CALD') communities by a simple 'core' set of indicators: country of birth, main language other than language spoken at home, English proficiency, and Indigenous status. Further 'standard' indicators include parents' birth country and religious affiliation.²²⁰

4.2 Context and prevalence

Statistically, more than one in 4 Australians (27%) are born overseas.²²¹ The *National Community Attitudes Towards Violence Against Women ('NCAS') Survey*²²² and 2021 Census data²²³ show that the largest group of people born overseas are from England, followed by non-mainly English-speaking ('N-MESC') countries, as indicated in Table 3 below:

Table 3: Country of birth, 2021 Census/NCAS, Australia

Country	% of Australian population
Australia	66.7
England	3.6
India	2.6
China	2.2
New Zealand	2.1
Philippines	1.2
Vietnam	1.0
Malaysia	0.7
Italy	0.6
Nepal	0.6

Source: compiled from 2021 Census, NCAS²²⁴

Navigating the complex process of migration and settlement is made more complex for migrants from N-MESC countries, who may be at greater risk of pre-existing trauma from war and conflicts. This can exacerbate the stressors of resettling, such as experiencing racism and isolation.²²⁵ Migrant men's experiences of oppression in Australia may impact on their engagement with violence prevention efforts

²¹⁹ UN Educational, Scientific and Cultural Organisation (UNESCO) *Universal Declaration on Cultural Diversity* (2 November 2001) <<https://www.unesco.org/en/legal-affairs/unesco-universal-declaration-cultural-diversity>>.

²²⁰ Australian Bureau of Statistics, *Standards for statistics on cultural and language diversity* (Updated 2022 version, previous Catalogue No 1289.0., 1999) <<https://www.abs.gov.au/statistics/standards/standards-statistics-cultural-and-language-diversity/latest-release#cite-window1>>. Hence the indicators are primarily directed at ethnicity (cultural characteristics including language, history, religion): National Research Council (US) Panel on Race, Ethnicity, and Health in Later Life, 'Understanding Racial and Ethnic Differences in Health in Late Life: A Research Agenda' in RA Bulatao and NB Anderson (eds), *The Nature of Racial and Ethnic Differences* (National Academies Press, 2004) 1 <<https://www.ncbi.nlm.nih.gov/books/NBK24684/>>.

²²¹ Australian Bureau of Statistics, *Cultural diversity: Census* (Web Page, 2022) <<https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/latest-release>>.

²²² ANROWS, *Attitudes Matter: The 2021 National Community Attitudes towards Violence Against Women Survey: Findings for people born in countries where the main language is not English* (2021) 28 ('NCAS Survey') <https://irp.cdn-website.com/f0688f0c/files/uploaded/ANROWS_-_NCAS_-_N-MESC_-_WEB_24.6.pdf>.

²²³ ABS, '2021 Census All persons QuickStats', *Australia* (Report, 2021) ('ABS Census 2021') <<https://abs.gov.au/census/find-census-data/quickstats/2021/AUS>>.

²²⁴ Ibid; NCAS Survey (n 222).

²²⁵ Ibid 28-30.

and ability to adjust to evolving gender roles. The NCAS Survey reveals a ‘concerning minority’ of respondents whose main language was not English strongly agreed or agreed with attitudes that minimise violence (4-33%), mistrust women’s reports (8-40%) or objectify women or disregard the need for consent (7-30%).²²⁶

Migrant women may be disconnected from protective factors, such as support networks and knowledge of processes, policies, and services.²²⁷ Cultural attitudes may also impact on how violence is perceived and tolerated. Some cultures may require women to persist in a violent relationship to avoid shaming –of themselves and/or their family – or rigid gender roles may mean they are more accepting of certain behaviour from their partners, even if violent or abusive, which perpetuates cycles of violence.²²⁸ Around the settlement period, there is an increased risk of violence against a backdrop of economic insecurity and limited safe housing.²²⁹

Early studies had mixed findings, indicating either a higher or lower prevalence of violence for women and girls with a CALD background.²³⁰ The latest ABS PSS data indicate a low prevalence of ‘sexual violence’²³¹ in the two years prior to the survey, of 2.1% of women from N-MESC countries and around 2.0% of women born overseas, compared to 3.4% of Australian born women.²³² However, as the Australian Institute for Health and Welfare indicates, caution must be exercised with the ABS results due to language barriers.²³³ The deeply felt stigma of sexual abuse can also silence women and girls with a CALD background from disclosing their experience.

The ABS statistics are significantly lower than an ANROWS study by Townsend et al which indicates around a quarter to a half (22.5%-48.7%) of participant women with CALD backgrounds experienced ‘sexual violence’.²³⁴ Another Australian study by Segrave, Wickes and Keel indicates the overwhelming majority (91%) of migrant and refugee women experienced controlling behaviour and more than four in 10 (42%) ‘sexual violence’.²³⁵ Of those experiencing physical and/or sexual violence, one in 5 participants (21%) indicated this happened ‘frequently’ and for one in 7 (14%) it occurred ‘often’.²³⁶ Again, these studies are not directly comparable due to the different methodologies employed, but are summarised in Table 4 below for convenience.

Table 4: Summary Table: recent prevalence studies, CALD communities

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 (by age bands)	22.5%-48.7%
Segrave, Wickes and Keel	‘Sexual violence’ as defined, during COVID (March to November 2020)	42%

Sources: as indicated

²²⁶ NCAS Survey (n 222) 31.

²²⁷ Ibid 30.

²²⁸ See generally NCAS Survey (n 222) 31ff.

²²⁹ Ibid.

²³⁰ Australian Institute of Criminology, ‘Key issues in domestic violence’, (2009) 7 *Research in Practice* 1, 5.

²³¹ ABS PSS – 2021-22 (n 131), defined as the ‘occurrence, attempt or threat of sexual assault experienced since the age of 15’.

²³² Ibid, as cited and discussed in Australian Institute of Health and Welfare, ‘People from culturally and linguistically diverse backgrounds’, *Family, domestic and sexual violence* (Summary Report, 19 July 2024) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/cald>> (‘AIHW CALD’).

²³³ AIHW CALD (n 232); see also NCAS Survey (n 222) 31.

²³⁴ In this study, participants were grouped by age rather than country of birth: NCAS Survey (n 222) 31, citing N Townsend et al, *A life course approach to determining the prevalence and impact of sexual violence in Australia: Findings from the Australian Longitudinal Study on Women’s Health* (ANROWS Research report, 2022). The Townsend study emphasises the need for more consistent terminology around sexual violence. Its participants were asked questions relating to ‘unwanted sexual activity’ (at 24). The study acknowledges that its broad definition of sexual violence likely contributed to the high prevalence rates (at 69-70).

²³⁵ M Segrave, R Wickes and C Keel, *Migrant and refugee women in Australia: The Safety and Security Study* (Research Report, 2021) 9. ‘Sexual violence’ was interrogated by asking participants whether someone ‘forced you into any unwanted sexual activity, by threatening you, holding you down, hurting you in some way or via some other means (including threatening withdrawal of visa or threatening to report you to Immigration)’ (at 34).

²³⁶ Ibid 35.

Thus, while it cannot be said that a CALD background is an explicit risk factor, women and girls in this population can experience a greater exposure to risk factors for sexual violence.²³⁷ Victim-survivors with multiple intersecting social identities, such as those possessing ‘triple minority status’ (ethnic, sexual and gender minority), can be particularly vulnerable; one US study found this group of participants had the highest risk of sexual violence compared to white heterosexual participants.²³⁸

While studies five years ago reported little significant Australian research on sexual violence experienced by people with CALD or N-MESC backgrounds, the literature is growing.²³⁹ The NCAS Survey indicates that the forms of sexual violence that are more prevalent for CALD and N-MESC populations as compared to Australian women include forced and child marriage, marital rape, female genital mutilation and immigration law abuse.²⁴⁰

4.3 Identifying and disclosing sexual violence

Women and girls with a CALD background can experience multiple barriers to disclosure, help-seeking and reporting.²⁴¹ Specific risk factors and barriers to disclosure, help-seeking and reporting can include:

- language barriers and, particularly for reporting, the unavailability of an interpreter;
- religious or cultural beliefs about divorce;
- isolation and concerns about being rejected by their community or family;
- guilt, shame, stigma;
- low-level identification of violent acts;
- a lack of understanding about legal rights;
- distrust of authorities due to experiences before migration;
- lack of resources, including financial/income support, transport;
- difficulties in locating safe housing;
- concerns about confidentiality and/or the woman’s partner finding out, exacerbating the violence, or leading to deportation or loss of children;
- lack of culturally appropriate services;
- fears about losing their visa, being deported, and/or being refused Australian residency.²⁴²

Such barriers, especially finances and transport, can pose daunting obstacles to the exercise of basic independent personal mobility. This deters help-seeking as well as reporting and engagement with the criminal justice system. As one victim-survivor recalls:

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.²⁴³

For students in Australian tertiary institutions, research indicates that help-seeking is generally at low levels (48.7%), although many (66.2%) perceive a need for help. In this environment, cultural minority students were less likely to perceive a need for help – which, in itself, is a barrier to help-seeking.²⁴⁴ For these

²³⁷ AIHW CALD (n 232).

²³⁸ Gabriela López et al, ‘Sexual victimization among sexual and racial/ethnic minority women: bridging the gap between research and practice’ in WT O’Donohue and PA Schewe (eds), *Handbook of sexual assault prevention* (Springer Nature Switzerland, 2019) 684, citing Gold et al, ‘Psychological outcomes among lesbian sexual assault survivors: An examination of the roles of internalized homophobia and experiential avoidance’ (2009) 33 *Psychology of Women Quarterly* 54.

²³⁹ AIHW Continuing the Story (n 14) 95; see the literature cited in the latest NCAS Survey (n 222).

²⁴⁰ NCAS Survey (n 222) 30.

²⁴¹ AIHW CALD (n 232).

²⁴² Ibid; see also Victorian Government, *Family violence – culturally and linguistically diverse victim-survivors* (Web Page, 8 February 2022) Better Health Channel <<https://www.betterhealth.vic.gov.au/health/healthyliving/family-violence-culturally-linguistically-diverse-victim-survivors>>. Similar barriers exist for Muslim women: Nada Ibrahim, ‘Experiences of Abused Muslim Women With the Australian Criminal Justice System’ (2022) 37(3-4) *Journal of Interpersonal Violence* NP2360.

²⁴³ Geetanjali Gangoli, Lis Bates and Marianne Hester, ‘What does justice mean to black and minority ethnic (BME) victims/survivors of gender-based violence?’ (2020) 46(15) *Journal of Ethnic and Migration Studies* 3119, 3127.

²⁴⁴ Laura Zark, John W Toumbourou and Lata Satyen, ‘Help-Seeking for Intimate Partner and Family Violence Among Tertiary Students in Australia: Nature, Extent, and Cross-Cultural Differences’ (2023) 38 *Journal of Family Violence* 491.

students, barriers included losing respect from other members of their culture, religious or moral beliefs, visa status, fear of deportation, and lack of culturally appropriate services.²⁴⁵

In addition, cultural and racist stereotyping, particularly evident in mass mainstream and social media, can drive the devaluating of victim-survivors' experience of sexual violence. For example, as Kendall explains, social reaction in the US to the victim-survivors of the R. Kelly scandal²⁴⁶ were largely driven by racist stereotyping; society still does not 'perceive young Black women as innocent, as deserving of protection'.²⁴⁷ In Australia, Our Watch has called on mainstream media to eliminate the use of stereotypes, to frame stories ethically, portray the 'seriousness and prevalence of racialized violence' and, in particular, to 'highlight the voices of Indigenous people in commentary and analysis'.²⁴⁸ More generally, a Monash study in 2015 found high levels of discrimination for certain nationalities, including people born in South Sudan (77%), Zimbabwe (75%), Kenya (67%), Ethiopia (60%) and Egypt (53%).²⁴⁹

Socially-entrenched cultural stereotyping then feeds into the way that women and girls with CALD backgrounds who experience sexual violence are treated by health and support services, and the police.²⁵⁰ In the Monash study, more than half of the South Sudanese participants (59%) indicated they experienced discrimination with the police in the past 12 months.²⁵¹ Gangoli, Bates and Hester's UK study, for example, reports one participant's experience of:

...not being believed by social workers, and was only listened to when there is a professional supporting... (her) and able to challenge the authorities when they don't act.²⁵²

Similarly, another participant reported:

And they began the case but the police supported him, the police support him... the first time they help you to get you out then they help British born only.²⁵³

4.4 Immigration law abuse

Women with CALD backgrounds may be living in Australia on a range of different visas – temporary, bridging (for asylum seekers), student, tourist and partner-related visas. 'Immigration law abuse' or 'visa abuse' occurs where partners, family or employers exploit women's uncertain visa status to control them and perpetrate violence, including sexual violence, or exploitation and modern slavery.²⁵⁴ Intersectionality can impact here also: those with CALD backgrounds who also identify as LGBTIQ+ can be particularly vulnerable to immigration law abuse.²⁵⁵

There is no national dataset on immigration law abuse.²⁵⁶ A 2017 study of women on temporary visas attending a Victorian family violence service indicates there were significant levels of threats by a partner or family member to withdraw sponsorship for their visa application (44%) or to deport them (39%).²⁵⁷ A 2021 report indicates that Australian citizens and permanent visa holders experience domestic and family violence at similar rates (32% and 28% respectively), but the prevalence for temporary visa holders was

²⁴⁵ Ibid 503.

²⁴⁶ R. Kelly was a famous American R&B singer who was convicted of, among other things, child pornography. See, for example, Mark Savage, 'R. Kelly: the history of his crimes and allegations against him', *BBC News* (Online News, 24 February 2023) <<https://www.bbc.com/news/entertainment-arts-40635526>>.

²⁴⁷ Andrea Baker, 'Intersectionality and hashtag journalism' in Andrea Baker and Usha Manchanda Rodrigues (eds) *Reporting on sexual violence in the #MeToo era* (Routledge, 2023) 105.

²⁴⁸ Usha Manchanda Rodrigues, 'Australian media, intersectionality and reporting on violence against women from diverse backgrounds' in Baker and Rodrigues (n 247) 156, 157.

²⁴⁹ Supreme Court of Western Australia (n 26) 433.

²⁵⁰ Gangoli, Bates and Hester (n 243) 3129.

²⁵¹ Supreme Court of Western Australia (n 26) 433.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ NCAS Survey (n 222) 30.

²⁵⁵ Anecdotal lived experience from a member of the Expert Advisory Group; see also AIHW CALD (n 232).

²⁵⁶ AIHW CALD (n 232).

²⁵⁷ Marie Segrave, *Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support* (Report, 2017) 45.

significantly higher (40%).²⁵⁸ Of these, more than 40% experienced sexual violence, either from their spouse (around 35%) or other family members or in-laws (6%).²⁵⁹

Forms of immigration law abuse include:

- ‘threats to report women to immigration;
- deportation or coercion to return to the country of origin;
- withdrawal of sponsorship;
- prevention of family members accessing visas or travelling to Australia;
- separation from children via women’s deportation or sending children overseas.’²⁶⁰

In addition, temporary visa holders may not be able to access social support such as income support or Medicare as eligibility is restricted.²⁶¹ Temporary visa holders are particularly vulnerable to ‘cultural stereotyping’,²⁶² sex trafficking and modern slavery. One migrant victim-survivor recalls,

The first time I learned about Modern Slavery was from a fellow sex worker with lived experience of sexual exploitation, who was the first person who explained to me what different forms of Modern Slavery looked like.

I didn't know that I was being exploited while it was happening to me. Talking to other victim-survivors, as well as connecting with the NSW Anti-Slavery commissioner as well as Anti-Slavery Australia helped get more clarity about my experiences.

I was able to recognize that I had experienced exploitative conditions at work such as wage theft or underpayment, before I started working at brothels who engaged in forced labor practices such as coercing or threatening me into seeing clients against my will or being prevented from leaving my workplace. After leaving those conditions I ended up in a situation that resembled debt-bondage and forced labor conditions on a farm.

We had very little money to my name, due to working off an unspecified amount of debt that my partner incurred on the farm. I never received payment for my contributions to the farm and my partner was paid \$500 per week for working 7 days a week, often 10 hours a day. Even though we worked on the farm for around 7 months, my partner only was paid for 3,5 months of this time. I was able to leave the farm on occasion (my movements was restricted in parts by the farm owners) and was able to subsidise our income engaging in sex work.

Since then I have connected with and supported other survivors of Modern Slavery, most on temporary visas, and we found that a lack of support available to migrant victim-survivors and no visa pathway options were the main barriers to accessing safety.

This victim-survivor outlines particular risks and barriers for migrants in rural or remote communities:

- ‘language barriers, speaking English as second, third or fourth language, and the skills can vary from beginner to fluent
- you don't know anyone in town, but the family you are working for knows everyone, sometimes for generations
- the local police might be friends with the perpetrators and the police might be coming to the house or a pub and have dinner with the family

²⁵⁸ Segrave, Wickes and Keel (n 235) 31.

²⁵⁹ Ibid 35.

²⁶⁰ Ibid.

²⁶¹ Eligible if holding certain visas, including Regional Provisional, Permanent, Applied for Permanent with valid Temporary, Some Temporary visas, Visa holder from a country with reciprocal health care agreement with Australia; or where the temporary visa holder is covered by Ministerial Order (Fulbright Scholars, Witness Protection, de facto partners of Australian citizens or permanent residents, Support for Victims of Trafficking Program, Temporary Humanitarian Concern, Contributory Parent, Temporary Protection, Removal Pending Bridging visa, Unauthorised maritime arrivals holding a Bridging E, Humanitarian Stay, Secondary Movement Offshore Entry, Safe Haven Enterprise, Skilled Work Regional Provisional, Skilled Employer Sponsored Regional Provisional): Visaenvoy, *What visas are eligible for Medicare?* (Website, 2024) <<https://visaenvoy.com/visas-eligible-for-medicare/>>.

²⁶² Annabelle Allimant and Beata Ostapiej-Piatkowski, ‘Supporting women from CALD backgrounds who are victims/survivors of sexual violence’ (2011) 9 *ACSSA Wrap* 1, 5.

- migrants might have been reporting a perpetrator for years but the police refuses to investigate
- some visas are linked to your location i.e. work and holiday visa holders have to mandatory engage in farm work to receive their second year visa
- other visas are linked to your perpetrator i.e. you partner or employer
- there are restricted visa pathways for temporary migrants who experience violence, exploitation or modern slavery²⁶³
- migrants victim-survivors who seek support for their situation or make a report are at heightened risk of being detained and deported, while there are rarely any consequences for the perpetrator.’

4.5 The criminal justice system and ‘justice’

For victim-survivors with a CALD background, particularly those identifying as LGBTIQ+, negative interactions with police are well documented – as well as calls for specialist, culturally safe training.²⁶⁴ However, there is a dearth of literature on courtroom experiences for victim-survivors of sexual violence with a CALD background. But given their linguistic and cultural differences, the court experience may be challenging. They may:

- feel uncomfortable, fearful, overwhelmed or offended by what occurs in court;
- not understand what is happening;
- not understand legal processes, or their rights;
- not feel comfortable speaking;
- not communicate their point of view in ways that can be adequately understood;
- feel an injustice has occurred.²⁶⁵

Hester et al’s work on mapping the understandings of ‘justice’ in a general population of victim-survivors²⁶⁶ provides a pertinent contrast to a related study by Gangoli, Bates and Hester, which documents perspectives of ‘justice’ by ‘black and minority ethnic’ (‘BME’) victim-survivors.²⁶⁷

Hester et al’s participants reported 642 mentions of justice clustering into broad themes. As to the criminal justice system, the main themes were accountability, fairness in outcome, fairness in process, protection from harm and recognition/being believed; beyond the justice system, justice was felt to inhere in a sense of agency, empowerment, and assisting with social transformation, as indicated in Figure 3 below.²⁶⁸

²⁶³ See, for example, Australian Government, Domestic and family violence and your visa (Website, 1 July 2024) <<https://immi.homeaffairs.gov.au/visas/domestic-family-violence-and-your-visa/family-violence-provisions>>.

²⁶⁴ Ussher (n 175) NP3575.

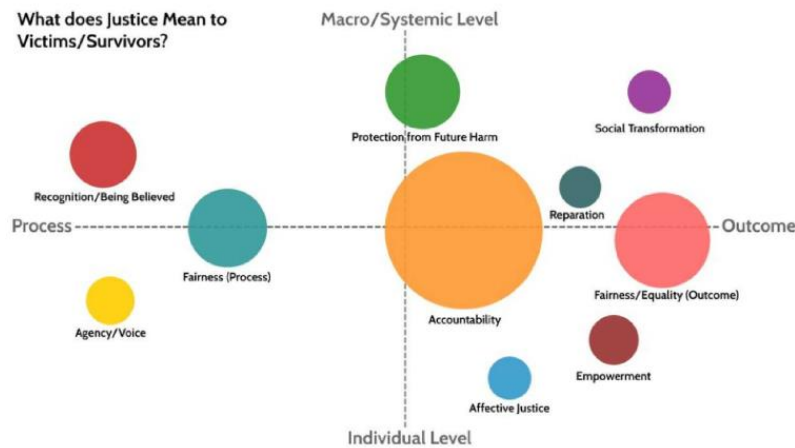
²⁶⁵ Supreme Court of Western Australia (n 26) 440; Judicial Commission of New South Wales (n25) ‘People from culturally and linguistically diverse backgrounds’ [3.2.3].

²⁶⁶ Marianne Hester et al, ‘What is justice? Perspectives of Victims-Survivors of Gender-Based Violence’ (2023) *Violence against women* 1.

²⁶⁷ Gangoli, Bates and Hester (n 243).

²⁶⁸ Hester et al (n 266) 7.

Figure 3: What does justice mean to victim-survivors?



Source: Hester et al, *What is justice? Perspectives of victim-survivors of gender-based violence*²⁶⁹

In contrast, Gangoli, Bates and Hester’s participants identified justice as recognition by community (acceptance of perpetrator responsibility, that their victim-blaming families were ‘in the wrong’), justice as human rights, conceptualised as personal freedom (especially for women who experienced lifelong family coercive control) and legal justice or equal treatment (alluding to ‘inequalities based on ethnicity and implicit racism within legal systems’).²⁷⁰

Notably, women with insecure visa status held an ‘implicit understanding that it was not possible to hope for justice with regard to gender based violence as long as their immigration status was threatened’.²⁷¹ While minority women reported numerous barriers to justice, they could not identify many enablers; those reported included their ‘own sense of self’, family (in ‘rare’ cases), religion, and in some cases the justice and social care system.²⁷²

5. Sex workers

5.1 Terminology and stigmatisation of sex workers

As a preliminary matter, it is important to distinguish sex work from ‘trafficking’, which is considered to be ‘modern slavery, human trafficking and related exploitation’.²⁷³ Generally, there is little consistency in terminology, and the terms are often used interchangeably. The Australian Institute of Family Studies (‘AIFS’) study by Quadara defines sex work broadly as –

... the exchange of sexual services (including oral sex, vaginal and anal sex, sexual touching, masturbation and massage) for payment or reward. However, there is great variation in the forms these exchanges take. Street based sex work, brothel work, private work, bondage and discipline services, escort work, and tabletop and exotic dancing all create very different experiences of sex

²⁶⁹ Ibid 9. Reproduced under creative commons, ‘Attribution 4.0 International’ licence (CC by 4.0, including commercial) <<https://creativecommons.org/licenses/by/4.0/>>.

²⁷⁰ Gangoli, Bates and Hester (n 243) 3126-3127.

²⁷¹ Ibid 3126.

²⁷² Ibid.

²⁷³ This discussion is adapted from Amanda-Jane George et al, Submission to the Australian Law Reform Commission (ALRC), *Inquiry into the justice responses to sexual violence*, 31 May 2024 (‘George et al 2024’) 34. Trafficking often involves individuals entering countries by illegally supported means in order to work in exploitative conditions: Quadara (n 14) 4. See also National Roundtable on Human Trafficking and Slavery, *Guidelines for NGOs: Working with trafficked people* (Guidelines, 3rd ed, 2015) <<https://www.homeaffairs.gov.au/criminal-justice/files/guidelines-ngos-working-with-trafficked-people.PDF>>; NSW, *Let’s talk about sex work* (Terminology and Statement Guide, 2024) <https://www.nswp.org/sites/default/files/terminology_guide_english_prf03.pdf>.

work for those involved, and differences in the kinds of associated risks and dangers and the standard of living they provide.²⁷⁴

The Human Rights Watch ('HRW') notes that 'sex work' is appropriate for people who call themselves 'sex workers', not only out of respect, but also for general and legal clarity.²⁷⁵

Terminology is important, because language and stigmatisation are inextricably intertwined – and tied to violence. The recent HRW submission to the UN Special Rapporteur on violence against women and girls maintains that use of the term 'prostitute' (except where reclaimed and used by sex workers) 'connotes criminality', suggesting that they deserve punishment.²⁷⁶ Such language tends to objectify, patronise, and dehumanise – and the use of terms such as 'prostituted women' is 'directly tied to several forms of violence that women face, in part because it normalises that violence'.²⁷⁷ Similarly, a 2017 article by Benoit et al found that such stigmatisation 'plays a role in fostering an environment where disrespect, devaluation, and even violence are acceptable'.²⁷⁸ Stigmatisation is discussed further below.

5.2 Context and prevalence

While there is no official dataset on sex work, based on early estimates and population growth it would appear there are currently around 23,000-25,000 sex workers in Australia.²⁷⁹

As with the other priority populations, a strong element of intersectionality is apparent here as well: one study of Sydney brothel workers conducted in 2006 found around a quarter (27%) of sex workers are Australian born, with one in 5 (21%) from China, one in 6 (17%) from Thailand, and just over one in 7 (15%) from other Asian countries; subsequent studies found almost equal representation of Chinese, Thai and South Korean sex workers.²⁸⁰ More than three quarters (76.4%) of sex workers were on some form of visa.²⁸¹ As to education, one Queensland study found that almost two thirds (64%) of sex workers had tertiary qualifications;²⁸² in Sydney, around half (46%) had qualifications beyond secondary school.²⁸³

Recent Australian literature in this area is sparse. Quadara's 2008 study notes 'it is clear that very little is known about sectors other than the street-based trade. Few comparative studies exist, with the tendency to either collapse all industries together or to focus exclusively on street sex work'.²⁸⁴ Challenges in researching this population include sex workers' reluctance to identify as such due to stigma and criminalisation, and the consequent social and economic risks (including risks to jobs and credit applications).²⁸⁵

Discussion of prevalence rates must distinguish between sexual assault in sex workers' private lives, and in their work lives. Quadara suggests that in their private lives, sex workers' experiences and characteristics of sexual violence are similar to the general population (younger, Australian born). However, one early

²⁷⁴ Quadara (n 14) 3.

²⁷⁵ Human Rights Watch, *Why sex work should be decriminalized* (News Post, August 7, 2019) <<https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>>. See also National Roundtable on Human Trafficking and Slavery (n 273).

²⁷⁶ Human Rights Watch, Submission to the UN Special Rapporteur *On violence against women and girls* (31 January 2024) <<https://www.hrw.org/news/2024/01/31/human-rights-watch-submission-un-special-rapporteur-violence-against-women-and>>.

²⁷⁷ Ibid. See also Scarlet Alliance, Submission to *Draft National Plan to End Violence Against Women 2022-2032* (25 February 2022) 10 <<https://scarletalliance.org.au/wp-content/uploads/SCARLET-ALLIANCE-National-Plan-to-End-Violence-Against-Women-2022-2032-Redacted.pdf>>.

²⁷⁸ Cecilia Benoit et al, 'Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers' (2017) 55(4-5) *The Journal of Sex Research* 457, 460.

²⁷⁹ Quadara (n 14) estimated 20,000 sex workers as at 2008 (000.92404%). Allowing for population increases (5,322,789), this equates to around 24,919 in 2024. This is supported by UN Data, *Sex workers: Population size estimate* (Website, 2024) <<https://data.un.org/Data.aspx?d=UNAIDS&f=inID%3A111>>. The estimated sex worker population size (for 2012) in the UN dataset was 25,000 although this dropped (in 2014) to 20,500; allowing for population uplift since 2014 this would equate to around 23,321.

²⁸⁰ Renshaw et al, *Migrant sex workers in Australia* (Report, 2017) 9 <<https://www.aic.gov.au/sites/default/files/2020-05/rpp131.pdf>>, citing B Donovan et al, *The sex industry in New South Wales: A report to the NSW Ministry of Health* (Report, 2012), discussing health clinic data from 2006. However, the statistics vary by state and territory, and may not be representative.

²⁸¹ Ibid 13.

²⁸² Ibid 10.

²⁸³ Ibid.

²⁸⁴ Quadara (n 14) 8.

²⁸⁵ Ibid 2.

Australian study (1991) indicates an increased prevalence rate of sexual violence in sex workers' private lives of 46.9%, compared to 21.9% of health workers and 12.7% of students, and a later study (2006) supports this finding (44%).²⁸⁶

At work, the Quadara literature review found street-based workers are the most vulnerable to sexual assault and it can be more physically violent. They are more likely to experience:

- 'repeat victimisation;
- aggravated or particularly brutal sexual assaults;
- kidnapping and unlawful imprisonment; and
- multiple forms of interpersonal violence while at work, including verbal abuse, physical assault, and other crimes such as robbery and non-payment'.²⁸⁷

A 2016 analysis of UK sex workers' rape cases between 1992-2012 confirms that most (73%) reported violence in addition to the rape, including general violence (13%), punching (12%) use of a knife (16%), restraints (4% gagging or binding), or threats of violence (16%).²⁸⁸ More than one in 8 sex workers endured assaults lasting between 1-4 hours.²⁸⁹ Decker's review of 800 international reports on human rights violations against sex workers found similar results, including reports of severe sexual violence such as gang rape, and forced unprotected sex by police officers, including at arrest and when detained.²⁹⁰ Ussher's study also confirms heightened combinations of physical and sexual violence, with one participant commenting:

People feel like that if they're paying for services, they own you and can do what they want with you.²⁹¹

As to prevalence rates, sex workers are generally acknowledged as experiencing a greater susceptibility to sexual violence,²⁹² but there are very few recent studies and reliable data internationally. Quadara's 2008 Australian review discusses older international literature indicating prevalence for street workers from 13% (United States) to 27% (Aotearoa New Zealand).²⁹³ One early Australian study that found that most (78.8%) street workers had ever experienced sexual assault; 60.6% of these from a client, 27.3% once and 33.3% more than once.²⁹⁴

Lea et al's 2016 study cites international data from 2003 to 2008, which indicates prevalence rates of 63%-75%.²⁹⁵ McBride et al's more recent 2020 Canadian study cites Deering et al's 2014 global systematic review that found lifetime prevalence rates ranging between 45-75% for physical, sexual, or combined workplace violence against women sex workers.²⁹⁶ The latter study is cited often in the literature.

Again, the studies referred to in this discussion are not directly comparable due to the different methodologies. The studies interrogated by Quadara are summarised in Table 5 below for convenience.

²⁸⁶ Ibid 5, citing R Perkins, *Working girls: Prostitutes, their life and social control* (Report, 1991) and A Roxburgh, L Degenhardt and J Copeland, 'Posttraumatic stress disorder among female street-based sex workers in the greater Sydney area, Australia' (2006) 6(24) *BioMed Central Psychiatry* 12.

²⁸⁷ Quadara (n 14) 8.

²⁸⁸ Lea et al, 'Attrition and rape case characteristics: a profile and comparison of female sex workers and non-sex workers' (2016) 31(12) *Journal of Interpersonal Violence* 2175, 2183.

²⁸⁹ Ibid.

²⁹⁰ Decker et al, 'Human rights violations against sex workers: burden and effect on HIV' (2015) 385 *Lancet* 186, 189.

²⁹¹ Ussher (n 175) NP3568-3569.

²⁹² Queensland Law Reform Commission, *Review of consent laws and excuse of mistake of fact* (Report, 2020) 49 <https://www.qirc.qld.gov.au/data/assets/pdf_file/0010/654958/qirc-report-78-final-web.pdf>; Queensland Government, *Prevent. Support. Believe. Queensland's framework to address sexual violence* (Report, 2019) 6 (citing Quadara (n 14)).

²⁹³ Quadara (n 14).

²⁹⁴ Human Rights Watch (n 276); AIHW, 'Sexual violence', *Family, domestic and sexual violence* (Summary Report, 19 July 2024) ('AIHW Sexual Violence') <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/sexual-violence>>.

²⁹⁵ Lea et al (n 288).

²⁹⁶ Bronwyn McBride et al, 'Underreporting of Violence to Police among Women Sex Workers in Canada' (2020) 22(2) *Health and Human Rights* 257, 257, citing K Deering et al, 'A systematic review of the correlates of violence against sex workers' (2014) 104(5) *American Journal of Public Health* e42-e54.

Table 5: Summary Table: prevalence studies, sex workers

Study	Measure	%
Australia		
Perkins (1991)	All sectors (street, brothel, other)	19.5%
Boyle et al (1997)	All sectors (street, brothel, other), lifetime	29%
RhED ‘Ugly Mugs’ (2001)	Street (46%, 18% with a weapon)	46%
Woodward et al (2004)	Street (78.8%), brothel (34.7%), private (37.8%), lifetime	34.7%-78.8%
SWOP NSW (2000, 2006)	All sectors (street, brothel, other)	13%
Roxburgh et al (2006)	Street (33% rape, 40% aggravated rape)	33%-40%
Perkins and Lovejoy (2007)	Brothel (6.5%), private (8.4%)	6.5%-8.4%
International		
Farley et al (1998) (multi-country)	South Africa (57%), Thailand (57%), Turkey (50%), US (68%), Zambia (55%)	50%-68%
Plumridge & Abel (2001)	Street (27%), brothel (8%)	8%-27%
Church et al (2001)	‘Outdoor’ (27%), ‘indoor’ (8%)	8%-27%
Kurtz et al (2004)	Brothel (13.9%)	13.9%
Vanwesenbeeck (no date)	All sectors (street, brothel, other)	40%
Deering et al (2014) (multi-country)	Physical, sexual, or combined workplace violence (systematic review), lifetime	45%-75%

Sources: Quadara, *Sex workers and sexual assault in Australia*,²⁹⁷ McBride²⁹⁸

Sex workers can encounter a wide range of perpetrators of sexual violence, including police, clients, health care providers and others.²⁹⁹ Quadara found that underage street-based sex workers were most vulnerable to sexual assault due to inexperience with dangerous situations, or because perpetrators target them, knowing their inexperience and reluctance to go to police.³⁰⁰

Sex workers report numerous health risks and concerns, including social isolation due to stigma (discussed below). A study by Donovan et al indicates ‘nearly half [of participants] had symptoms that met DSM-iv criteria for post-traumatic stress disorder (PTSD) and one third reported current PTSD’.³⁰¹ Indeed, the Australian Comorbidity Guidelines indicate that trauma exposure is ‘almost universal among Australian sex workers’ at (99%).³⁰²

5.3 Identifying and disclosing sexual violence

Both case law, and the literature, consistently indicates that sex workers have long carried the burden of social stigma and stereotyping. This acts as a catalyst for violence, and raises a significant barrier to disclosing and reporting sexual violence.

In the 1981 case of *Attorney-General v Harris*, for example, Starke J stated that:

²⁹⁷ Drawn from the summary data in Quadara (n 14) 9 and studies cited there.

²⁹⁸ McBride (n 296) 258.

²⁹⁹ Human Rights Watch (n 276).

³⁰⁰ Quadara (n 14) 8.

³⁰¹ Donovan et al (n 280) 26.

³⁰² Comorbidity Guidelines, *Sex workers* (Guidelines, 2024) <<https://comorbidityguidelines.org.au/part-c-specific-population-groups/sex-workers>>, citing Roxburgh, Degenhardt and Copeland (n 286) 6, 24.

... the crime [of rape] when committed against prostitutes ... is not as heinous as when committed, say, on a happily married woman living in a flat in the absence of her husband when the miscreant breaks in and commits rape on her.³⁰³

This was said to be because rape for sex workers 'would not cause a reaction of revulsion which it might cause in a chaste woman', who could suffer 'a very serious psychiatric effect'.³⁰⁴ This was despite evidence that one of the sex worker complainants had suffered a breakdown following the 'trauma' of the 'terrifying' pre-planned crime, which included forcible abduction and assault, and lasted 'at least two hours'.³⁰⁵ Starke J dismissed the appeal against the minimal sentence, with the other judges in agreement. Indeed, the Victorian sentencing manual supported this view, and was not updated until 2016.³⁰⁶

As Scarlet Alliance notes, stigma:

... condones and encourages private citizens to act violently against us, as we are understood as criminals, deviants or vectors of disease who cannot expect public protection nor action. This creates a climate of impunity, wherein perpetrators of violence can view us as 'easy' and even 'justifiable' targets.³⁰⁷

Stigma against sex workers is 'deeply entrenched in the Australian national consciousness'.³⁰⁸ In 2022, Scarlet Alliance conducted research with the Centre for Social Research in Health ('CSRH') at the University of New South Wales ('UNSW'), surveying 689 sex workers' experiences of stigma and discrimination.³⁰⁹ The study indicated:

- The overwhelming majority (97%) of participants reported experiencing stigma or discrimination regarding their sex work in the last 12 months (81% indicated this occurred sometimes, often or always).
- The overwhelming majority (88%) of participants reported negative treatment by health workers (66% indicated this occurred sometimes, often or always).³¹⁰

The stigma felt by sex workers correlates with another 2022 study by UNSW, CSRH and Scarlet Alliance. This study surveyed the views of health workers and the public about sex workers, finding that:

- More than one in 5 health workers (21%) self-reported they would behave negatively toward sex workers because of their sex work (sometimes, often or always).³¹¹
- In a 2015 companion study, almost two thirds of the general public (64%) self-reported they would behave negatively toward sex workers because of their sex work (35% sometimes, often or always).³¹²

The social stigma towards sex workers from the health sector is perhaps surprising; the most common way that participants reported avoiding the stigma was simply not to disclose they were sex workers.³¹³ The higher levels of stigma from the general public are significant, as they may be indicative of the levels of stigma against sex workers brought to bear by jurors in a sexual assault trial. One 2017 study of US college undergraduates (mainly female, white and heterosexual) involved participants reading randomised vignettes

³⁰³ *Attorney-General v Harris* (Victorian Court of Criminal Appeal, Starke, Crockett and Gray JJ, 11 August 1981) 7 <<https://aucc.sirsidynix.net.au/Judgments/Cca/259929.pdf>>. See the discussion of this case in Zahra Stardust and Hilary Caldwell, 'Archetypal Sluts' (2023) *New Directions in Sexual Violence Scholarship* 45, 49.

³⁰⁴ *Ibid* 6.

³⁰⁵ *Ibid* 8.

³⁰⁶ Stardust and Caldwell (n 303) 49.

³⁰⁷ Scarlet Alliance (n 277) 10. Scarlet Alliance is the Australian Sex Workers' Association.

³⁰⁸ *Ibid*. See also Australian Government (n 591) 47.

³⁰⁹ University of New South Wales, CSRH and Scarlet Alliance, *Stigma indicators monitoring project: Sex workers* (Information sheet, 2022) <<https://unsworks.unsw.edu.au/bitstreams/2f1922ea-3c07-4e5f-849b-ec6330e8e840/download>>.

³¹⁰ *Ibid*.

³¹¹ University of New South Wales, CSRH and Scarlet Alliance, *Stigma snapshot: health care workers 2022* (Information sheet, 2022) <<https://www.unsw.edu.au/content/dam/images/ada/csrh/research/2024-02-crsh/2024-02-crsh-%20health-care-workers.pdf>>.

³¹² University of New South Wales, CSRH and Scarlet Alliance, *Sex work stigma research collaboration* (Information sheet, 2015) <<https://scarletalliance.org.au/wp-content/uploads/2022/07/Sexworkstigmaresearchcollaboration.pdf>>.

³¹³ University of New South Wales, CSRH and Scarlet Alliance (n 309).

on sexual assault; they expressed ‘significantly less empathy toward sex workers who experienced sexual assault than the group of women who were identified as non-sex workers’.³¹⁴ Significantly more victim-survivor blame was also attributed to the sex workers. The difference was not due to a strong emotional response to the vignettes, suggesting a cognitive bias of stigma against sex workers.³¹⁵

The literature consistently indicates that similar attitudes are evident in the police force. Sex workers report police not treating their claims seriously, not considering their experience as ‘legitimate’ sexual assault, or (most concerning) expecting free services in return for not charging them for sex work offences.³¹⁶ Decker et al report that criminalisation of sex work means ‘[p]olice wield tremendous power over sex workers’,³¹⁷ and engage in repressive conduct, which can result in a ‘climate of fear’ and both direct and indirect risks to their health and safety.³¹⁸ Scarlet Alliance maintains that:

... [i]t is clear that police cannot effectively occupy both roles of (alleged) protector and prosecutor in a way that provides appropriate services to sex worker survivors of violent crime. This conflicting role has long been criticised by sex workers as the cause of various barriers that sex workers face when considering reporting violence.³¹⁹

Decker et al’s study suggests there are links between police arrest, raids, extortion and sexual violence, with client violence.³²⁰ Deering et al’s systematic review also concluded there was ‘consistent evidence of an independent link’ between police arrest, violence and coercion with elevated rates of sexual violence.³²¹ Platt et al’s more recent systematic review and meta-analysis also finds that repressive policing of sex workers correlates with increased risk of sexual/physical violence from clients or others and condomless sex.³²²

Stardust et al’s Australian study reports one participant’s experience with reporting to police, indicating a rapid shift in receptiveness and respect upon disclosure:

I had to engage with the police in reporting [of a sexual assault] ... as part of reporting it, it became clear to the police that I was a sex worker ... and a lot of things were said to me during that time that were completely unacceptable and I noticed it was just like everything is going along and you’re being treated with respect and then just you know, click your fingers and all of a sudden, everything is very different ... I was really just treated with no dignity, with no humility, with no respect.³²³

One co-author contributes their experience of reporting to police as a migrant sex worker:

I reported to police several times sexual or other types of violence I experienced as a sex worker. Rather than listening to what had happened to me, police started questioning me about my work and visa status. ... I was asked what visa I was on, how many hours I was working and if I was paying my taxes. On at least two occasions the officers said that they might have to report me to Australian Border Control due to suspecting I am in breach of my student visa work hour restrictions.

I never worked in breach of my visa conditions. I actually started engaging in sex work due to feeling that it was my only choice to survive on 40 hour per fortnight work hour restrictions. ...

³¹⁴ Sprankle et al, ‘The Role of Sex Work Stigma in Victim Blaming and Empathy of Sexual Assault Survivors’ (2018) 15 *Sexuality Research and Social Policy* 242, 245.

³¹⁵ Ibid.

³¹⁶ This is confirmed by studies such as Decker (n 290) and Scarlet Alliance (n 277) 11.

³¹⁷ Ibid 189.

³¹⁸ Ibid 190.

³¹⁹ Scarlet Alliance (n 277) 11.

³²⁰ Decker (n 290) 190, citing JT Earausquin, E Reed and KM Blankenship, ‘Police-related experiences and HIV risk among female sex workers in Andhra Pradesh, India’ (2011) 204 (suppl 5) *Journal of Infectious Diseases* S1223.

³²¹ Deering et al (n 296) e51.

³²² Lucy Platt et al, ‘Associations between sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and qualitative studies’ (2018) 15(12) *PLoS Medicine* 1, 9 <<https://doi.org/10.1371/journal.pmed.1002680>>.

³²³ Zahra Stardust et al, ‘“I Wouldn’t Call the Cops if I was Being Bashed to Death”: Sex Work, Whore Stigma and the Criminal Legal System’ (2021) 10(3) *International Journal for Crime, Justice and Social Democracy* 148 <<https://doi.org/10.5204/ijcjsd.1894>>.

Last year, when I was trying to rhyme together all the violence that has happened to me, I went to NSW police and asked for my E-reference numbers. I received an A4 page of reports. I asked about the details of the reports and not a single reference mentioned [or] referred to a crime I reported as a sex worker. I even asked to check my work name, in case they recorded it under a different name. There were no reports made under my work name.

Since then I have met multiple other migrant victim-survivors that have been threatened by police with reports to Border Force while they were reporting sexual or other forms of violence. In some cases the report was actually made and confirmed either verbally by a police officer or in writing documented in the police report.

Stardust et al's study and Scarlet Alliance's advocacy both confirm that police reluctance to document or investigate, and threats to report sex workers to immigration, are common in Australia.³²⁴ Accordingly, a Canadian study found that while 38.2% of sex workers who experienced violence reported to police, just 12.7% of migrant sex workers did so.³²⁵ This 'repeated exclusion and expectation of inaction'³²⁶ means that reports might be made for serious crime, but even then Australian studies indicate around 75% would not report,³²⁷ and some sex workers would never seek police assistance:

I wouldn't call the cops if I was being bashed to death.³²⁸

5.4 Criminalisation of sex work, safety and reporting

Intertwined with the issue of stigma, criminalisation is the other significant barrier to reporting for sex workers.³²⁹ Aspects of sex work remain criminalised in most states and territories in Australia.³³⁰ Even in a number of jurisdictions that have 'decriminalised' sex work, there remain criminal penalties for street-based sex work in particular areas. This places sex workers in the 'paradoxical position whereby sex workers continue to be targeted as "criminals", even and especially when they attempt to report rape and sexual assault.'³³¹ Effectively, sex workers must decide between reporting violence in their workplaces and potentially being criminally charged, or not reporting or seeking justice.³³²

³²⁴ Ibid. See also Scarlet Alliance (n 277) 28.

³²⁵ McBride (n 296) 261, 263.

³²⁶ Stardust et al (n 323) 147.

³²⁷ DecrimQld and Respect Inc, *Synopsis 2: Sex workers' lack of access to justice in Queensland* (Report, 2024); Housing Big Build and Manufacturing Committee, *Public hearing – inquiry into the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* (Transcript, 22 March 2024, Brisbane) <<https://documents.parliament.qld.gov.au/com/HBBMC-C4A9/CCDSWOLAB2-5CFF/Public%20Hearing,%2022%20March%202024.pdf>>.

³²⁸ Ibid.

³²⁹ Scarlet Alliance (n 277) 13.

³³⁰ Decriminalised models: Victoria, Northern Territory, Queensland (decriminalisation provisions came into effect 2 August 2024), New South Wales (restrictions on street-based work). The ACT has legalised some forms of sex work, with restrictions; in South Australia sex work is criminalised (a bill to introduce the 'Nordic' model of criminalisation for purchasers of sex services only, and not sex workers, failed to pass in Parliament in May 2024); WA laws criminalise much activity but only some of the provisions are enforced; in Tasmania, private sex work is legal but brothels and escort agencies are criminalised: Scarlet Alliance, *Sex work laws in Australia* (Information sheets, 2023) <<https://scarletalliance.org.au/resources/laws/>>; Sydney Criminal Lawyers, *The legal status of sex work in Australia* (Blog Post, 1 May 2023) <<https://www.sydneycriminallawyers.com.au/blog/the-legal-status-of-sex-work-across-australia/>>.

³³¹ Zahra Stardust and Hilary Caldwell (n 303) 47.

³³² Scarlet Alliance (n 277) 11.

In responding to criminalisation, HRW statements,³³³ as well as reports³³⁴ and analysis³³⁵ from academics,³³⁶ health journals,³³⁷ anti-trafficking organizations,³³⁸ UN women's rights bodies,³³⁹ and sex workers themselves,³⁴⁰ consistently maintain that criminalisation of the demand or supply of sexual services makes sex workers more vulnerable to violence, including rape, assault, and murder, while having no demonstrable impact on the eradication of trafficking.

As HRW notes, 'the use of criminal law to regulate women's bodies is not an effective tool for their protection'.³⁴¹ Instead HRW recommends decriminalisation of sex work as a critical step in the eradication of violence against sex workers and survivors of trafficking for sexual exploitation.³⁴² Decriminalisation has occurred in Victoria, Northern Territory, New South Wales and Queensland. In Aotearoa New Zealand, national decriminalisation has redirected police enforcement funds to provide health and social services for sex workers, and this initiative is thought to have reduced violence and increased sex worker comfort in reporting abuse to police.³⁴³ Better health outcomes for sex workers have been reported in the Netherlands, Germany and New South Wales due to decriminalisation.³⁴⁴

Overall, the literature is sparse on sex workers' experiences of sexual violence, but particularly so in relation to their experiences in court. Walker et al's study of the trajectories of 585 UK rape cases indicates that of all types of rape case, sex worker-client rape was the least likely to progress through the criminal justice system.³⁴⁵ Notably, it appears that none of the current Australian bench books devote a section to sex workers' experiences.³⁴⁶

6. People with disabilities

6.1 Context and prevalence

It is important to reiterate that, while people with disabilities are discussed below as a community to highlight risks, barriers and experiences, as with all other priority populations, they:

³³³ Human Rights Watch, Open letter of the European Coalition on Sex Workers' Rights and Inclusion to Members of the European Parliament Re: Prostitution Report (Open Letter, 12 September 2023) <<https://www.hrw.org/news/2023/09/12/open-letter-european-coalition-sex-workers-rights-and-inclusion-members-european>>.

³³⁴ Hélène Le Bail, Calogero Giametta and Noémie Rassouw, *What do sex workers think about the French Prostitution Act?* (Report, 2019) <<https://sciencespo.hal.science/hal-02115877/document>>.

³³⁵ American Civil Liberties Union, 'It's Time to Decriminalize Sex Work', *ACLU News* (3 July 2023) <<https://www.aclu.org/news/topic/its-time-to-decriminalize-sex-work>>.

³³⁶ Anca Minescu et al, *I must be some person: accounts from street sex workers in Ireland* (Report, 2022) <[https://researchrepository.ul.ie/articles/report/I must be some person accounts from street sex workers in Ireland/26248118](https://researchrepository.ul.ie/articles/report/I%20must%20be%20some%20person%20accounts%20from%20street%20sex%20workers%20in%20Ireland/26248118)>.

³³⁷ The Lancet, *HIV and sex workers* (Series, 23 July 2014) <<https://www.thelancet.com/series/HIV-and-sex-workers>>.

³³⁸ Global Alliance Against Traffic in Women, *Collateral damage: the impact of anti-trafficking measures on human rights around the world* (Report, 2007) https://www.antislavery.org/wp-content/uploads/2017/01/collateraldamage_2007.pdf

³³⁹ United Nations Human Rights Special Procedures, *Mandate of the Working Group on discrimination against women and girls: Eliminating discrimination against sex workers and securing their human rights* (Report, 2023) <<https://www.ohchr.org/sites/default/files/documents/issues/women/wg/sex-work-pp-fin-proofread-24-sept.pdf>>.

³⁴⁰ Ugly Mugs, *Crime has almost doubled in the two years since new law came in* (Website, 26 March 2019) <<https://uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf>>; NSW Global Network of Sex Work Projects, 'Sex workers in Queensland, Australia celebrate as sex work decriminalised after decades of campaigning' *NSWP News* (Website, 3 May 2024) <https://www.nswp.org/news/sex-workers-queensland-australia-celebrate-sex-work-decriminalised-after-decades-campaigning>.

³⁴¹ Human Rights Watch Submission (n 299).

³⁴² Ibid; see also Human Rights Watch (n 333).

³⁴³ Decker et al (n 290) 193.

³⁴⁴ Donovan et al (n 280) 9.

³⁴⁵ Walker et al (n 183) 306.

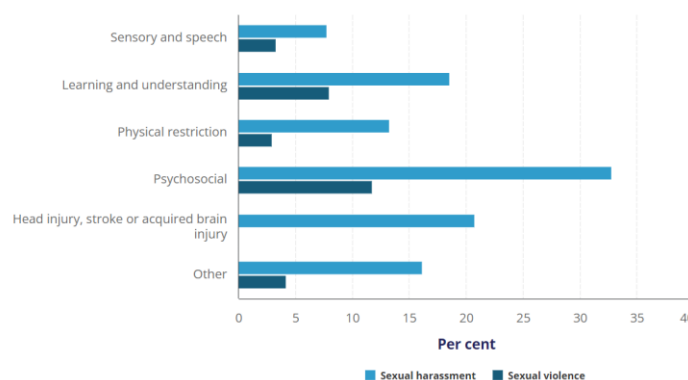
³⁴⁶ Searches of the bench books mentioned earlier (n 59) indicated only three peripheral mentions of sex work in the AIJA's *National Domestic and Family Violence Bench Book* (one case in the database, one mention in 'other bench books', and a mention of one article in 'key literature'), and five peripheral mentions in the Supreme Court of Western Australia's *Equal Justice Bench Book* (in relation to HIV and also criminalisation of young people). Searches of the other bench books returned null results.

... are not a homogenous group, but rather represent a diverse range of abilities and potential vulnerabilities ... adults with a disability may not all experience the same risk or vulnerability to sexual assault, and nor will the issues and barriers that they face be the same.³⁴⁷

Around one in 6 people (18%) in Australia live with some form of disability, with around a third having severe or profound disability.³⁴⁸ However, data collection for prevalence rates of sexual violence is challenging. As the 2021 Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability (‘Disability Royal Commission’) noted, there are many disparate datasets and at least nine different definitions of ‘disability’ in use nationally,³⁴⁹ which exacerbates the definitional challenges around ‘sexual violence’.

The 2016 and 2021-22 ABS PSS enabled participants with disability or a long-term health condition to self-identify;³⁵⁰ the 2016 data indicates almost one in 6 (16%) adults with disability experienced ‘sexual violence’ compared to one in 10 (9.6%) of adults without disability.³⁵¹ The latest 2021-22 PSS shows that, in the two years prior to the survey, incidents of sexual violence were around 1.5 times more likely in women with disability (4.0%) than women without disability (2.5%). Women with psychosocial disability (12%) were most vulnerable to sexual violence.³⁵²

Figure 4: Proportion of women with disability who experienced sexual violence in the last 2 years or sexual harassment in the last 12 months, by type of disability, 2021–22



Source: Australian Institute of Health and Welfare, ‘People with disability’³⁵³

³⁴⁷ Suellen Murray and Anastasia Powell, ‘Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response’ (2008) 9 *Issues* 1, 1-2.

³⁴⁸ AIHW, *People with disability in Australia* (Report, 23 April 2024) <<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/people-with-disability/prevalence-of-disability>>.

³⁴⁹ Royal Commission in Violence, Abuse, Neglect, and Exploitation of People with Disability, *Nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia* (March 2021) 14 (‘Disability Royal Commission’). Executive Summary, 185; see also Leanne Dowse et al, ‘Mind the gap: the extent of violence against women with disabilities in Australia’ (2016) 51(3) *Australian Journal of Social Issues* 341, 346.

³⁵⁰ See ABS, *Personal Safety, Australia 2016* (Report, 8 November 2017) (‘ABS PSS – 2016’). See also Australian Institute of Health and Welfare, ‘People with Disability’, *Family domestic and sexual violence* (Summary Report, 19 July 2024) (‘AIHW People with disability’) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/people-with-disability>>; ABS PSS – 2021-22 (n 131). Note in this ABS PSS series sexual violence ‘includes sexual assault and sexual threat’; see the expanded definition in the 2016 ABS PSS (below, n 351).

³⁵¹ ABS PSS – 2016 (n 350), lifetime prevalence rate since 15 years. The 2016 PSS defines ‘sexual violence’ as including sexual assault and sexual threat. ‘Sexual assault’ is defined as ‘an act of a sexual nature carried out against a person’s will through the use of physical force, intimidation or coercion, including any attempts to do this. This includes rape, attempted rape, aggravated sexual assault (assault with a weapon), indecent assault, penetration by objects, forced sexual activity that did not end in penetration and attempts to force a person into sexual activity. Incidents so defined would be an offence under state and territory criminal law.’ ‘Sexual threat’ is defined as ‘the threat of acts of a sexual nature that were made face-to-face where the person believed it was able to and likely to be carried out.’

³⁵² ABS PSS – 2021-22 (n 131).

³⁵³ AIHW *People with disability* (n 350), drawn from the ABS PSS – 2016 (n 350). Reproduced under creative commons, ‘CC BY’ (attribution, credit) (including commercial) licence. <<https://creativecommons.org/share-your-work/ccllicenses/>>. Note that the results for sexual violence for sensory and speech, learning and understanding had a relative standard error between 25% and 50% so should be used with caution.

The difficulty with the *PSS* series is that it excludes people who need communication support to participate in a survey, and people residing in non-domestic closed environments of care and containment. This ‘erasure’ of a critical dimension of gendered disability violence results in significant underreporting.³⁵⁴

The Disability Royal Commission heard evidence of much higher prevalence rates of sexual violence (since 15 years of age) for women with cognitive disability (46%) and women with psychological disability (50%) compared to women without disability (16%).³⁵⁵ Dowse’s individual analysis found many (62%) women with disability under 50 years had experienced ‘violence’.³⁵⁶ Fox’s review indicates that, for autistic people, prevalence rates for ‘interpersonal violence’ range from 49%-80%.³⁵⁷ Others have estimated around 90% of women with intellectual disability have experienced sexual violence, although this figure has been disputed.³⁵⁸

For women with intellectual disability, Nixon et al’s study found that there was a 5.5 times greater risk of experiencing a sexual offence than a community comparison sample.³⁵⁹ Similarly, Fogden et al’s study found the rate of sexual victimisation those with intellectual disability was six times higher than the comparison community, and there was a tenfold increase in the likelihood of sexual violence for those with intellectual disability as well as comorbid mental illness.³⁶⁰ Overall, the Royal Commission found women with disability were found to be almost twice as likely as women without disability to experience sexual violence (since 15 years of age).³⁶¹

In addition, when considering prevalence rates, an intersectional approach is important –

... to understanding the violence experienced by women with disabilities ... Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse (CALD) backgrounds, older women, women in regional, rural and remote areas, women who identify as Gay, Lesbian, Bisexual, Transsexual, Intersex and Queer (GLBTIQ), and women from economically disadvantaged backgrounds face a heightened risk of violence associated with disability.³⁶²

Again, the prevalence rates are not comparable, but are summarised in Table 6 below for convenience:

Table 6: Summary Table: key prevalence studies, women with disability

Study	Measure	%
ABS <i>PSS</i> , 2016	Women with disability, ‘sexual violence’ as defined, lifetime prevalence since 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, ‘violence’	62%
Fox	Women with autism	49%-80%
Nixon	Women with intellectual disability	5.5 x risk
Fogden et al	Women with intellectual disability	6 x risk

Sources: as indicated

³⁵⁴ Leanne Dowse, ‘Worlds apart and still no closer to justice’ in *Practical justice: principles, practice and social change* (Taylor and Francis Group, 2019) 43; Leanne Dowse et al (n 349) 350.

³⁵⁵ Disability Royal Commission (n 349). Data presented during Public Hearing 17.

³⁵⁶ Dowse (n 354) 43. However, Dowse appears to include physical, sexual and ‘disability-specific’ violence.

³⁵⁷ Jessica Fox, ‘The impact of intersectional disadvantage on autistic women’s experiences of interpersonal violence: A narrative review’ (2024) *Autism in Adulthood* 1, 5. The study does not clearly define ‘interpersonal violence’.

³⁵⁸ Maher et al (n 367) and some newspaper sources cite the 90% figure, although this is disputed by the Melbourne Disability Institute, which states ‘misinformation on the prevalence of violence is promulgated such as that 90% of women with intellectual disabilities have been sexually assaulted’: Melbourne Disability Institute, *Violence against people with disability – the numbers* (Information page) <<https://disability.unimelb.edu.au/home/projects/violence-against-people-with-disability>>.

³⁵⁹ Margaret Nixon et al, ‘Estimating the risk of crime and victimisation in people with intellectual disability: a data-linkage study’ (2017) 52 *Social Psychiatry and Psychiatric Epidemiology* 617, 621.

³⁶⁰ Billy C Fogden et al, ‘Crime and victimisation in people with intellectual disability: a case linkage study’ (2016) 16 *BMC Psychiatry* 1, 4.

³⁶¹ *Ibid* 3-116.

³⁶² Leanne Dowse et al (n 349) 345.

Women and girls with disability can also experience sexual violence in a broader range of contexts and relationships than those without disability, due to the dynamics of power, dependency and care.³⁶³ Perpetrators can include support workers, co-residents in residential settings and peers in disability services,³⁶⁴ who may view women and girls with disability as ‘ideal victims’, unable to report, and/or not being believed if they do report.³⁶⁵

6.2 Identifying and disclosing sexual violence

As for any other cohort of victim-survivors, shame, embarrassment and self-blame can act as barriers to reporting sexual violence.³⁶⁶ However, living with disability can create ‘severe and numerous’ barriers³⁶⁷ to disclosing or reporting, which have been described as of ‘grave concern’:³⁶⁸

- Physical isolation,³⁶⁹ or living in residential care, where ‘crimes occur “behind closed doors”’ where the victim-survivor has limited ability or support to report;³⁷⁰
- The offender may be someone the victim-survivor is dependent upon for care – an intimate partner, family member, or paid support worker;³⁷¹
- Lack of transport options to get to a police station or lack of physical accessibility once there;³⁷²
- A fear of being institutionalised,³⁷³ or being punished for being ‘assertive’;³⁷⁴
- A fear of having children removed from their care;³⁷⁵
- A fear of exacerbating pain or other symptoms associated with disability as a result of re-traumatisation;³⁷⁶
- Being ignored by others due to communication barriers (this is a major barrier);³⁷⁷
- Impacts from the sexual assault being mistakenly associated with the disability;³⁷⁸
- Not being able to identify the experience as sexual violence due to a lack of sexual health/consent/relationship education;³⁷⁹
- Lack of understanding of rights, and/or how to advocate for them, and/or lack of knowledge about how to report;³⁸⁰ and

³⁶³ Dowse (n 354) 44.

³⁶⁴ Disability Royal Commission (n 349) 3-105.

³⁶⁵ Dowse (n 354) 42.

³⁶⁶ Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime – Summary report* (Report, July 2014) 20 (‘VEOHRC Report’).

³⁶⁷ Maher et al, Women, disability and violence: Barriers to accessing justice: Final Report (Report, 2018) <https://www.anrows.org.au/publication/women-disability-and-violence-barriers-to-accessing-justice-final-report/read/#_Toc72939018>.

³⁶⁸ VEOHRC Report (n 366) 20.

³⁶⁹ George et al 2023 (n 22) 16-17.

³⁷⁰ Ibid. See also Maher et al (n 367).

³⁷¹ Maher et al (n 367) note that failures to report were commonly due to fears of reprisal, intimidation, unease about impact on the victim, paperwork, and because they did not know how to identify abuse.

³⁷² George et al 2023 (n 22) 16-17.

³⁷³ Disability Royal Commission (n 349) 5-7.

³⁷⁴ George et al 2023 (n 22) 16-17.

³⁷⁵ Maher et al (n 367); see also Jones et al, Wangkiny Yirra “Speaking Up” Project: First Nations women and children with disability and their experiences of family and domestic violence (Report, June 2023) <<https://espace.curtin.edu.au/bitstream/handle/20.500.11937/93864/93669.pdf?sequence=3&isAllowed=y>>; Sophie Claire Wood, Disablist hate crime: a scoping review of current research and understandings (Report, 2024) 21 <<https://www.diva-portal.org/smash/get/diva2:1871916/FULLTEXT01.pdf>>.

³⁷⁶ Anecdotal evidence, Sarah Rosenberg.

³⁷⁷ Disability Royal Commission (n 349) 5-7; Suellen Murray and Anastasia Powell, ‘Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response’ (2008) 9 *Issues* 1, 2. See also VEOHRC Report (n 366) 20-22.

³⁷⁸ Ibid.

³⁷⁹ Ibid.

³⁸⁰ Disability Royal Commission (n 349355) 5-7. See also VEOHRC Report (n 366) 20-22; George et al 2023 (n 22) 16-17; supported by anecdotal evidence by Sarah Rosenberg.

- Poor and/or dismissive police responses, such as sexism, ableism,³⁸¹ and questioning the reliability of the victim-survivor³⁸² – which has led to a ‘historic trust deficit’ in police.³⁸³

Despite the challenges for women and girls with disability in recognising abuse, and knowing their legal rights, there is a dearth of available information on ‘how and where to seek support after experiencing abuse’ and how to make a complaint.³⁸⁴ Fox concludes that autistic women’s service delivery needs are ‘unmet across all fields of practice’, and for autistic women with intersecting identities this problem is exacerbated, but ‘research has yet to explore this’.³⁸⁵

6.3 The criminal justice system

6.3.1 Law enforcement

When women and girls with disability do seek help via the criminal justice system, the experience with police can often be a negative one. While the Disability Royal Commission did hear some positive testimony about police conduct,³⁸⁶ its commissioned review of police responses to reports of crime by Dowse et al³⁸⁷ indicates a police culture of ‘derogatory language, negative or paternalistic stereotypes and a “what’s the point?” attitude’, with junior officers being unable to effect change.³⁸⁸ The Victorian Equal Opportunity and Human Rights Commission (‘VEOHRC’) reported:

[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.³⁸⁹

Such findings are consistent with findings regarding the general population; a 2017 Australian study indicates around one in 7 (14%) of people with disabilities self-reported that they were the subject of disability-based discrimination in the past 12 months.³⁹⁰ Indeed, discrimination was found to be an ‘under-recognised public health problem’, and that addressing it is likely to not only improve health but reduce social and economic disadvantage for people with disabilities.³⁹¹

The Royal Commission heard numerous testimonies reflecting a lack of trauma-informed police conduct, such as disallowing the victim-survivor’s parents and disability support case manager to be present during a police interview to report sexual assault;³⁹² or a male officer forcibly holding down a victim-survivor of sexual assault who was detained in a watch-house on other matters, while other officers cut off her old clothes to change into new ones.³⁹³ The Tasmanian Commissioner of Police also acknowledged there was a heightened risk of a victim-survivor with disability being misidentified as a perpetrator.³⁹⁴

Dowse et al found that victim-survivors with disability commonly reported a fear that police will not believe them, supporting earlier reports by the VEOHRC and Maher et al.³⁹⁵ Research with police also appears to confirm victim-survivors’ fears: two consistently held rape myths in relation to women with disability reporting sexual violence were that they are promiscuous, and that their story is not credible.³⁹⁶ Accordingly,

³⁸¹ Leanne Dowse et al, Police responses to people with disability (October 2021), 12.

³⁸² Disability Royal Commission (n 349) 5-7.

³⁸³ Ibid 8-272; VEOHRC Report (n 366) 21.

³⁸⁴ Maher et al (n 367).

³⁸⁵ Fox (n 357) 7.

³⁸⁶ Ibid 8-267.

³⁸⁷ Dowse et al (n 381) 9.

³⁸⁸ Ibid, citing VEOHRC Report (n 366) 25; Maher et al (n 367); Fox (n 357) 7.

³⁸⁹ VEOHRC Report (n 366) 24.

³⁹⁰ Supreme Court of Western Australia (n 26) 168.

³⁹¹ Ibid.

³⁹² Disability Royal Commission (n 349) 8-265, citing evidence from ‘Chloe’, the victim-survivor’s mother.

³⁹³ Ibid, citing evidence from Ms Kristy Hill.

³⁹⁴ Ibid, 8-266, 269; Maher et al (n 367) observes this is particularly true for First Nations victim-survivors.

³⁹⁵ VEOHRC Report (n 366) 20; Maher et al (n 367).

³⁹⁶ VEOHRC Report (n 366) 20 11, citing Jennifer Keilty & Georgina Connelly, ‘Making a statement: an exploratory study of barriers facing women with an intellectual disability when making a statement about sexual assault to police’ (2001) 16(2) *Disability & Society* 273, 280. See also Disability Royal Commission (n 349) 8-268; Maher et al (n 367).

police may not record the allegation³⁹⁷ and ‘often’ do not proceed with charges.³⁹⁸ One Victorian study of 850 rape allegations made to police indicates that reports by victim-survivors with cognitive disability or mental health problems were least likely to result in a charge and twice as likely to be determined false.³⁹⁹ These findings are supported by a study in Aotearoa New Zealand, which indicates police only considered 13% of sexual assault reports by victim-survivors with mental health problems or intellectual disability to be genuine.⁴⁰⁰

Further, Dowse et al highlight another ‘defining feature’ of police responses to people with disabilities – failure to identify and respond to disability appropriately.⁴⁰¹ This was felt most acutely by people with ‘invisible disabilities’, for example, cognitive disability. Limitations in communication skills or fluency meant that some victim-survivors were severely disadvantaged in reporting, given the police reliance on verbal communication.⁴⁰²

The communication issue raises a further problem consistently indicated in the literature: police resistance to engaging mandated supports, or lack of same, such as intermediaries, or Auslan or First Nations sign language interpreters.⁴⁰³ This can be due to perceptions of effort, cost or lack of awareness, or a misunderstanding of how deaf people communicate or simply because ‘it will be quicker to do it without an interpreter’.⁴⁰⁴ Sometimes family are used to interpret – even in highly inappropriate circumstances:

I have seen cases where the person’s husband is used as the interpreter, even when he was the perpetrator.⁴⁰⁵

Dowse et al also note the disturbing issue of police violence, which is ‘directly attributable to the power, training and socialisation of police. Indeed, it is not only individuals, but it is institutions and systems that perpetuate police violence’.⁴⁰⁶ Research from the US shows that ‘police sexual misconduct is the second most frequently reported form of police misconduct’, but it is infrequently discussed in the literature.⁴⁰⁷ Where complaints are raised, police routinely receive little or no sanction.⁴⁰⁸ Other intersecting factors, such as LGBTIQ+ status, can increase challenges in interactions with police:⁴⁰⁹

The over-policing of First Nations and certain culturally and linguistically diverse communities, and the intersecting and compounding influence of racism and ableism amongst police add significant additional complexity for First Nations and culturally and linguistically diverse people with disability in their interactions with police ... [Disadvantages] are amplified for First Nations people with disability due to the historical continuity of fear, intimidation and racism in the police force.⁴¹⁰

A recent Australian study by Jones et al notes the trauma of reporting sexual assault and being disbelieved:

I tried to charge them because it happened three or four times in one night ... but the detectives were so biased against me – they were laughing at me, and were like, you know that if you go to court, the judge is not going to believe you, like one person against two is not going to help you in court ... They took the statement, and they took my evidence. I had my clothes I was wearing that night. They took the towel. I told them it has evidence on there, like proper evidence in the bush, and they

³⁹⁷ Disability Royal Commission (n 349) 8-268. Where sexual violence occurs in the context of domestic violence, the failure to record then does not trigger the integrated system response to family violence, so the victim-survivor is not referred to specialist services or legal support.

³⁹⁸ Dowse et al (n 387) 9; see also Disability Royal Commission (n 349) 8-268; VEOHRC Report (n 366) 23; Maher et al (n 367).

³⁹⁹ Ibid 11, citing Suellen Murray & Melanie Heenan, ‘Reported rapes in Victoria: police responses to victims with a psychiatric disability or mental health issue’ (2012) 23(3) *Current Issues in Criminal Justice*.

⁴⁰⁰ Dowse et al (n 387) 11.

⁴⁰¹ Ibid 13.

⁴⁰² Ibid 15.

⁴⁰³ Ibid 12, 15-16; VEOHRC Report (n 366) 22.

⁴⁰⁴ VEOHRC Report (n 366) 22.

⁴⁰⁵ Ibid.

⁴⁰⁶ Dowse et al (n 387) 19.

⁴⁰⁷ Ibid 18-19.

⁴⁰⁸ Ibid 19.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid 22-23; see also the VEOHRC Report (n 366) 24.

went and found it the next day, it was there, exactly where I told them to go and get it, and they threw it in the bin before they put it through the evidence machine ...⁴¹¹

Alternately, prosecutors may fail to progress the case:

... the public prosecutor rejected proceeding against the carer/perpetrator on the basis that it was our daughter's word against his. The police were surprised as they absolutely believed her ... My daughter is very clear and knowledgeable about not only the sexual abuse but also the decisions made by those in control ... We as a family feel utterly let down by the Justice system as well as the lack of accountability with regard to the staff in whose care we left our daughter.⁴¹²

Another small Australian study by Fraser-Barbour⁴¹³ indicates a failure to actively plan for and engage with people with intellectual disability, and/or dismiss their ability to contribute – with the silencing causing a sense of disempowerment and secondary trauma. One support worker participant described a meeting between the victim-survivor with disability, family and lawyers:

... during the discussion the actual victim with the intellectual disability interjected and complained, and said that they were embarrassed by the fact that people were talking as if they weren't there [...]. And it's quite clear that this person understood what we were talking about, otherwise they would not have reacted and responded the way that they did.

6.3.2 The court environment

Where women and girls' reports of sexual violence proceed through the justice system, experiences at court can be underpinned by a fundamental misunderstanding of disability, such as:

... a person with cerebral palsy, who had a cramped hand being told to lie it flat on the bible rather than curled.⁴¹⁴

Maher et al note that it is common to find justice representatives struggling to identify disability, respond appropriately and provide reasonable adjustments.⁴¹⁵ If disability is recognised, the literature also consistently indicates that an intellectual disability is simply assumed.⁴¹⁶ People with disabilities have expressed frustration about reasonable adjustments not being provided because:

- Courts were not adjourned to ascertain whether a person had disabilities/screening approaches did not exist;
- People with disabilities were unaware they were available;
- Support persons or interpreters were not pre-booked;
- Support workers were unavailable;
- The court banned their communication devices; and
- There was no assistance to fill out the required forms or engage with the relevant procedures.⁴¹⁷

Cross-examination also raised 'serious concerns'.⁴¹⁸ For people with intellectual disability, inappropriate question format (improper questions) can trigger suggestibility, acquiescence, and lessen accuracy and memory,⁴¹⁹ and fatigue can become an issue⁴²⁰ – which is why intermediaries are so important. Even just appearing in court can pose numerous barriers for people with disabilities, such as inaccessibility of courtrooms, inability or reduced ability to sit/stand in the same position, inability or reduced ability to concentrate, behavioural disabilities, difficulty understanding the court process or severity of the situation,

⁴¹¹ Jones et al (n 375) 105.

⁴¹² Dowse (n 354) 38-39.

⁴¹³ Ellen Frances Fraser-Barbour, Ruth Crocker and Ruth Walker, 'Barriers and facilitators in supporting people with intellectual disability to report sexual violence: perspectives of Australian disability and mainstream support providers' (2018) 20(1) *The Journal of Adult Protection* 5.

⁴¹⁴ VEOHRC Report (n 366) 38.

⁴¹⁵ Maher et al (n 367); see also Supreme Court of Western Australia (n 26) 225.

⁴¹⁶ Maher et al (n 367).

⁴¹⁷ Supreme Court of Western Australia (n 26) 225-226.

⁴¹⁸ Ibid 226.

⁴¹⁹ Joanne Morrison et al, 'Communication and cross-examination in court for children and adults with intellectual disabilities: A systematic review' (2019) *The International Journal of Evidence and Proof* 366, 389.

⁴²⁰ Judicial Commission of New South Wales (n25), 'People with disabilities' [5.6.3].

communication barriers or challenges with demeanour such as appearing distracted, jumbled, severely anxious, fearful, delusory or aggressive/angry. These challenges can all be compounded where the victim-survivor is a First Nations person, has a CALD background, is a child or young person, or is of diverse sexuality or gender identity.⁴²¹

Outcomes from adversarial jury trials can also be harrowing. The Disability Royal Commission heard evidence from ‘Chloe’, who lives with cerebral palsy; her support worker groomed her, then exerted coercive control, extending to financial exploitation, physical and sexual abuse that resulted in one pregnancy and a miscarriage. The accused was ‘charged with multiple counts of rape, grievous bodily harm, torture and assault’, but there was no conviction. Chloe conveyed her negative experience of the trial process, stating ‘[the jury] saw me as disabled and a liar, and he got off’.⁴²²

The VEOHRC reported that discontinuances often occur due to courts not accommodating a disability, the judge ‘not picking up on issues with the cross-examination’, and inappropriate questioning despite prior case conferencing.⁴²³ Police prosecutors felt defence lawyers would ‘vigorously pursue the argument that the victim lacked credibility’,⁴²⁴ or might question the victim-survivor’s disability so as to exclude video evidence.⁴²⁵

6.3.3 Reform

To improve justice responses, Dowse et al’s review recommends specialist scenario-based training for police, co-designed and delivered by people with lived experience,⁴²⁶ may be effective in obtaining more useful information from victim-survivors of sexual violence.⁴²⁷ The Royal Commission suggested that police training should encompass prevalence rates of sexual violence for women and girls with disability, offending patterns (possible multiple perpetrators over a victim-survivor’s lifetime), differences in nature and severity of violence, and ways to prevent misidentification.⁴²⁸

Ultimately, the Royal Commission recommended all Australian governments and police services should collaborate with people with disabilities in co-designing, implementing and evaluating strategies to improve police responses, and the introduction of ‘adequate numbers’ of dedicated disability liaison officers.⁴²⁹ It also recommended the introduction of alternative reporting mechanisms.⁴³⁰ Maher et al’s study also notes the need for provision of further information on abuse and rights as a ‘prerequisite for justice’, although they opine that:⁴³¹

Despite systematic investigations of, reports into, and recommendations for change, there appears to be limited progress towards embedding access to justice for women with disability facing violence in meaningful and concrete ways.

7. Older women

7.1 Context and prevalence

ABS data indicates that as at June 2020, there were 4.2 million ‘older people’ in Australia aged 65 years and over, or 50 years and over for First Nations people, reflecting the significant disparity in life

⁴²¹ Ibid; see also Supreme Court of Western Australia (n 26) 227.

⁴²² Disability Royal Commission (n 349) 3-117.

⁴²³ VEOHRC Report (n 366) 39.

⁴²⁴ Ibid.

⁴²⁵ Ibid 40.

⁴²⁶ Ibid 28.

⁴²⁷ Disability Royal Commission (n 349) 8-266. See also Fraser-Barbour (n 413).

⁴²⁸ Ibid 8-271.

⁴²⁹ Ibid 8-276, recommendation 8.20.

⁴³⁰ Disability Royal Commission (n 349) 8-276, recommendation 8.20. The Commission discussed third party reporting, where disclosure can be made to a trusted third party, and the victim-survivor then decides whether they want the third party to report to police or an information-only report to be made: 8-273.

⁴³¹ Maher et al (n 367).

expectancy.⁴³² Around 2.2 million older people are women, including around 65,000 First Nations women.⁴³³ As with other overrepresented populations, there is significant diversity. More than half of all older Australians (52.3%) have a disability (including 10% with dementia),⁴³⁴ around one third of older Australians (37%) have a culturally and linguistically diverse background,⁴³⁵ and 1 in 17 people (5.9%) that reported a diverse sex and/or gender identity were older Australians.⁴³⁶ The ABS predicts that the number of older Australians will increase significantly over the next 45 years (2021-2066) from 17% to 21% of the population.⁴³⁷

In determining prevalence rates for sexual violence against older women the lack of consistent terminology and methodologies is challenging.⁴³⁸ Once again, sexual violence is measured inconsistently, and sometimes swept into the general term ‘elder abuse’. This ‘definitional chaos’⁴³⁹ is particularly problematic as it places the focus on age, removing the gendered element which is ‘at the core’ of understanding and responding to sexual violence.⁴⁴⁰ An age-related focus means that responses may be directed at health or medication rather than the violence itself.⁴⁴¹ It also means that older women are not viewed as a distinct cohort to be supported by the domestic/sexual violence services. There is a pressing need for research that acknowledges the intersections between gender, age and other characteristics including disability and sexuality.⁴⁴²

Estimates of prevalence range from 0.4% to 59%, although the studies are clearly not comparable. In 2020, the AIFS *Elder Abuse Prevalence Study* by Qu et al surveyed 7,000 older people who were living in private homes in the community, and had the capacity to engage in telephone interviews.⁴⁴³ Notably, people without access to a telephone, those in institutional care (aged care, prisons, military bases), people ‘incapable of undertaking an interview due to a physical or health condition’ or affected by drugs or alcohol were excluded.⁴⁴⁴ The dataset provides ‘very little insight’ into the extent of sexual abuse given sample

⁴³² AIHW, ‘Older Australians – summary’, *Older people* (Summary Report, 2 July 2024) <<https://www.aihw.gov.au/reports/older-people/older-australians/contents/summary>>. See also Australian Law Reform Commission, *Elder Abuse—A National Legal Response* (Report 131, 8 June 2017) (‘ALRC Elder Abuse Report’): ‘Aboriginal and Torres Strait Islander persons have a significantly lower life expectancy than other Australians: for the Aboriginal and Torres Strait Islander population born in 2010-2012, life expectancy was estimated to be ... 9.5 years [lower] for females’ compared with non-Indigenous women (73.7 compared with 83.1 years).

⁴³³ AIHW, ‘Older Australians – demographic profile’, *Older people* (Summary Report, 2 July 2024) <<https://www.aihw.gov.au/reports/older-people/older-australians/contents/summary>>, AIHW, ‘Older Aboriginal and Torres Strait Islander People’, *Older Australians* (Summary Report, 2 July 2024) indicates there are 124,000 Aboriginal and Torres Strait Islander people aged 50 and over, with 53% (65,720) being women.

⁴³⁴ ABS, ‘Disability, Ageing and Carers, Australia: Summary of Findings’, *Disability* (Summary Report, 4 July 2024) <<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release>>; ALRC Elder Abuse Report (n 432) at 2.19 estimates a 10% prevalence rate for dementia in people aged 65 or over, or 30% in people aged 85 or over (in 2016).

⁴³⁵ AIHW, ‘Culturally and linguistically diverse older people’, *Older Australians* (Summary Report, 2 July 2024) <<https://www.aihw.gov.au/reports/older-people/older-australians/contents/population-groups-of-interest/culturally-linguistically-diverse-people>>.

⁴³⁶ AIHW, ‘Older Australians who identify as lesbian, gay, bisexual, transgender or intersex’, *Older Australians* (Summary Report, 2 July 2024) <<https://www.aihw.gov.au/reports/older-people/older-australians/contents/population-groups-of-interest/identify-as-lgbti>>.

⁴³⁷ AIHW, ‘Older people’, *Family, domestic and sexual violence* (Summary Report, 19 July 2024) (‘AIHW Older People’) <<https://www.aihw.gov.au/reports/older-people/older-australians/contents/summary>>.

⁴³⁸ Numerous studies comment on the difficulties of multifarious research designs and methodologies. See, for example, Hannah Bows, ‘Sexual Violence Against Older People: A Review of the Empirical Literature’ (2018) 19(5) *Trauma, Violence and Abuse* 567, 568; Jessica K Gill, ‘Barriers to Help Seeking among Victims of Elder Abuse: A Scoping Review and Implications for Public Health Policy in Canada’ (2022) 41(3) *Canadian Journal on Aging* 460, 461; Hand et al, ‘Societal, organizational, relational, and individual perceptions of sexual violence against older adults and its prevention: a systematic scoping review’ (2022) 62(10) *The Gerontologist* e597, e607; Rosemary Mann, Philomena Horsley and Jean Tinney, “‘You Can’t Do That!’ The Sexual Assault of Older Women in Australia’ in H Bows (ed), *Violence against older women volume 1: nature and extent* (Springer International Publishing, 2019) 60; Sarah R Meyer, Molly E Lasater and Claudia Garcia-Moreno, ‘Violence against older women: A systematic review of qualitative literature’ (2020) 15(9) *PLoS One* e0239560..

⁴³⁹ H Bows, ‘Rape of older people’ in MAH Horvath and JM Brown (eds), *Rape: challenging contemporary thinking – 10 years on* (Taylor & Francis Group, 2022) (‘Bows 2022’) 94.

⁴⁴⁰ Ibid; see also H Bows and N Westmarland, ‘Rape of older people in the United Kingdom: Challenging the “real-rape” stereotype’ (2017) 57(1) *British Journal of Criminology* 1, 13.

⁴⁴¹ Bows 2022 (n 439) 94.

⁴⁴² Ibid.

⁴⁴³ AIFS Elder Abuse Study (n 14) 21.

⁴⁴⁴ Ibid.

limitations,⁴⁴⁵ but as the AIHW notes, this is ‘the best national data source at present’.⁴⁴⁶ The AIFS data indicates that around 39,500 (1.2%) of women aged 65 and over had experienced ‘sexual abuse’, broadly defined, in the past year.⁴⁴⁷ The AIFS study is consistent with Yon’s (geographically diverse) meta-analysis, which indicated a past-year pooled prevalence estimate of ‘sexual abuse’ for older people 60+ years was 0.9% (0.6%-1.4%);⁴⁴⁸ however recent Aotearoa New Zealand research suggests adult victim-survivors 65+ years represented 2.25% of all adult victim-survivors of ‘sexual assault and related offences’ for a one-year period.⁴⁴⁹

Hill and Katz’s analysis of 2016 ABS PSS data which, like the Aotearoa New Zealand study, focuses more narrowly on ‘sexual violence (assault and threat)’, indicates around 0.4% or 12,700 women aged 55 years and over had experienced an incident in the past year.⁴⁵⁰ In contrast, Bows’ estimate of past-year sexual violence for older people within the context of intimate partner violence in the UK is as high as 15%, and her review of literature on prevalence in community dwellings indicated lifetime prevalence rates from 6% to 59%.⁴⁵¹

For First Nations women aged 45 years and over, Hill and Katz only discussed recorded crime data for two states, due to low numbers (a total of 71 offences for 2016). This provided limited insight save that ‘the majority of recorded sexual assault offences are committed by known persons’.⁴⁵² As one state report observes, given the societal focus on First Nations offending and little attention to or research with victim-survivors, ‘the voices of Aboriginal and Torres Strait Islander victims are silenced.’⁴⁵³

Given the fragmented nature of prevalence studies, challenges with data collection, and the significant factors contributing to silencing of older women (discussed further below), the reports of statistical prevalence should be treated with caution. Nevertheless, they are tabularised below in Table 7 for convenience:

Table 7: Summary Table: prevalence studies, older women

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%

⁴⁴⁵ Trish Hill and Ilan Katz, *Insights into abuse of older people - analysis of Australian Bureau of Statistics datasets* (Final Report, 2019) 54 <<https://unsworks.unsw.edu.au/entities/publication/346d17e3-b456-47ca-ad55-4d6b744992db>>.

⁴⁴⁶ AIHW Older People (n 437), citing Australian Institute of Family Studies, *National Elder Abuse Prevalence Study: Final Report* (Report, 2021) (‘AIFS Elder Abuse Report’) <<https://aifs.gov.au/research/research-reports/national-elder-abuse-prevalence-study-final-report>>.

⁴⁴⁷ AIFS Elder Abuse Study (n 446) 33. For ‘sexual abuse’, participants were asked whether in the past year someone they knew: sexually touched them, made them view pornography, forced them to engage in sexual acts (not defined), talked to them in a sexual way, or tried to engage them in any other unwanted sexual experience(s), against their will (at 39). Most incidents involved being spoken to in a sexual way (76%), then sexual touching (32.2%), and forced ‘sexual acts’ (15.9%) (at 40).

⁴⁴⁸ Yongjie Yon et al, ‘Elder abuse prevalence in community settings: a systematic review and meta-analysis’ (2017) 5 *Lancet Global Health* e147, e147: ‘sexual abuse’ was defined as ‘forcing an older person to take part in a sexual act when the elder does not or cannot consent’: e150. ‘Sexual act’ was not defined. Prevalence was for past year.

⁴⁴⁹ Tess Patterson et al, ‘Sexual Assault in Older-Age Adults: Criminal Justice Response in New Zealand’ (2023) *Journal of Aging and Social Policy* 1, 7.

⁴⁵⁰ Hill and Katz (n 445) 53.

⁴⁵¹ Bows 2022 (n 439) 96, citing her earlier work, Bows (n 438). Bows’ earlier work defines ‘sexual violence’ as ‘any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work’ (at 568).

⁴⁵² Ibid 52-54, at 52; the states reported were New South Wales and Queensland; see also AIHW Older People (n 437), citing ABS, *Recorded Crime – Victims* (Summary Report, 2022) <<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2022>>.

⁴⁵³ Australian Capital Territory Government, *Listen. Take action to prevent, believe and heal* (Report, 2021) 21.

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%

Sources: as indicated

For the general population, the AIFS study by Qu indicates most sexual abuse is perpetrated by friends (42%), acquaintances (13%) and neighbours (9%).⁴⁵⁴ However, the literature also documents women's sexual violence by husbands (sometimes with dementia).⁴⁵⁵ In aged care facilities opportunism, and the dynamic of power and dependency in care, can be acute. The 2021 *Royal Commission into Aged Care Quality and Safety in Australia* estimated around 2,520 incidents of 'unlawful sexual contact' each year, or almost 50 per week.⁴⁵⁶ Perpetrators can be other residents or carers.⁴⁵⁷ The Commission found this to be a 'disgrace' and 'source of national shame'.⁴⁵⁸ One witness testified:

My 71 year old husband is a resident in aged care because of advanced Parkinson's disease ... he was horrifically sexually abused by 2 night duty staff ... 1 nurse a female held him down while the other, a male masturbated him. He is frightened, withdrawn and very distressed.⁴⁵⁹

Another witness described their mother's 'latest' sexual assault, which –

... occurred whilst she was in her room in her bed, perpetrated by one of the other residents who was able to wander freely into her room and assault her.⁴⁶⁰

The Commission found that the level of abuse, including sexual assaults, in aged care facilities was 'unacceptably high'⁴⁶¹ – yet older people, their families and care workers were reluctant to speak out due to a fear of retribution.⁴⁶² Advocacy groups, such as the Older Women's Network, highlight the deeply concerning failure to hold providers of aged care accountable for their dereliction of duty to keep older women safe in aged care facilities. They continue to hear from sexual assault services that providers are not keeping older women safe from known perpetrators with cognitive decline who are repeat offenders of sexual assault.⁴⁶³

7.2 Identifying and disclosing sexual violence

Under-reporting by older women can occur for a variety of reasons; many of the same barriers to reporting as that experienced by the priority populations discussed previously, particularly women and girls with a CALD background, also hold true for older women. The stigma and shame around sexual abuse can be acutely felt, leading to the silencing of older women. The Older Women's Network is running body mapping exercises with groups of older women to understand how they conceptualise sexual abuse, and the results clearly show that they are not willing to discuss this if they are not in a safe, supportive space.⁴⁶⁴

It is therefore unsurprising that the AIFS study found that sexual abuse was the second most likely form of abuse (after neglect) to be rated as 'not serious' by victim-survivors, despite them having high distress scores.⁴⁶⁵ The views of victim-survivors downplaying the severity of rape and sexual assault also appear to

⁴⁵⁴ AIFS Elder Abuse Study (n 446) 72.

⁴⁵⁵ See generally Mann, Horsley and Tinney (n 438).

⁴⁵⁶ Commonwealth, *Royal Commission into aged care quality and safety: executive summary* (Final Report, 2021) 68, 140 <<https://www.royalcommission.gov.au/system/files/2021-03/final-report-executive-summary.pdf>>.

⁴⁵⁷ Ibid 68.

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid, Volume 2, 97.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid, Executive summary, 140.

⁴⁶² Ibid.

⁴⁶³ Anecdotal evidence, Yumi Lee, CEO, Older Women's Network; George et al 2024 (n 273) 38.

⁴⁶⁴ Lee (n 463).

⁴⁶⁵ AIFS Elder Abuse Study (n 14) 161.

be mirrored by providers in aged care facilities. A KPMG study highlighted the ‘somewhat anomalous’ result that over half (58.8%) of aged care providers reported Type 1 incidents of ‘unlawful sexual contact’ (rape and sexual assault, including touching genitals without consent) as having ‘no impact’ on the victim-survivor.⁴⁶⁶

These findings correlate with the AIFS findings on help-seeking. Among all subtypes of elder abuse, help-seeking was least likely for sexual abuse (75% did not seek help).⁴⁶⁷ Those that sought help contacted a family member, doctor, nurse, friend or neighbour; ‘[p]olice and legal responses were almost never invoked’.⁴⁶⁸ One Canadian study indicates that those experiencing poly-victimisation were around four times as likely to seek help, indicating individuals may wait until the abuse is severe before disclosing it to a third party.⁴⁶⁹

As with other priority populations, barriers are not just ‘internal’ or age-related, but also social, cultural and systemic.⁴⁷⁰

- Fear of retribution (as noted above);
- Dependency on caregivers;⁴⁷¹
- Lack of resources, including financial,⁴⁷² transport,⁴⁷³ or lack of access to technological support;⁴⁷⁴
- Fear, shame, stigma, personal wellbeing;⁴⁷⁵
- Self-blame, perceptions of destiny, fate;⁴⁷⁶
- Not recognising the conduct as sexual abuse, or being aware of rights;⁴⁷⁷
- Lack of awareness of, or access to, support services;⁴⁷⁸
- Cognitive impairments that may affect the victim-survivor’s ability to report the abuse;⁴⁷⁹
- Poor physical or mental health, substance misuse;⁴⁸⁰
- The ‘hidden’ nature of sexual violence,⁴⁸¹ including family reluctance to ‘interfere’;⁴⁸²

⁴⁶⁶ KPMG, *Prevalence study for a serious incident response scheme (SIRS)* (Final Report, November 2019) 33-34

<https://www.health.gov.au/sites/default/files/documents/2020/06/prevalence-study-for-a-serious-incident-response-scheme-sirs_0.pdf>.

⁴⁶⁷ AIFS Elder Abuse Study (n 14) 161.

⁴⁶⁸ Ibid. Mann, Horsley and Tinney (n 438) 62 cite earlier research suggesting 20% of sexual assaults of older women are reported to police. Note the contrasting finding in Canada, where Gill notes 72% of individuals experiencing physical or sexual assault sought help: Gill (n 438) 469.

⁴⁶⁹ Gill (n 438) 469.

⁴⁷⁰ Mann, Horsley and Tinney (n 438) 73.

⁴⁷¹ Ibid 468; AIHW Older People (n 437); Mann, Horsley and Tinney (n 438) 62; Bows 2022 (n 439) 99; Gill (n 438) 468.

⁴⁷² Bows 2022 (n 439) 99; Bridget Penhale, ‘Older women as the invisible victims of intimate partner violence: findings from two European research projects’ in C Bradbury-Jones and L Isham (eds), *Understanding gender-based violence* (Springer Nature Switzerland, 2021) 153; Deborah Finfgeld-Connett, ‘Intimate partner abuse among older women: Qualitative systematic review’ (2014) 23(6) *Clinical Nursing Research* 664, 675.

⁴⁷³ NCAS Report (n 98) 219.

⁴⁷⁴ Ibid.

⁴⁷⁵ Gill (n 438) 468; AIHW Older People (n 437); Walker et al (n 183) 308; Hadass Goldblatt et al, ‘“Who Would Sexually Assault an 80-Year-Old Woman?”: Barriers to Exploring and Exposing Sexual Assault Against Women in Late Life’ (2022) 37(5-6) *Journal of Interpersonal Violence* 2751, 2756, 2759; Mann, Horsley and Tinney (n 438) 62; Bows 2022 (n 439) 99; Finfgeld-Connett (n 472) 675; Meyer, Lasater and Garcia-Moreno (n 438) 30.

⁴⁷⁶ Gill (n 438) 469; AIHW Older People (n 437); Walker et al (n 183) 308 Goldblatt (n 475) 2759; Bows 2022 (n 439) 100; Finfgeld-Connett (n 472) 675.

⁴⁷⁷ Walker et al (n 183) 308; Penhale (n 472) 154; Gill (n 438) 469.

⁴⁷⁸ Gill (n 438) 470; Meyer, Lasater and Garcia-Moreno (n 438) 31.

⁴⁷⁹ Yumi Lee, CEO, Older Women’s Network; George et al 2024 (n 273) 38; Mann, Horsley and Tinney (n 438) 62; Bows 2022 (n 439) 99.

⁴⁸⁰ AIHW Older People (n 437); Bows 2022 (n 439) 99. Walker et al (n 183) 307 indicates older women victim-survivors were significantly more likely to have mental health issues and alcohol misuse; more than one third of complainants had consumed alcohol at the time of the incident; none of these cases resulted in a referral for charge.

⁴⁸¹ Madeline Lee, Emily Moir and Nadine McKillop, ‘Public views of sexual assault, and its prevention, in residential aged care facilities’ (2024) 57(1) *Journal of Criminology* 23, 24-25.

⁴⁸² Mann, Horsley and Tinney (n 438) 66.

- Previous experiences of abuse,⁴⁸³ minimising and normalising,⁴⁸⁴ and/or a feeling that their situation is immutable⁴⁸⁵ or that they should ‘make the best of it’;⁴⁸⁶
- Weak support networks;⁴⁸⁷
- Fear of losing support networks or family;⁴⁸⁸
- Generational patriarchal norms perceiving non-consensual sexual activity as ‘wifely duties’ rather than assault;⁴⁸⁹
- Generational patriarchal norms to stay with an abusive partner,⁴⁹⁰ or deterring disclosure;⁴⁹¹
- Cultural norms that lack a vocabulary to narrate the experience;⁴⁹²
- Social/cultural attitudes including ageism and stereotypes (discussed below).⁴⁹³

In addition to the above barriers, older women victim-survivors are often invisible to those that could help most: health workers. A systematic review of healthcare professionals and nurses by Garma indicates that there is a significant issue with identifying abuse, or a lack of confidence that abuse is being experienced, which leads to a reluctance to interfere. Indeed, more students in training recognised abuse than qualified professionals. Concerns around the lengthy judicial process and victim-survivor wellbeing were also factors in health professionals failing to report, as well as self-interested reasons such as placing themselves in conflict with other colleagues. Further training was recommended.⁴⁹⁴ Another systematic review by Meyer, Lasater and Garcia-Moreno indicates healthcare workers may assume older women cannot experience ‘violence’, can engage in minimising behaviours, and/or a lack of confidentiality.⁴⁹⁵

These studies align with a recent Australian study by Smith, Wright and Ibrahim of 53 Australian aged care nurses.⁴⁹⁶ Despite institutional prevalence rates varying between 1.8% and 38.1%, few reported unwanted sexual behaviour either of a resident-resident nature (<35%) or staff-resident nature (<22%) once a year. Most were not informed by another resident (>75%) or had not personally reported (>77%) unwanted sexual behaviour. Almost half believed unwanted sexual behaviour would occur once a decade, and most considered there to be no barriers to reporting (77.8%). Most were unaware whether their facility filed an incident report to the regulator or authorities in the past 12 months. The study concluded most nurses do not recognise, record or report elder abuse, and education programs are ‘largely absent’.⁴⁹⁷

Responses by health practitioners can also be less than supportive, hampered by a lack of awareness and/or acceptance of stereotypical rape myths. One study found several health practitioners expressed ‘disgust’ when older women presented experiencing sexual violence:

I was quite disgusted by her descriptions . . . I wanted to put my hands over my ears so as not to hear. The main thing was that I felt helpless. She threw this thing at me; I didn’t think I could handle it. I didn’t know what to do with it.⁴⁹⁸

⁴⁸³ AIHW Older People (n 437).

⁴⁸⁴ Meyer, Lasater and Garcia-Moreno (n 438) 31.

⁴⁸⁵ Finfgeld-Connett (n 472) 675.

⁴⁸⁶ Ibid 677.

⁴⁸⁷ Walker et al (n 183) 308.

⁴⁸⁸ Mann, Horsley and Tinney (n 438) 65, noting the persistent rape of elderly women, one who took no action ‘because she feared what this would do to her daughter’, or another ‘for fear they would suicide out of same that she had been raped’; see also Finfgeld-Connett (n 472) 674; Gill (n 438) 469.

⁴⁸⁹ Goldblatt (n 475) 2756; Mann, Horsley and Tinney (n 438) 65; Bows 2022 (n 439) 99, 100; NCAS Report (n 98) 219.

⁴⁹⁰ Meyer, Lasater and Garcia-Moreno (n 438) 1, 33; Penhale (n 472) 152.

⁴⁹¹ Walker et al (n 183) 308; Goldblatt (n 475) 2756; Mann, Horsley and Tinney (n 438) 62; Finfgeld-Connett (n 472) 674; Meyer, Lasater and Garcia-Moreno (n 438) 31.

⁴⁹² Goldblatt (n 475) 2760.

⁴⁹³ Walker et al (n 183) 307.

⁴⁹⁴ Carmen Touza Garma, ‘Influence of health personnel’s attitudes and knowledge in the detection and reporting of elder abuse: An exploratory systematic review’ (2017) 26 *Psychosocial Intervention* 73.

⁴⁹⁵ Meyer, Lasater and Garcia-Moreno (n 438) 31.

⁴⁹⁶ Daisy E Smith, Meghan T Wright and Joseph E Ibrahim, ‘Aged care nurses’ perception of unwanted sexual behaviour in Australian residential aged care services’ (2022) 41 *Australasian Journal of Aging* 153, 153, 157.

⁴⁹⁷ Ibid 157.

⁴⁹⁸ Goldblatt (n 475) 2760.

7.3 Health impacts

Bows notes that the impacts of sexual violence for older women are ‘broadly in line with those reported among all victim-survivors’, including anxiety, depression, confusion, anger, self-harm, suicidal thoughts, panic attacks and post-traumatic stress disorder,⁴⁹⁹ although several studies including Meyer, Lasater and García-Moreno’s systematic review indicate ‘emotion-based coping strategies’ such as alcohol and drug use, to ‘navigate difficult decisions ... and protect other family members in the context of exposure to violence’.⁵⁰⁰ Injuries such as fractures, external and genital trauma can impact older women more adversely, and can create long-term conditions such as incontinence or compound existing conditions.⁵⁰¹ One early US study found that more than half (58%) of the aged care residents who were sexually assaulted died within 12 months of the incident.⁵⁰² Subsequent studies confirm that, generally, sexual assaults of elderly victim-survivors are more violent, and many result in a lethal outcome.⁵⁰³

A recent Australian study by Cations et al indicates that older women with exposure to ‘intimate partner violence’⁵⁰⁴ ‘die significantly earlier than women who do not’; this risk was highest where women reported both historical intimate partner violence and current violence at baseline.⁵⁰⁵ They conclude the stress processes likely create paths to ill-being even after the violence has ended, so close monitoring is essential as survivors age. Generally, the sequelae of violence are ‘chronically under-recognised and addressed in aged care settings’.⁵⁰⁶

7.4 The criminal justice system

7.4.1 Law enforcement

When older women do decide to disclose or report sexual violence, ageism can lead to their claims being taken less seriously than those of younger victim-survivors. Doubts about the reliability, mental capacity, or credibility of older victim-survivors can lead to inadequate investigations and a lack of legal recourse.

Further, sexism combines with ageism and leads to stereotyping and embedded myths. For example, that older women are weak, dependent, ‘frigid and asexual ... sexually undesirable’,⁵⁰⁷ or the associated myth that rape is a male biological response to attractive younger women,⁵⁰⁸ or that if sexual assault occurs it is likely older women are ‘relatively “unharmd”’,⁵⁰⁹ or that the older woman has dementia and likely will not remember the assault, so it does not matter. All of such stereotypes and misconceptions render older women’s experiences invisible.

Such stereotypes can lead to society, including law enforcement, healthcare providers, family members, and even victim-survivors, to dismiss or overlook the possibility of sexual violence.⁵¹⁰ One healthcare professional expressed incredulity at the prospect:

Who would sexually assault an 80-year-old woman? . . . I was very surprised to understand that this type of sexual assault exists . . . I seem to also hold the same stigma—that older women cannot be the object of sexual thoughts . . . It seems to me like a disorder, and I daren’t think that one of our workers here [in a long-term care facility] has such a disorder . . .⁵¹¹

⁴⁹⁹ Bows 2022 (n 439) 101.

⁵⁰⁰ Meyer, Lasater and García-Moreno (n 490) 32.

⁵⁰¹ Bows 2022 (n 439) 101.

⁵⁰² Ann Burgess, Elizabeth Dowdell and Robert Prentky ‘Sexual abuse of nursing home residents’ (2000) 10(8) *Journal Of Psychosocial Nursing And Mental Health Services* 38, .

⁵⁰³ Eric Beauregard, Julien Chopin and Jan Winter, ‘Lethal outcome in elderly sexual violence: Escalation or different intent?’ (2020) 71 *Journal of Criminal Justice* 101704 1, 1.

⁵⁰⁴ Monica Cations et al, ‘Intimate partner violence and risk for mortality and incident dementia in older women’ (2022) 37(5-6) *Journal of Interpersonal Violence* NP2605, NP2606 defined as ‘physical or psychological abuse’.

⁵⁰⁵ Ibid NP2606, NP2614.

⁵⁰⁶ Ibid NP2617.

⁵⁰⁷ Bows and Westmarland (n 440) 13; Walker et al (n 183) 308; Mann, Horsley and Tinney (n 438) 66; Bows 2022 (n 439) 100.

⁵⁰⁸ Ibid 309. See also Goldblatt (n 475) 2753; Mann, Horsley and Tinney (n 438) 67; Bows 2022 (n 439) 100.

⁵⁰⁹ Mann, Horsley and Tinney (n 438) 67.

⁵¹⁰ Ibid; Bows 2022 (n 439) 100.

⁵¹¹ Goldblatt (n 475) 2763.

When older women internalise such stereotypes, it triggers them ‘to develop negative self-esteem and avoid help-seeking’.⁵¹² This makes it easier for perpetrators to commit such acts without detection.⁵¹³

The following testimony by the daughter of Sandra, an older victim-survivor, speaks to multiple system failures and the failure to take older women in aged care seriously.⁵¹⁴ After repeated reports of rape, and inaction by the manager who dismissed them as ‘hallucinations’, Sandra became increasingly agitated; a doctor was called but failed to recommend any action; she was eventually placed in psychiatric care for her ‘delusions’. Sandra’s daughter then arranged for her to return to her own home to recover, and recalls –

A friend put me in contact with a retired senior police officer, who agreed to review mum’s notes and make up a timeline of what occurred. He contacted the police on our behalf to ask them to investigate the possibility that mum had been sexually assaulted. We had copies of mum’s records from the aged care service and noted that some references to rape had been removed; we wanted police to investigate that as well. The police said they would not investigate because mum had dementia. Not because of her cognition; but because of her diagnosis of dementia. I told them I thought that was outrageous. We got a copy of the police report and it refers to mum’s ‘rape fantasies’. ... We have not yet resolved what happened. ... Mum’s rape allegations were never heard.⁵¹⁵

Walker et al’s UK study shows that, of female participants, older (50+ years) victim-survivors were less likely to report, less likely to have a report deemed a crime, and 82% less likely to be referred for charge.⁵¹⁶ Apart from underreporting, complicating factors can include delayed responses from nursing homes hindering substantiation of an incident; mental illness; inconsistent or insufficient statements; and insufficient evidence.⁵¹⁷ Tellingly, of all Walker et al’s participants, older women were least likely to be referred to specialist support services.⁵¹⁸

7.4.2 The court environment

While most older women will be able to participate as fully in court as the general population, their increased susceptibility to physical and mental illness may present specific barriers including:

- physical inaccessibility of court building;
- inability to sit/stand for prolonged periods;
- hearing/vision/speech impairments;
- women with dementia may experience communication barriers, fatigue, inability to concentrate; difficulty with dates or appointments (like court dates).⁵¹⁹

7.4.3 Reform

Hand et al indicate there is a ‘persistent’ need for further knowledge, including research on intersectional ageism and sexism with a feminist and gerontological framework.⁵²⁰ Training and community-based education campaigns to challenge stereotypes and myths is necessary for practitioners, prevention efforts and also to address victim-blaming and self-blame.⁵²¹ There is also a pressing need to provide information

⁵¹² Goldblatt (n 475) 2754.

⁵¹³ Yumi Lee, CEO, Older Women’s Network; George et al 2024 (n 273) 38.

⁵¹⁴ Anonymus, *Sandra’s story* (Website) <<https://www.opalinstitute.org/uploads/1/5/3/9/15399992/sandrastoryb.pdf>>.

⁵¹⁵ Ibid.

⁵¹⁶ Walker et al (n 183) 307. Note, however, a comparative study of court cases involving intimate partner violence against older people in Europe (Austria, Germany, Hungary, Poland, Portugal and the UK) by Penhale (n 472) at 158 indicates a relatively high rate of conviction at 13%.

⁵¹⁷ Hand et al (n 438) e607.

⁵¹⁸ Walker et al (n 183) 307.

⁵¹⁹ Supreme Court of Western Australia (n 26) 410; Judicial Commission of New South Wales (n 25) [11.3.3.1].

⁵²⁰ Hand et al (n 438) e607-e608.

⁵²¹ Ibid e609; Mann, Horsley and Tinney (n 438) 70; Penhale (n 472) at 161.

on rights, and pathways to find someone to safely disclose to.⁵²² Training for better evidence collection and forensic skills would also improve substantiation.⁵²³

8. Children and young people

8.1 Context and prevalence

The ABS data for the 2021 Census indicates that around a third of Australians are children or young people up to 24 years of age (just over 7.6 million, 33.1%).⁵²⁴ Of these, around 3.2 million are ‘young people’ aged 15-24, with women and girls making up half of the total population (50.7%).⁵²⁵ While different studies use different age bands for ‘children’ and ‘young people’, and all people under 18 years are legally children, the term ‘child’ for young people should be used with caution as it is important to acknowledge their developmental differences and ‘desire and capacity for self-determination’.⁵²⁶ By around age 16-17 years, AIFS data indicates around one third have engaged in sexual intercourse.⁵²⁷

The prevalence rates of child sexual abuse indicated by the *Australian Child Maltreatment Study* (‘ACMS’) are deeply troubling: more than a quarter (28.5%) of participants aged 16-65 years and more than a third (35.2%) of females aged 16-24 years experienced ‘child sexual abuse’, broadly defined.⁵²⁸ Sexual touching was most common (19%), followed by attempted forced sex (14%) and forced sex (8.7%).⁵²⁹ Girls were 2.4 times more likely to experience child sexual abuse than boys.⁵³⁰ The study’s relatively low response rate (4%-14%) indicates some caution may be required in generalising the results,⁵³¹ although other studies do confirm highly concerning prevalence rates and patterns:

- The ABS *PSS* 2021-22 indicates more than one in 10 (11%, 1.1 million women) experienced ‘child sexual abuse’⁵³² before 15 years of age. The more detailed ABS *Childhood abuse* report indicates:
 - more than two thirds (69%) reported multiple incidents of childhood sexual abuse;⁵³³ (the ACMS finds 78%);⁵³⁴

⁵²² Penhale (n 472) 154.

⁵²³ Ibid.

⁵²⁴ ABS Census 2021 (n 223) total 0-24 years 7,675,357; ‘young people’ 15-24 years are estimated at 3.2 million: AIHW, ‘Demographics of Australian young people and their families’, *Australia’s youth* (Summary Report, 25 June 2021) <<https://www.aihw.gov.au/reports/children-youth/australias-youth/contents/demographics>>.

⁵²⁵ ABS Census 2021 (n 223).

⁵²⁶ Australian Institute of Family Studies, ‘What is child abuse and neglect?’, *Policy and Practice papers* (Report, September 2018) <<https://aifs.gov.au/resources/policy-and-practice-papers/what-child-abuse-and-neglect>>.

⁵²⁷ Australian Institute of Family Studies, *Growing up in Australia: the longitudinal study of Australian children* (Report, 2018) (‘AIFS Children Report’) 4 <https://aifs.gov.au/sites/default/files/2022-06/lisac-asr-2018-corrected-2021_0.pdf>.

⁵²⁸ See Divna Haslam et al, *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report* (Report, 2023) (‘ACMS Report’) 14, 17, 21 <<http://doi.org/10.5204/rep.eprints.239397>>.

‘Sexual abuse’ is defined as ‘any sexual act inflicted on a child by any adult or other person, including contact and non-contact acts, for the purpose of sexual gratification, where true consent by the child is not present. True consent will not be present where the child either lacks capacity to give consent, or has capacity but does not give full, free, and voluntary consent. Operationally, acts of sexual abuse include forced intercourse; attempted forced intercourse; other acts of contact sexual abuse (e.g., touching, fondling); and non-contact sexual acts (e.g., voyeurism, exhibitionism)’ (at 6). No disaggregated data was provided for First Nations participants. The AIHW cautions against generalising results given the low (4%) response rate: AIHW, ‘Children and young people’, *Family, domestic and sexual violence* (Summary Report, 19 July 2024) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/children-and-young-people>>.

⁵²⁹ ACMS Report (n 528) 17; and Ben Mathews et al, ‘The prevalence of child maltreatment in Australia: findings from a national survey’ (2023) 218(S6) *Medical Journal of Australia* S13, S15.

⁵³⁰ ACMS Report (n 528) 17.

⁵³¹ ‘The final response rate was 4.0% when based on the estimated number of eligible participants (about 210,370 people) and 14% when based on eligible participants contacted (about 60,800 people)’: AIHW, ‘Data sources and technical notes’, *Family, domestic and sexual violence* (Summary Report) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/data-sources-technical-notes>>.

⁵³² ABS *PSS* – 2021-22 (n 131) defines ‘Child sexual abuse’ as ‘[a]ny act by an adult involving a child (under the age of 15 years) in sexual activity beyond their understanding or contrary to community standards’.

⁵³³ ABS, ‘Childhood abuse’, *Crime and Justice* (Summary Report, 22 November 2023) 19, 23 <<https://www.abs.gov.au/statistics/people/crime-and-justice/childhood-abuse/2021-22>>.

⁵³⁴ ACMS Report (n 528) 19: more than a third (36%) reported 2-5 times; 12% reported 6-10 times; 18% reported 11-50 times; 11% reported more than 50 times.

- almost half (49%) were aged 5 to 9 years old at the time of first incident;⁵³⁵
- most (84%) have never told the police about the incident.⁵³⁶
- The ABS *Recorded crime – victims* series indicates that in 2023, most (84%) victim-survivors of recorded sexual assault were female and well over a third (42%, 13,439) were aged between 10-17 years at the time of incident;⁵³⁷
- The AIFS reports that one half of girls aged 16-17 said they experienced some form of broadly defined ‘unwanted sexual behaviour’ towards them in the past year.⁵³⁸

As with previous priority populations, these prevalence studies are not comparable but are summarised in Table 8 for convenience:

Table 8: Summary Table: prevalence studies, children

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 <i>Recorded crime</i> (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%

Sources: as indicated

As to perpetrators, Salter et al’s research disturbingly indicates that on average around 15% of Australian men report sexual feelings towards children, and around 10% have sexually offended against children.⁵³⁹ ABS data indicates that the most likely perpetrator is a family member, mostly non-immediate male relative (25%), or father/step-father (16%).⁵⁴⁰ In comparison, a recent Canadian study found 27% of reported decisions on child sexual abuse in a three-year period were committed by fathers, some with daughters as young as four years old, which continued over many years until the victim-survivor was within the study age range (12-17 years). The authors conclude sexual abuse by fathers ‘may be the easiest to perpetrate, the hardest to uncover, and the most damaging to victims’.⁵⁴¹

Contributing factors to the elevated risk of sexual violence for young people may include media influences, a lack of access to services, and peer cultures normalising sexist attitudes and conduct.⁵⁴² As to the latter, Walker et al highlighted coercion techniques pressuring young women and girls into unwanted sex, and confusion about non-consensual sex allowing young men and boys to rationalise rape.⁵⁴³ Indeed, the ACMS

⁵³⁵ ABS, Childhood abuse (n 533).

⁵³⁶ Ibid.

⁵³⁷ ABS Recorded Crime (n 8).

⁵³⁸ AIFS Children Report (n 527) 47. This was defined as someone telling, showing or sending sexual pictures, stories or jokes that made participants feel uncomfortable; someone making sexual gestures, rude remarks, using body language, touching or looking at participants in a way that was embarrassing or upsetting; persistent requests for dating or hooking up despite the participant saying ‘no’ (at 53).

⁵³⁹ Salter et al, *Identifying and understanding child sexual offending behaviours and attitudes among Australian men* (November 2023) 3.

⁵⁴⁰ ABS, Childhood abuse (n 533): family member (47%), non-immediate male relative (25%), father/step-father (16%), or brother/step-brother (5.6%); see also National Centre for Action on Child Sexual Abuse, *The Australian child sexual abuse attitudes, knowledge and response study: Focus on Tasmania* (Presentation, May 2024) (‘Attitudes Study’) 13.

⁵⁴¹ Janine Benedet and Isabel Grant, ‘Breaking the Silence on Father-Daughter Sexual Abuse of Adolescent Girls: A Case Law Study’ (2020) 32 *Canadian Journal of Women and the Law* 239, 240.

⁵⁴² NCAS Report (n 98) 218, citing M Flood and L Fergus, *An assault on our future: The impact of violence on young people and their relationships* (Report, 2008).

⁵⁴³ Ibid 307-308.

indicates a possible shift in perpetrator type – it found that known adolescents under 18 years old were the most likely perpetrators of child sexual abuse, followed by caregivers in the home.⁵⁴⁴

8.2 Health impacts

Walker et al's UK study indicates that younger women and girls are disproportionately affected by sexual violence by peers or intimate partners and are more likely than boys or young men to report a negative impact on their lives.⁵⁴⁵ The ACMS indicates that these impacts are profound and long-term: participants were almost three times as likely to have a mental disorder, 4.6 times more likely to have post-traumatic stress disorder, and around three times more likely to have anxiety disorder, depression disorder, or severe alcohol use disorder – with participants that experienced sexual abuse, emotional abuse and poly-victimisation being most affected.⁵⁴⁶ Self-harm, attempted suicide and cannabis dependency were all more than twice as likely for participants who experienced childhood sexual abuse in particular.⁵⁴⁷

Treloar, Idle and valentine's study of victim-survivor narratives observes that 'the absence in the narratives of systems of care, that could address rather than exacerbate trauma, is striking'.⁵⁴⁸ Apart from the devastating human cost, childhood sexual abuse contributes 'substantially' to the 'crippling' \$200 billion annual cost associated with mental health disorders and suicide.⁵⁴⁹ KPMG has estimated that violence against women and children costs the national economy around \$22-26 billion annually.⁵⁵⁰

In addition, a history of childhood sexual abuse impacts on lifetime experience of abuse. Townsend et al's recent Australian study confirmed a number of earlier studies' findings that childhood sexual abuse is a risk factor for subsequent sexual, physical and domestic violence.⁵⁵¹

8.3 Identifying and disclosing sexual violence

The barriers to reporting and attrition risk factors for children and young people include:

- Interpersonal power differentials, and structural vulnerability at societal level;⁵⁵²
- Lack of developmental or language ability to make disclosure;⁵⁵³
- Stigma, shame, embarrassment;⁵⁵⁴
- Fear of not being believed;⁵⁵⁵
- Coercion; intimidation; persistent peer pressure;⁵⁵⁶
- Fear of further abuse by the perpetrator;⁵⁵⁷
- Confusion about whether conduct was sexual abuse;⁵⁵⁸

⁵⁴⁴ ACMS Report (n 528) 17; see also Ben Mathews et al, 'Child sexual abuse by different classes and types of perpetrator: Prevalence and trends from an Australian national survey' (2024) 147 *Child Abuse & Neglect* 106562 <https://www.sciencedirect.com/science/article/pii/S0145213423005501?fr=RR-2&ref=pdf_download&rr=8a78ad3b5c15a947>.

⁵⁴⁵ Walker et al (n 183) 307.

⁵⁴⁶ ACMS Report (n 528) 25.

⁵⁴⁷ Ibid 29. See also Benedet and Grant (n 541) 262-263; Maureen MacGinley, Jan Breckenridge and Jane Mowll, 'A scoping review of adult survivors' experiences of shame following sexual abuse in childhood' (2019) 27 *Health and Social Care in the Community* 1135.

⁵⁴⁸ Carla Treloar, Jan Idle and kylie valentine [valentine does not capitalise], 'Child sexual abuse, alcohol and other drug use and the criminal justice system: the meanings of trauma in survivor narratives for a national Royal Commission' (2023) 33(1-2) *Qualitative Health Research* 117, 122.

⁵⁴⁹ ACMS Report (n 528) 33.

⁵⁵⁰ KPMG, *The cost of violence against women and their children in Australia* (Final Report, May 2016) 2, 4.

⁵⁵¹ Townsend et al (n 234) 71.

⁵⁵² National Centre for Action on Child Sexual Abuse, *Disclosure Scoping Review* (Report, 2024 (forthcoming)) 5. See also two further forthcoming companion studies by the National Centre, *Stigma Scoping Review* (Report, 2024); *Response Scoping Review* (Report, 2024).

⁵⁵³ See generally Arlene Lo, 'Hermeneutical injustice and child victims of abuse' (2023) 37(3) *Social Epistemology* 364.

⁵⁵⁴ Ibid; National Centre for Action on Child Sexual Abuse, *Stigma Scoping Review* (n 552) 2; indeed, MacGinley, Brackenridge and Mowll (n 547) emphasise the 'centrality of shame' in the victim-survivor's psychological effects as well as revictimization (at 1141).

⁵⁵⁵ National Centre for Action on Child Sexual Abuse, *Disclosure Scoping Review* (n 552) 6.

⁵⁵⁶ Walker et al (n 183) 307.

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

- Fear of social consequences of reporting;⁵⁵⁹
- Disproportionate mental health impacts.⁵⁶⁰

Adult responses to disclosure by child victim-survivors are commonly contextualised by deep societal shame and stigma, which can result in judgment and ostracisation rather than safety and support.⁵⁶¹ Indeed, so deeply embedded are such norms and so deep is the fear experienced by children that disclosure can take many years, depending on context. The *Royal Commission into Institutional Responses to Child Sexual Abuse*, for example, found it took on average around 24 years to disclose the abuse.⁵⁶² This confirms earlier studies indicating only 4% of child sexual abuse victim-survivors disclosed immediately,⁵⁶³ with an average delay of around 16-21 years – and many never disclose.⁵⁶⁴

Problematically, when adult survivors of child sexual abuse do disclose, a study by the National Centre for Action on Child Sexual Abuse shows that some participants lacked compassion, would not connect with their pain, would not think much about their situation, or would avoid them.⁵⁶⁵

Another study by the National Centre indicates these barriers and risks are compounded by harmful myths, such as that children are generally not credible, or disclosures may be vindictive or vengeful.⁵⁶⁶ Some Australian participants agreed with myths and victim-blaming attitudes, such as ‘older children have a responsibility to actively resist adults’ sexual advances’,⁵⁶⁷ ‘sexual contact ... that does not involve force or coercion and does not involve actual or attempted intercourse is unlikely to have serious psychological consequences’, adolescents ‘who wear very revealing clothing are asking to be sexually abused’ and ‘children who act in a seductive manner must be seen as being at least partly to blame if an adult responds sexually’.⁵⁶⁸

8.4 The criminal justice system

Engagement with the criminal justice process can exacerbate the health impacts of child abuse discussed above. In the period between reporting to police and trial, the literature indicates children may suffer complex mental health and behavioural problems (not unlike the general population of victim-survivors), such as nightmares, self-hatred, fear of further victimisation, depression, self-harm or suicide attempts, and also may be unable to concentrate at school.⁵⁶⁹ Fear of encountering a defendant on bail or at the trial is also a significant concern.⁵⁷⁰ Thus the delay between complaint and trial – which can be a substantial portion of a child’s life – is itself a stressor that can seriously impact on a child’s relationship with family, community, peers and affect their schooling.⁵⁷¹

Defence counsel cross examination, often involving allegations of lying, can be particularly harrowing;⁵⁷² it is said to be ‘well known that for many children [it is] the worst part of the trial process, second only to

⁵⁵⁹ Ibid.

⁵⁶⁰ Ibid.

⁵⁶¹ National Centre for Action on Child Sexual Abuse, *Stigma Scoping Review* (n 552).

⁵⁶² Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse – brief guide to final report* (Report, 2017) 5 <https://www.childabuseroyalcommission.gov.au/sites/default/files/a_brief_guide_to_the_final_report.pdf>.

⁵⁶³ John Read et al, ‘Mental health services and sexual abuse. The need for staff training’ (2006) 7(1) *Journal of Trauma & Dissociation* 33, 38.

⁵⁶⁴ Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report) Volume 4, 9; Rosaleen McElvaney, ‘Disclosure of child sexual abuse: delays, non-disclosure and partial disclosure. What the research tells us and implications for practice’ (2013) *Child Abuse Review* 1, 3 (discussing Swedish research indicating around 21 years); Read et al (n 563) 38 indicating an average delay till disclosure of 16.3 years.

⁵⁶⁵ National Centre for Action on Child Sexual Abuse, *Attitudes Study* (n 540) 27.

⁵⁶⁶ National Centre for Action on Child Sexual Abuse, *Disclosure Scoping Review* (n 552).

⁵⁶⁷ This speaks to the literature on maturation bias: see Jaylan Melek Aliev, ‘The influence of victim physical maturity and victim-defendant age congruency on mock juror decision-making in child sexual abuse trials’ (Masters Thesis, University of Wyoming, 2024).

⁵⁶⁸ Ibid 23.

⁵⁶⁹ George et al (n 22), 111-112, citing Isabel Randell et al, ‘The Experiences of Young Complainant Witnesses in Criminal Court Trials for Sexual Offences’ (2018) 25(3) *Psychiatry, Psychology and Law* 357, 358 and 366.

⁵⁷⁰ Randell (n 569) 358 and 366.

⁵⁷¹ Ibid 361; Randell et al, ‘The experiences of young witnesses and caregivers in Aotearoa New Zealand’s Sexual Violence Pilot Courts’ (2022) 29(1) *Psychiatry, Psychology and Law* 134, 139.

⁵⁷² George et al (n 22), 111-112.

the fear of seeing the accused ... [and it] has proved to be the most difficult area in which to effect change.⁵⁷³ Studies in Aotearoa New Zealand found:

... cross-examination questions were confusing, vague, and child witnesses were often asked more than one question in the same sentence. Some were also asked the same question repeatedly and were not always permitted space to provide answers. ... [cross-examination in the courts studied] involved 'developmentally inappropriate' and complex cross-examination.⁵⁷⁴

When giving evidence in court, children face numerous developmental challenges, including differences in understanding of time, context, causality; what of events they remember and how they recall them; dependence on context for comprehending language and concepts; levels of maturity and how they react to situations and people; and shorter attention span (especially when stressed). In addition, they lack power in the adult world and may endure family or peer pressure to give or not give particular evidence.⁵⁷⁵

Multiple studies have documented the myths and misconceptions being utilised in child sexual abuse cases,⁵⁷⁶ with one recent US study indicating around 10% of all defence questioning going to credibility involved myths, and at least one reference to a myth in 90% of cases.⁵⁷⁷ These findings are consistent with Canadian research on trial transcripts, which indicates that in many child sexual abuse trials defence counsel persist in utilising myths.⁵⁷⁸ In particular, adolescent girls were 'socially constructed as sexual temptresses', and perpetrators blamed the victim-survivor for 'initiating the sexual activity or coming on to them' – although there was nothing in any of the cases studied to indicate spontaneous initiation of sexual activity with the perpetrator.⁵⁷⁹ To the contrary, in most cases threats, pressure, coercion and/or physical force was used. Alternately, defence counsel sought to undermine credibility by pointing to a girl's bad behaviour in other contexts, such as skipping school (which itself can be symptomatic of trauma).⁵⁸⁰

Documented use of myths at trial include:

- 'child sexual abuse is rare;
- false allegations are common;
- children will scream, call for help or try to escape during the abuse;
- sexual abuse cannot occur with others near the location [it will always happen in secret];
- there will be physical evidence of the abuse [such as medical, or behavioural indicators];
- children will attempt to avoid the offender [children cannot have close, loving relationships with their abusers];
- children will report abuse immediately [delay is not common];
- children will disclose the abuse when asked directly about it [they will not deny it]; and
- the offender is usually a stranger';⁵⁸¹
- when children disclose, they will provide complete and consistent disclosure;
- children who are sexually abused are not emotionally harmed;
- child sexual abuse can never be physically pleasant for a child.⁵⁸²

In addition to the stress of cross-examination, children and young people face difficulties at court which can impact on the quality of their evidence, such as: long delays in getting to court, long waits at court, imposing

⁵⁷³ Supreme Court of Western Australia (n 26) 312.

⁵⁷⁴ George et al (n 22) 120.

⁵⁷⁵ Supreme Court of Western Australia (n 26) 310.

⁵⁷⁶ Summarised in Isabel Randell, *That's a lie: Sexual violence misconceptions, accusations of lying, and other tactics in the cross-examination of child and adolescent sexual violence complainants* (Report, 2021) 6.

⁵⁷⁷ Emily Denne, Suzanne St George and Stacia N Stolzenberg, 'Myths and Misunderstandings About Child Sexual Abuse in Criminal Investigations' (2023) 38(1-2) *Journal of Interpersonal Violence* 1893-1919, 1919.

⁵⁷⁸ Benedet and Grant (n 541).

⁵⁷⁹ Ibid 255.

⁵⁸⁰ Ibid 256.

⁵⁸¹ Randell (n 576) 6.

⁵⁸² Denne, St George and Stolzenberg (n 577) 1901; see also Lo (n 553).

court environment and incomprehensible procedures, having to tell their story multiple times, and the presence or absence of caregivers.⁵⁸³

Recent research has investigated children’s reasons for engaging with the criminal justice system; this study indicates significant similarity in children’s articulated ‘justice goals’ when reporting abuse to police, compared to adult victim-survivors.⁵⁸⁴ The most frequently revealed justice goal was acknowledgment (82%), such as recognition as a victim-survivor, desire to have the harm acknowledged and a desire to be believed and not blamed. This was followed by an ‘aspiration that the perpetrator’s act or actions would be found to be wrong’ (64%), and protection or safety of both self and others (41%).⁵⁸⁵ Attainment of such goals by way of conviction, however, is rarely achieved given the generally low conviction rates for sexual assault, although the latest statistics for New South Wales indicate marginally more success with contemporary child sexual abuse charges (8%) and historical sexual assaults (7%) than adult sexual offences (6%).⁵⁸⁶

8.5 Policy and criminal justice system initiatives

Of the populations experiencing increased susceptibility to sexual violence in Australia, there has been significant policy and legislative reform activity to benefit child victim-survivors – although the ACMS data indicates there is still much work to be done. For example, school-based primary prevention campaigns, such as the Consent and Respectful Relationships Education program, are positively regarded.⁵⁸⁷

Disclosure still poses an overwhelming barrier to engaging with the criminal justice system, but incremental reforms are also improving matters. For example, most jurisdictions in Australia now operate an intermediary service, where specialist communication facilitators can assist children’s communication with police and in court.⁵⁸⁸ The most comprehensive court initiative is the Child Sexual Offence Evidence Pilot (specialist list) commenced in Sydney and Newcastle District Courts in 2016.⁵⁸⁹ This pilot is designed to alleviate many of the problematic aspects of a child’s courtroom experience, such as pre-recording of evidence and appointment of a specialist intermediary to facilitate communication⁵⁹⁰ – but a nationally consistent approach has yet to be developed.

9. Common issues across populations

9.1 Data collection, definitions

The Australian Institute of Health and Welfare (‘AIHW’) concedes that data is ‘not always available’ to report the experiences of sexual violence for most of the priority populations, and that they are ‘key information gaps and development activities’ under the *National Plan*.⁵⁹¹ This review clearly highlights the challenge: inconsistent, unavailable or unreliable data makes meaningful inter-study comparisons difficult,

⁵⁸³ Judicial Commission of New South Wales (n 25), ‘Children and young people’ [6.1.3]; Supreme Court of Western Australia (n 26) 314-315.

⁵⁸⁴ Robyn L Holder et al, ‘Claiming Justice: An Analysis of Child Sexual Abuse Complainants’ Justice Goals Reported during Investigative Interviews’ (2023) 12(9) *Laws* 1; compare with Hester et al (n 266).

⁵⁸⁵ *Ibid* 9.

⁵⁸⁶ Brigitte Gilbert, *Attrition of sexual assaults from the New South Wales criminal justice system* (NSW Bureau of Crime Statistics and Research Brief No BB170, May 2024)

<https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB170-Summary-attrition-sexual-assaults.aspx>.

⁵⁸⁷ Department of Education, *Consent and respectful relationships education* (Website, 2024)

<<https://www.education.gov.au/consent-and-respectful-relationships-education-crre>>; Helen Cahill et al, *Summary of findings: A social network analysis and implementation study of an intervention designed to advance social and emotional learning and respectful relationships in secondary schools* (Report, November 2023) <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2023/11/15121816/4AP.6-Summary-Report_Cahill_Respectful-Relationships-Education.pdf>.

⁵⁸⁸ See generally, George et al (n 22) chapter 4.3.4.

⁵⁸⁹ George et al 2023 (n 22) 127.

⁵⁹⁰ *Ibid*.

⁵⁹¹ AIHW Sexual violence (n 294); AIHW, ‘Key information gaps and development activities’, *Family, domestic and sexual violence* (Summary Report) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/key-information-gaps-and-development-activities>>; National Plan (n 4) 27.

if not impossible. This impedes the formation of a coherent evidence base and nationally consistent approach to sexual violence.

The present review also found inconsistent definitions in the literature for most priority populations. As stated in the *National Plan* –

Nationally consistent definitions should be used to inform and support program design, public and private sector policies, as well as legislation across states and territories to ensure that all people in Australia have equal access to support and justice.⁵⁹²

Moreover, the lack of reliable data collection and definitional inconsistencies negatively impact the research and evidence base that underpins the program design, policy and legislation. Indeed, the recent Parliamentary inquiry into Australia’s consent laws concluded that ‘data gathered through these surveys and studies are essential to our understanding of sexual violence in Australia and critical to assessing the consequences of reform ... such research should be undertaken on a regular *consistent basis* to inform policy responses and to track the effectiveness of reforms, including those relating to education programs’.⁵⁹³

Accordingly, this review supports calls for a national consensus approach to definitions and data collection to support further research, including greater disaggregation of data. The need is particularly acute for First Nations victim-survivors of sexual violence. More consistent data collection, by courts, is also required. Such further sustained research efforts can enable a better understanding of prevalence rates, reporting rates, attrition from the criminal justice system, and victim-survivors’ experiences at court – and therefore more informed and targeted reform initiatives. As Kate Eastman, Disability Royal Commissioner, has observed, little can be done until we recognise:

... the intersecting forms of inequality and discrimination that are the underlying drivers of violence and abuse of women and girls ... We have to examine ableism and these intersecting forms of inequality and discrimination that operate throughout the Australian legal system, in policy and practice frameworks but, most importantly, through community attitudes and to understand how these matters underpin violence.⁵⁹⁴

9.2 Stereotypes

Stereotypes are a deeply socially embedded driver of the overt or implicit bias that underpins stigma, racism and prejudice. Stereotypes are a particularly difficult social construct to address, serving as they do to justify and legitimise the social and power relations in a society.⁵⁹⁵ A wide variety of stereotypes, misconceptions or rape myths are employed against the populations discussed in this review, both in the community and criminal justice system. Multiple studies indicate the influence of stereotypes by police when victim-survivors do surmount the barriers to reporting. In sexual assault trials, studies and reports consistently document the deployment of stereotypes and misconceptions (improper questions) by defence counsel to influence juror perception of victim-survivor credibility.⁵⁹⁶ Researchers such as Cossins have found that the extent to which jurors accept rape myths ‘may lead to quick, heuristic judgements and dominant group norms based on these rape myths’.⁵⁹⁷

⁵⁹² National Plan (n 4).

⁵⁹³ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Current and proposed sexual consent laws in Australia* (Final Report, September 2023) (‘Senate Inquiry’) 103. Emphasis added.

⁵⁹⁴ Transcript of Proceedings, Disability Royal Commission (n 349) 12 (Kate Eastman) <<https://disability.royalcommission.gov.au/system/files/2022-10/Transcript%20Day%201%20-%20Public%20hearing%2017%2C%20Virtual%20-%20Part%201.pdf>>.

⁵⁹⁵ See generally, K Minter, E Carlisle and C Coumarelos ‘*Chuck her on a lie detector*’—*Investigating Australians’ mistrust in women’s reports of sexual assault* (Research report, April 2021) <https://www.anrows.org.au/publication/chuck-her-on-a-lie-detector-investigating-australians-mistrust-in-womens-reports-of-sexual-assault/read/#_Toc97278436>; Martha Augoustinos and Iain Walker, ‘The construction of stereotypes within social psychology: from social cognition to ideology’ (1998) 8(5) *Theory and Psychology* 629.

⁵⁹⁶ See for example the numerous studies discussed in the Senate Inquiry (n 593).

⁵⁹⁷ Anne Cossins, *Closing the Justice Gap for Adult and Child Sexual Assault: Rethinking the Adversarial Trial* (Palgrave Macmillan UK, 2020) 112.

9.2.1 Stigma, shame and silence

Community attitudes are a critical component of understanding victim-survivors' experiences. A common element across all priority populations is community stigma, driven by stereotypes. The stigma involved in prejudice events can lead to 'minority stress' experienced by victim-survivors,⁵⁹⁸ as well as a deep sense of shame. Stigma can then lead to silence – deterring victim-survivors' help-seeking, disclosure, and their engagement with the criminal justice system. As intersectional advocate Kendall notes, '[t]he problem has never been the ways that victims don't tell, so much as it has been that some victims aren't seen as valuable enough to protect.'⁵⁹⁹

As to community attitudes, evidence-based policy initiatives such as educational campaigns that provide easily accessible information about the experiences and needs of the various population groups are a crucial step in the path towards fostering understanding, prevention, and improved responses when victim-survivors choose to disclose. However, one would be optimistic to hope for significant cultural shift in the short term; incremental change would appear to be a more realistic goal.

Within the criminal justice system – particularly at the stage of police disclosure – undervaluing and stigma is a major factor in attrition. Wide acknowledgment and fear of such negative systemic experiences then itself operates as an additional barrier to initial reporting, reinforcing the lack of disclosure and engagement. Studies have shown victim-survivors that identify as LGBTIQ+ or with a CALD background can experience unequal, negative or threatening treatment in the court environment. The literature on sex workers' experiences is thin, and absent from judicial bench books.

9.2.2 Limited impact of legislative safeguards on stereotyping in court

Stereotyping and improper questioning of a kind that would re-traumatise victim-survivors in court, and influence juries, is targeted by s 41 of the *Evidence Act 1995* (Cth). It states:

41 Improper questions

- (1) The court must disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered, if the court is of the opinion that the question (referred to as a *disallowable question*):
 - (a) is misleading or confusing; or
 - (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or
 - (c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or
 - (d) has no basis other than a stereotype (for example, a stereotype based on the witness's sex, race, culture, ethnicity, age or mental, intellectual or physical disability).
- (2) Without limiting the matters the court may take into account for the purposes of subsection (1), it is to take into account:
 - (a) any relevant condition or characteristic of the witness of which the court is, or is made, aware, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality; and
 - (b) any mental, intellectual or physical disability of which the court is, or is made, aware and to which the witness is, or appears to be, subject; and
 - (c) the context in which the question is put, including:
 - (i) the nature of the proceeding; and
 - (ii) in a criminal proceeding—the nature of the offence to which the proceeding relates; and
 - (iii) the relationship (if any) between the witness and any other party to the proceeding.
- (3) A question is not a disallowable question merely because:
 - (a) the question challenges the truthfulness of the witness or the consistency or accuracy of any statement made by the witness; or
 - (b) the question requires the witness to discuss a subject that could be considered distasteful to, or private by, the witness.
- (4) A party may object to a question put to a witness on the ground that it is a disallowable question.
- (5) However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.
- (6) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.

⁵⁹⁸ Ilan H Meyer, 'Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence' (2007) 129(5) *Psychology Bulletin* 674, 674.

⁵⁹⁹ Mikki Kendall, *Hood Feminism: Notes from the Women White Feminists Forgot* (Bloomsbury Publishing Plc, 2021) 44.

There is a growing recognition that this legislation and its state and territory counterparts⁶⁰⁰ has limited operational effectiveness in either deterring disallowable defence questioning or encouraging judicial intervention to protect a witness from same. It is noted that a failure to disallow a question does not affect admissibility in evidence of an answer provided by the witness – so this aspect does not provide an avenue of appeal for the accused.⁶⁰¹ However, there are still concerns that judicial intervention may create an appearance of bias and therefore furnish grounds for appeal. While there are no cases that would appear to confirm these concerns in Australia,⁶⁰² anecdotal judicial evidence,⁶⁰³ as well as Australian and international research, indicates limited use of s 41 (and its counterparts), and problematic defence questioning continues as discussed below.

9.2.3 History of legislative safeguards

Two decades ago, the Victorian equivalent of the previous Australian provision that addressed improper questioning provided a judicial discretion to intervene and was somewhat narrower (addressing questioning that was indecent or scandalous, intended to insult or annoy, or was needlessly offensive). In 2004, the Victorian Law Reform Commission found it insufficient to protect child witnesses from inappropriate questions.⁶⁰⁴ The Victorian Law Reform Commission found:

Examples of defence counsel asking multiple questions designed to confuse witnesses or lead them into a statement which suits the needs of the defence are commonplace. It is a technique which accomplished legal counsel perfect.⁶⁰⁵

As the report finds, this technique does not elicit a witness' best evidence. Regarding the former provisions:

The Commission believes that these powers tend to be exercised sparingly by judicial officers. Magistrates' and judges' approaches to intervention in cross-examination are individual and primarily a matter of personal style. A judicial officer with a less interventionist style will allow questioners greater freedom to pose whatever questions they choose.⁶⁰⁶

The report also finds the Commonwealth legislation, with its permissive judicial discretion 'too limited'.⁶⁰⁷ Accordingly, the Victorian legislation was amended to address this issue and provide greater protection against disallowable questioning via a judicial duty to intervene. New South Wales legislative reform was also focused on the issue.⁶⁰⁸

The Commonwealth legislation was amended in 2008, including the judicial duty to intervene and provisions addressing questioning based on stereotyping.⁶⁰⁹ Of note for present purposes, the 2006 inquiry by the ALRC, New South Wales Law Reform Commission and Victorian Law Reform Commission which led to the amendment noted evidence indicating that use of the provision was 'under utilised'⁶¹⁰ and 'patchy and inconsistent',⁶¹¹ which was especially concerning in sexual assault matters.⁶¹²

⁶⁰⁰ See, for example, *Evidence Act 2011* (ACT), s 41 (court 'must' disallow a 'disallowable question'); *Evidence Act 1995* (NSW), s 41 ('must'); *Evidence Act 1939* (NT), s 21QB(4) note 2 and *Evidence (National Uniform Legislation) Act 2011* (NT), s 41(2) ('may', 'must' for 'vulnerable' witnesses); *Evidence Act 1977* (Qld), s21 ('may'); *Evidence Act 1929* (SA), s 25 ('must'); *Evidence Act 2001* (Tas), s 41 ('must'); *Evidence Act 2008* (Vic), s 41 ('must'); *Evidence Act* (WA), s26 ('may').

⁶⁰¹ NSW Judicial Commission, 'What does s 41 of the Evidence Act mean to you as a judicial officer?', *Sexual Assault Trials Handbook* (Handbook, 2024) [9] <https://www.judcom.nsw.gov.au/publications/benchbks/sexual_assault/babb-s41_evidence_act.html#id-1.6.3.6.9.3.2.2>.

⁶⁰² Virginia Bell, 'Keynote address' (Conference Paper, AIJA/Commonwealth Attorney-General's Department, 2 August 2024); Meryl Sexton, 'Overview of process in relation to sexual assault complaints' (Conference Paper, AIJA/Commonwealth Attorney-General's Department, 2 August 2024). There are however cases of this nature in Aotearoa New Zealand. See further below.

⁶⁰³ Sexton (n 602).

⁶⁰⁴ Victorian Law Reform Commission, *Sexual offences*, Final Report 2004, 310ff.

⁶⁰⁵ Ibid 311.

⁶⁰⁶ Ibid 314.

⁶⁰⁷ Ibid 316.

⁶⁰⁸ Section s 275A of the *Criminal Procedure Act 1986* (NSW).

⁶⁰⁹ *Evidence Amendment Act 2008* (Cth) s 13, amending s 41.

⁶¹⁰ Australian Law Reform Commission, NSW Law Reform Commission, Victorian Law Reform Commission, *Uniform Evidence Act* (Report 102, 2006) 145.

⁶¹¹ Ibid 147.

⁶¹² Ibid 144.

Complainants in sexual assault matters are in a particularly vulnerable and distressing position in a courtroom. The New South Wales Law Reform Commission (NSWLRC) recognised that there are at least three factors that make sexual offence trials particularly distressing for complainants: the nature of the crime; the role of consent with its focus on the credibility of the complainant; and the likelihood that the complainant and the accused knew each other before the alleged assault. The NSWLRC found that the treatment of such matters in cross-examination is a particular concern, with complainants likely to be cross-examined for a longer period of time than victims of other types of assaults. Complainants have appealed for greater control of cross-examination to make the process less stressful.

However, multiple studies over the past two decades consistently indicate little has changed from former practice despite the legislative amendments.

9.2.4 Studies indicating the operational ineffectiveness of s 41

In Cashmore and Trimboli's 2006 study of 277 jurors, around 20% of participants noted that defence lawyers were inappropriate in either language or behaviour towards the complainants (confusing, ambiguous, repetitive, not appropriate to age or intellectual ability).⁶¹³

Shead's 2014 article on prosecution of historical child sexual abuse allegations, similarly found:

... victims are still unnecessarily subjected to lengthy questioning about peripheral issues, such as the colour of a particular piece of clothing. At present, if matters are deemed 'relevant', a very broad test, cross-examination can seem endless and have little point apart from confusing the witness and undermining their credibility (Cossins 2009; Henderson 2002). Further, Cashmore and Trimboli (2006) found that judges are reluctant to intervene in the absence of objections from counsel.⁶¹⁴

The Victorian Law Reform Commission's 2021 report also indicates problematic cross-examination still continues, prosecution counsel and judicial officers do not intervene as much as they could, and many education initiatives have 'fallen away'.⁶¹⁵

Again, in Deck, Powell and Westera's 2022 study, participants observed judges were reluctant to intervene to disallow improper questions. Transcript analysis indicated intervention is 'rare', despite s 41 and its equivalents.⁶¹⁶ The study posits this may be due to the culture of the adversarial trial, autonomy of the parties, and concerns around fairness to the accused.⁶¹⁷ The authors argue that legislatively requiring judges to disallow improper questions will not cure a problem embedded in 'the adversarial system and culture'.⁶¹⁸

In Quilter and McNamara's 2023 study of transcripts from 75 sexual offence trials in the District Court of New South Wales, it was found that s 41 did not either regulate defence counsel utilisation of stereotypes and misconceptions, nor did it consistently embolden judicial intervention. A 'wide variety of practices' on judicial intervention ranged from 'very low to relatively high levels of intervention',⁶¹⁹ although it was 'uncommon' for the judge to address counsel on behaviour, style or tone, and the utilisation of misconceptions and stereotypes was 'routine'.⁶²⁰

⁶¹³ Judy Cashmore and Lily Trimboli, 'Child sexual assault trials: A survey of juror perceptions' (2006) 102 *Crime and Justice Bulletin* 1, 11 <<https://www.bocsar.nsw.gov.au/Publications/CJB/cjb102.pdf>>.

⁶¹⁴ Kara Shead, 'Responding to Historical Child Sexual Abuse: A Prosecution Perspective on Current Challenges and Future Directions' (2014) 26(1) *Current Issues in Criminal Justice* 55, 63.

⁶¹⁵ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences Report* (Report, 2021) ('VLRC Report') 389 <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/04/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.

⁶¹⁶ Sarah L Deck, Martine B Powell and Nina Westera, 'Are all complainants of sexual assault vulnerable? Views of Australian criminal justice professionals on the evidence-sharing process' (2022) 26(1) *The International Journal of Evidence and Proof* 20, 29.

⁶¹⁷ *Ibid.*

⁶¹⁸ *Ibid.*

⁶¹⁹ Julia Quilter and Luke McNamara, *Experience of Complainants of Adult Sexual Offences in the District Court of NSW: A Trial Transcript Analysis* (Report, 2023) 27 <<https://www.bocsar.nsw.gov.au/Publications/CJB/CJB259-Report-Transcript-Analysis-of-NSW-Sexual-Offences-Trial.pdf>>.

⁶²⁰ *Ibid* 28.

... the characterisation of a question as containing a comment (appropriate for closing submissions but not for cross-examination) was selective and partial, and still left defence counsel considerable scope to effectively make submissions during cross-examination. On one view, many of the real rape-related questions (discussed above) that featured prominently in complainant cross-examination (including those suggesting a complainant had failed to act as a “genuine” sexual violence victim would and/or was lying) could be said to contain a comment or submission, and yet they were routinely treated as unobjectionable.⁶²¹

The study concluded that, overall:

With some exceptions, we observed only limited use of s. 41 despite the fact that it imposes a positive duty on the trial judge to disallow improper questions – a finding that aligns with previous research.⁶²²

This is also consistent with research from Aotearoa New Zealand indicating similar difficulties with s 85 of the *Evidence Act 2006* (NZ).⁶²³ However, contrary to the Australian experience, one judge indicated that actively utilising such legislative safeguards does in fact result in appeals:

There are three trials that I presided over where there are appeals before the Court of Appeal and they are all around either my intervention to stop inappropriate questioning or comments that I made summing up about submissions. [By comparison], I haven't had an appeal against any jury trial that's been a non-sex trial. (Judge)⁶²⁴

Accordingly, inappropriate questioning continues, embedded in the adversarial system and culture; there is little to prevent sexual assault trials descending into ‘a stone-throwing exercise by defence counsel’.⁶²⁵ As noted previously, recent US research in child abuse trials indicates that around 10% of all defence questioning going to credibility involved myths, with at least one reference to a myth in 90% of cases.⁶²⁶ As the 2023 *Specialist Report* finds, questioning in cross-examination continues to be a ‘profound locus of re-traumatisation’:⁶²⁷

... the literature overwhelmingly indicates that victim-survivors’ fear of what is not uncommonly ‘brutal’ cross-examination acts as a significant barrier and ‘stops a lot of people coming forward’.⁶²⁸ It is a ‘key issue’ in re-traumatisation⁶²⁹ and a ‘key factor’ in the high attrition rate after a complaint is made.⁶³⁰

The report goes on to observe:

⁶²¹ Ibid.

⁶²² Ibid 29.

⁶²³ Gravitas Research and Strategy Ltd, *Qualitative Evaluation of the Sexual Violence Court Pilot* (Report for the Ministry of Justice, June 2019), 67.

⁶²⁴ Ibid.

⁶²⁵ Annie Cossins, ‘Why her behaviour is still on trial: the absence of context in the modernisation of the substantive law of consent’ (2019) 42(2) *UNSW Law Journal* 462, 462.

⁶²⁶ Emily Denne, Suzanne St George and Stacia N Stolzenberg, ‘Myths and Misunderstandings About Child Sexual Abuse in Criminal Investigations’ (2023) 38(1-2) *Journal of Interpersonal Violence* 1893-1919, 1919.

⁶²⁷ Amanda-Jane George, Vicki Lowik, Masahiro Suzuki, Nichola Corbett-Jarvis, *Specialist Approaches to Managing Sexual Assault Proceedings* (Report, 2023) <<http://dx.doi.org/10.13140/RG.2.2.22407.98725>>.

⁶²⁸ WSJT Report (n 19) 456.

⁶²⁹ NSW Report (n 19) 26.

⁶³⁰ Ibid 285.

... current legislative restraints,⁶³¹ and professional practice rules⁶³² on inappropriate questioning do not appear to be achieving traction in changing defence counsel cross-examination strategies, and judges may find it hard to intervene despite these legislative provisions.⁶³³

9.2.5 Reforms

In light of the difficulties discussed above, the *Specialist Report* recommends a multi-layered approach to address the cross-examination issue: specialist training for all judiciary and counsel as well as court staff, pre-recording of evidence,⁶³⁴ and ground rules hearings. As the Victorian Law Reform Commission noted on the necessity of ground rules hearings (which are now mandatory in all sexual offence trials in Victoria), ‘every sexual offence trial needs a discussion about cross-examination and respect’, with victim advocates present.⁶³⁵

Within the criminal justice system, specialist training for police and justice professionals has been consistently recommended by numerous reports, inquiries and Royal Commissions.⁶³⁶ Such training must be co-designed, and ideally delivered with input from victim-survivors from the various communities. Training must address stereotyping and misconceptions, cultural safety, and move beyond ‘cultural competency’ to a perspective of cultural humility – that is, moving beyond a check-box acknowledgment of the headline issues towards a deeper understanding that honours victim-survivors’ lived experiences, and one which translates into practice and action.

In relation to jurors, Gordon has also advocated training,⁶³⁷ although as Cossins notes, juror training would require significant resources in view of the number of jurors called for duty in sexual offences trials.⁶³⁸ Jury directions and the introduction of expert evidence have also been recommended to assist jurors, and juryless trials have been proposed for further research as a means of addressing the persistent utilisation and prevalence of misconceptions and rape myths.⁶³⁹

9.3 Information for victim-survivors

The literature discussed in this review consistently indicates there is an urgent need for further information on rights, options, and pathways to justice for priority populations, including education and awareness campaigns, co-designed and co-delivered with those having lived experience. The literature indicates that victim-survivors’ lack of understanding of the law and their rights can mean they either fail to identify sexual violence or they downplay and normalise it – and therefore continue to endure it in silence. Embedding knowledge about sexual violence in the community assists with identification of sexual violence, as well as contributing to its prevention and improving social norms generally.

The need for this kind of information has been recognised by numerous studies, inquiries and Royal Commissions. The information must be publicised and visible, widely available, in easy-read English and

⁶³¹ See, for example, *Evidence Act 2011* (ACT), s 41 (court ‘must’ disallow a ‘disallowable question’); *Evidence Act 1995* (NSW), s 41 (‘must’); *Evidence Act 1939* (NT), s 21QB(4) note 2 and *Evidence (National Uniform Legislation) Act 2011* (NT), s 41(2) (‘may’, ‘must’ for ‘vulnerable’ witnesses); *Evidence Act 1977* (Qld), s21 (‘may’); *Evidence Act 1929* (SA), s 25 (‘must’); *Evidence Act 2001* (Tas), s 41 (‘must’); *Evidence Act 2008* (Vic), s 41 (‘must’); *Evidence Act* (WA), s26 (‘may’).

⁶³² See the *Legal Profession Uniform Conduct (Barristers) Rules 2015* rr 62-3 in NSW, Victoria, WA; these are also adopted (as applying in NSW) in the *Legal Profession (Barristers) Rules 2016* (Tas), r 5; *South Australian Legal Practitioners Conduct Rules* rr 62-63; *Barristers’ Conduct Rules* (Qld) rr 61-62; *Rules of Professional Conduct and Practice 2005* (NT), no reference to inappropriate or misleading questions (but r 38 not to suggest serious misconduct unless belief on reasonable grounds that acceptance would diminish credibility); *Legal Profession (Barristers) Rules* (ACT), r 38 (similar to NT).

⁶³³ VLRC Report (n 19) 462..

⁶³⁴ This has a number of benefits, as discussed by Lady Dorrian in Leeona Dorrian, *Improving the management of sexual offence cases: final report from the Lord Justice Clerk’s Review Group* (Scottish Courts and Tribunals Service Report, March 2021) (‘Dorrian Review’) 6 <<https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>>.

⁶³⁵ Ibid 460, 462.

⁶³⁶ See, for example, the Senate Inquiry (n 593).

⁶³⁷ Ibid, citing SG Gordon, ‘All together now: Using principles of group dynamics to train better jurors’ (Scholarly Works, Paper 896, 2015).

⁶³⁸ Cossins (n 597) 112.

⁶³⁹ Amanda-Jane George et al, ‘The “Trauma-informed” Court: Specialist Approaches to Managing Sexual Offence Proceedings (Part Two)’, (2024) 33 *Journal of Judicial Administration* 1, 20 (forthcoming).

multiple languages, in disability-accessible formats both online and in hard copy for those victim-survivors who do not have access to the internet. For young people, education campaigns are particularly important for prevention.

9.4 Access to specialist support services

Another common theme across the literature on the various populations is access to services. Specialist support is fundamental not just for primary health care and support, but also to increasing reporting rates and retention of victim-survivors who wish to engage with the criminal justice system. Yet studies show that LGBTIQ+ victim-survivors, those with a CALD background, with disability (including mental health issues, substance use), and older people who experience sexual violence – populations at heightened risk – are those populations that are most chronically underserved by specialist sexual assault support systems. This is despite the fact that ‘multidisciplinary and coordinated support models have positive effects in terms of promoting recovery and improving legal outcomes’.⁶⁴⁰

Compared to those receiving no specialist support, research indicates that victim-survivors who received support were significantly more likely for police to deem their reported incident a crime, and for police to lay charges. Such charges were almost two (1.9) times as likely to result in conviction, 42% less likely to result in a ‘no further action’ closure by police and 49% less likely to withdraw from the criminal justice process.⁶⁴¹ Other reports confirm that the assistance of an advocate halved the attrition rate (20%-9%).⁶⁴² For similar reasons, the specialist courts attached to wraparound Thuthuzela Care Centres in South Africa have a longstanding track record in enrolling and finalising more cases, with higher conviction rates.⁶⁴³ These centres ‘offer a “one-stop” approach for victim-survivors to report a rape, obtain immediate medical assistance, arrange counselling, obtain assistance to open a police case, and arrange for ongoing counselling and court preparation if the case goes to trial’.⁶⁴⁴

10. Conclusion

This scoping review has canvassed the literature on prevalence, identification, disclosure and reporting of sexual violence and the experiences of women and girls in seven different priority populations:

- First Nations people;
- LGBTIQ+⁶⁴⁵ people;
- People with a CALD background, including migrants with insecure visa status;
- People engaged in sex work;
- People with disabilities;
- Older people; and
- Young people, including adult victim-survivors of child sexual abuse.

Australian literature was the predominant focus of the review, although the literature for all priority populations is emergent and fragmented. Accordingly, international studies found in searches of grey literature were not excluded to provide some commentary and comparisons in the areas of interest.

⁶⁴⁰ Maria Hardeberg Bach et al, ‘Underserved survivors of sexual assault: a systematic scoping review’ (2021) 12 *European Journal of Psychotraumatology* 1, 2.

⁶⁴¹ Walker et al (n 183) 304.

⁶⁴² Julian Molina and Sarah Poppleton, Rape Survivors and the Criminal Justice System (Report, 20 October 2020) 42 <<https://victimsc commissioner.org.uk/published-reviews/rape-survivors-and-the-criminal-justice-system/>>.

⁶⁴³ George et al 2023 (n 22) 68-69.

⁶⁴⁴ Ibid.

⁶⁴⁵ This acronym stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning and asexual; the ‘+’ sign ‘holds space for the expanding and new understanding of different parts of the very diverse gender and sexual identities’: Princeton Sexuality Resource Center, *LGBTQIA+ 101* (website). <<https://www.gsrc.princeton.edu/lgbtqia-101>>. See also AIHW, ‘LGBTIQ+ people’, *Family, domestic and sexual violence* (Summary Report, 12 April 2024) (‘AIHW LGBTIQ+ Report’) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtqia-people/>>.

The review found that, for certain priority populations, we do not even have any reliable data on the size of the population itself (LGBTIQ+, sex workers). The 2026 Census provides an opportunity to at least gather some of this base data (for the LGBTIQ+ community).

For the general Australian population, we know that sexual violence impacts one in 5 women. However, this review indicates that for all of the populations included (perhaps with the exception of children),⁶⁴⁶ recent and reliable prevalence rates of sexual violence are not available. National data has limited disaggregation and can fail to identify population sizes; studies use inconsistent terminology for sexual violence; and methodologies vary widely in scope and nature. What can be said with confidence is that there is a paucity of evidence on these populations – a key information gap as identified by the *National Plan*. A consensus approach to data collection and definitions in future research on sexual violence with these populations should be an urgent priority.

Further, studies for all priority populations consistently indicate negative community attitudes, including stigma and harmful social norms, which are driven by stereotypes, myths and misconceptions. These contribute at all stages to the entrenched nature of sexual violence and its resistance to reform. In the first place, stereotypes and social norms, as well as a lack of information, can contribute to the inability of many victim-survivors to identify sexual violence as a concept applicable to their own life situation. If it is so identified, stereotypes and stigma then raise what appear to often be insurmountable barriers to victim-survivors disclosing their experience of sexual violence – even to health workers – and reporting to the criminal justice system.

When victim-survivors do report, the literature also consistently indicates that the responses of police are not culturally safe or trauma-informed, and are commonly influenced by the prevalent stereotypes and harmful social norms that cluster around each priority population. Re-traumatisation of victim-survivors, and attrition from the criminal justice system, is often the result. If charges are laid, prosecutors' assessment of whether or not to proceed with the case may also be influenced by stereotypes, and the concomitant use of the 'bookmaker's test' (where prosecutors attempt to predict potential jury prejudice when making prosecution decisions).

There is little literature on the direct lived experience of members of these priority populations at court, likely because so few cases proceed to court. However, studies of trial transcripts show that stereotypes are routinely employed by defence counsel,⁶⁴⁷ even when cross-examining children. Legislative safeguards have failed to either curb such improper questioning, or encourage judicial intervention. As such, we have 'limited ways of preventing a sexual assault trial from turning into a stone-throwing exercise by defence counsel'.⁶⁴⁸

The extent to which jurors are influenced by such questioning has been studied with mock juries, although given the opaque nature of jury decision-making and difficulty of research with former jurors having actual experience of jury room deliberations, investigation is largely beyond the reach of researchers. As Cossins notes:

Since we also have no methods for vetting jurors to discover the rape myths they subscribe to, jurors are free to use rape myths to decide the key legal issues: did she consent and what was his state of mind? ... Numerous studies reveal the extent to which laypeople endorse rape myth acceptance beliefs ('RMA'). The higher an individual's level of RMA, the more likely s/he will blame the victim, and the less likely s/he will perceive the victim to be credible and the defendant to be culpable, with a positive correlation between relatively high levels of RMA and a tendency to acquit in sexual assault trials.⁶⁴⁹

In relation to judicial attitudes, again, there is a dearth of research investigating the acceptance or otherwise of stereotypical attitudes and norms. Apart from the occasional media report of overt judicial rape myth acceptance when sexual assault is raised in family law matters,⁶⁵⁰ or academic commentary around judicial

⁶⁴⁶ ACMS Report (n 528).

⁶⁴⁷ Quilter and McNamara (n 619).

⁶⁴⁸ Annie Cossins, 'Why her behaviour is still on trial: the absence of context in the modernisation of the substantive law of consent' (2019) 42(2) *UNSW Law Journal* 462, 462.

⁶⁴⁹ *Ibid* 463. Citations omitted.

⁶⁵⁰ PA Media, 'Family judges could get training after row over comments on rape', *The Guardian* (Online Newspaper, 23 January 2020) <<https://www.theguardian.com/society/2020/jan/23/outdated-views-rape-judges-training-appeal>>.

decision-making in juryless sexual assault trials,⁶⁵¹ the matter is largely untested and, we would suggest, a fruitful area of further research – if only to gather baseline measurements against which to evaluate culturally safe, trauma-informed training initiatives for the judiciary. The lack of literature also confirms the need for disaggregated court data on a victim-survivor’s self-determined social identity to enable researchers to analyse case transcripts in relation to the provision of appropriate court support, and court processes, such as defence counsel questioning and jury directions.

As to reform, specialist training has been suggested, along with other initiatives such as improved jury directions, pre-recording of evidence, ground rules hearings and expert evidence. Further research on juryless trials before a specialist trained judiciary, potentially with a panel of lay assessors (such as have been operating in South Africa since the abolition of juries more than half a century ago),⁶⁵² has also been recommended as a means of reducing improper questioning and victim-survivor re-traumatisation, and lowering or eliminating the risk of stereotype-based decision-making by the finders of fact.

The other consistent messages in the literature on these priority populations are the urgent need for greater information, education and awareness campaigns – co-designed and co-delivered with those having lived experience – and access to culturally safe and trauma-informed specialist support services. The value of these support services cannot be overstated. Apart from the beneficial impacts on victim-survivor health and wellbeing, having a wraparound service closely connected and coordinated with a specialist court, can dramatically improve a victim-survivor’s experience in the criminal justice system.

This review, adopting the lenses of cultural humility and allyship, provides a convenient overview of these seven populations. Overall, it highlights the pressing need for continued research to build the necessary evidence base, so that policymakers and justice system stakeholders can listen to the voices of victim-survivors in these populations, work with them to identify the best responses moving forward, and capacity build for those with lived experience to actively participate in the reform process, as well as in the implementation and delivery of reforms.

⁶⁵¹ Cossins (n 648).

⁶⁵² The *Abolition of Juries Act 1969* abolished juries in this jurisdiction.

11. Recommendations

Recommendation 1

That Commonwealth, state and territory governments work with victim-survivors, stakeholders and researchers as a key priority to progress the *National Plan* recommendations and develop nationally consistent definitions regarding sexual violence, wherever possible, for research, program design, policies and legislation.

Recommendation 2

That the Commonwealth government prioritise the collection of disaggregated data in national data collections such as safety surveys and recorded crime statistics regarding sexual violence, and its intersection with priority populations, including First Nations communities, LGBTIQ+ and CALD communities, people with disability, sex workers, older women and children.

Recommendation 3

That Commonwealth, state and territory governments consult with relevant heads of jurisdiction to ensure that courts collect consistent, disaggregated data to enable an understanding of the criminal justice experiences of sexual violence victim-survivors, including First Nations communities, LGBTIQ+ and CALD communities, people with disability, sex workers, older women and children.

Recommendation 4

That calls for the Commonwealth, state and territory Attorneys-General to consult with relevant heads of jurisdiction to implement nationally consistent specialist training for all legal professionals dealing with sexual offences proceedings be considered and progressed as a matter of priority. Such training should include sexual violence and its sequelae including trauma, associated harmful social norms and stereotyping; it should be culturally safe, co-designed with victim-survivor experts including representatives from priority populations and relevant stakeholders, and refreshed on an ongoing basis. Further, that additional measures to address the use and/or reliance on stereotyping and misconceptions by legal professionals, jurors and justice system stakeholders be considered and/or research to determine the evidence base for such measures be progressed as a matter of priority; such measures should include jury directions, expert evidence, and juryless trials.

Recommendation 5

That calls for Commonwealth, state and territory governments' investment in co-designed community education programs be progressed to build community awareness and skills, and to facilitate victim-survivors' identification and disclosure of sexual violence including provision of information and options around seeking support and/or reporting violence.

Recommendation 6

That Commonwealth, state and territory governments provide culturally safe and trauma-informed training on sexual violence across the health sector, particularly for those in primary and mental health settings.

12. Appendix 1: Methodology

12.1 Scope of this review, problem identification

The project is a scoping review,⁷⁶ which is appropriate for swiftly identifying key concepts, the volume of evidence in a field,⁷⁷ knowledge gaps. Scoping reviews are useful to examine fields where many different study designs may be encountered.⁷⁸ It also adopted a rapid approach; this approach is increasingly being utilised for emergent issues, as they take less time and utilise fewer resources while retaining transparent, albeit more restricted, methodology than a systematic review.⁷⁹ Rapid scoping reviews are not designed to comprehensively synthesise findings, include quality appraisals, or risk of bias assessments.⁸⁰ The research questions in rapid reviews are generally broader, rather than the more focused questions in a typical systematic review.

A ‘big picture’ scoping review is appropriate for this particular project, given the number of populations with increased susceptibility to sexual violence that were investigated, and the emergent and fragmented state of the Australian literature. The rapid process was adopted because of the fast pace of Australian policy-making and potential law reforms in the sexual violence space and to ensure that these populations and their unique needs are acknowledged in the reform processes – pending further research being undertaken with victim-survivors and criminal justice system stakeholders.

The scoping review is a valuable first step towards evidence-based decision-making, to highlight research gaps in important policy areas and pave the way for further work on the evidence base required for more trauma-informed, culturally safe courts in sexual violence matters. Ethics approval was granted by CQUniversity.⁸¹

The area of particular focus for this study is recent Australian literature on the priority populations, although as discussed below, literature from other jurisdictions was included where appropriate to fill out the picture given the generally thin nature of the published, peer reviewed Australian literature.

The research questions may be stated as:

RQ1: What is the prevalence rate in Australia for sexual violence, for each of the priority populations?

RQ2: What are the issues related to identifying and disclosing sexual violence, and barriers to reporting, for victim-survivors in each of the priority populations?

RQ3: What is the experience of the criminal justice system like for victim-survivors in each of the priority populations?

12.2 Inclusion/Exclusion Criteria, search strategy

This review adopts the following eligibility criteria. First, it included Australian literature focusing on the priority populations. Second, it included studies in the English language, in peer reviewed publications available in full-text format in select academic databases. Finally, it focused on literature published in the past decade (after 2014).

To identify the relevant Australian literature, a search of 5 academic databases was conducted: HeinOnline, Informit, ProQuest, CINAHL and Scopus. Drawing on the PCC model developed for scoping reviews,⁸² this review utilised three sets of keywords for the database searches with truncation.⁸³ Corresponding to ‘Population’, the first set of keywords correlates with the priority populations. Corresponding to ‘Concept’ or intervention, the second set is ‘justice system’, ‘courts’ or ‘police’; corresponding to ‘Context’, the final keywords relate to ‘sexual violence’ or ‘sexual assault’, prevalence, barriers and support.

The searches of Australian peer-reviewed literature as per the above parameters revealed a dearth of Australian literature generally on the priority populations, particularly on prevalence rates. To achieve

the shortened timelines for this review, further searching for international peer-reviewed literature was not conducted in the academic databases. However, searches were conducted of the grey literature on publicly available websites and databases. While many scoping reviews do not search grey literature in the interests of timeliness, including grey literature can go some way towards addressing issues such as publication bias, provide a better sense of context (especially where there is a paucity of peer-reviewed evidence), and can ‘help to ensure the most current picture of what is happening within a body of evidence’ is presented.⁸⁴

Grey literature was identified via separate searching online via GoogleScholar and Google. The grey literature for this study included literature from both Australia and overseas jurisdictions, to address the research questions more fully with recent literature and provide insights on identifying, disclosing, and reporting sexual violence, and experiences in the criminal justice system for the priority populations.

12.3 Data evaluation

Figure 9 describes the screening process. The search results of academic databases were screened by the first author, again in the interests of timeliness. Searching resulted in 455 hits; after initially removing 9 duplications 446 remained for screening by title and abstract, of which 413 were either excluded or further duplicates located, leaving the full text of 33 records to evaluate. Of these, 10 were excluded, leaving 23 records. Searches of the grey literature resulted in a further 221 studies, articles, websites and resources. Combined, a total of 244 records are included in this review.

12.4 Data analysis and presentation

After the first and second authors completed the problem identification, literature search and data evaluation steps, data analysis was conducted (data reduction, display, comparison). For data reduction, the first author extracted relevant information from peer-reviewed journal articles in terms of the author name, publication year, type of study, main findings, and the author’s conclusions.⁸⁵ These articles, together with the first and second authors’ grey literature search results, were utilised in the write-up phase by the first and second authors to outline the sections for the seven priority populations, in discussion with the third and fourth authors, who contributed significant intellectual assistance in shaping the report.

13. Appendix 2: Data extraction table

Summaries of studies – reviewed, sorted by populations

Population/theme	No. of papers
First Nations	4
LGBTIQ+A+	1
Culturally and Linguistically Diverse	2
Sex work	1
People with disability	6
Older women	6
Children	3
Total items included	23
Items not relevant after screening - did not fit inclusion criteria, not relevant	10
Total items full text screened	33

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
1.	Marta Chmielowska and Daniela C. Fuhr (2017) ⁶⁵³	Systematic review	<p>International systematic review. Study aims to summarise prevalence rates among Indigenous women, identify mental health outcomes and summarise prevalence rates of mental health disorders, identify risk factors and most common types of IPV. The inclusion/exclusion criteria produced only 13 studies that qualified for the systematic review. So relatively small sample.</p> <p>However, the data indicated most frequently identified IPV was physical violence, sexual violence, verbal aggression and emotional abuse (692). Most frequently reported mental health issues were depression (prevalence 41.6-70.5%) and PTSD (32%-45.6%) (692). Physical and/or sexual IPV have a stronger relationship with mental disorders than any other category of partner abuse (700).</p> <p>Noted that experiences of IPV are exacerbated by poverty, discrimination and substance abuse. Recommends further research. Reports on 2001-2010 BOCSAR data showing</p>	<p>While international systematic reviews not expressly included in criteria, does canvass Australian studies</p> <p>Population: originally located via CALD searching, but relevant to First Nations.</p>	<p>Include. Relevant as provides interesting comparative data around IPV rates.</p>

⁶⁵³ Marta Chmielowska and Daniela C. Fuhr, 'Intimate partner violence and mental ill health among global populations of Indigenous women: a systematic review' (2017) 52 *Social Psychiatry and Psychiatric Epidemiology* 689.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			Indigenous Australian women 6 times more likely to report IPV compared to other Australian women. Similar findings in Canada (2x more likely) India (47% compared to 40%). Exact rates lacking due to 'high rates of non-disclosure' – barriers include fear of retaliation, stigma/discrimination, low public trust in the justice system, and state agencies, lack of awareness of support services. (691). High prevalence figures of 40-100% were found in six out of 10 quantitative studies reviewed. Again, wide variety in types of IPV reported (inconsistent definitions/use of term 'IPV').		
2.	Amos et al (2023) ⁶⁵⁴	Re-analysis of findings of the <i>Private Lives 3 survey</i> .	<p>Australian article. Data from 4,607 LGBTQ+ adults who ever experienced IPV or FOV analysed to identify factors associated with reporting most recent experiences and feelings of support.</p> <p>Only 25.9% reported most recent experience, although most of these (84.%) felt supported. Most likely to feel supported if they had a regular GP and least likely to feel supported if they ever experienced homelessness. Recommendations: engage with a regular GP, establish family violence services catering to LGBTQ+ people, training family violence responders/service providers to recognise diverse relationship dynamics to improve outcomes. (1)</p> <p>Of disclosures, 18.7% reported to counsellor and just 5.9% to police. Felt most supported by counsellors (89.4%) rather than police (45%). (5)</p> <p>Non-binary people significantly more likely to report, and older people 45-54 more likely to report compared to 18-24 year olds. Participants born in a non-English speaking country significantly less likely than those born in Australia to report. Sexual orientation was not associated with reporting abuse. (5) Participants with postgraduate education were 'associated with the greatest likelihood of reporting violence' (8). 'Literature on this topic is currently limited' (9).</p>	Already included these findings via the <i>Private Lives 3</i> study.	Excluded - already included the information from the larger study. No need to include further discussion
3.	Cate Bailey et al (2015) ⁶⁵⁵	Evaluation of Operation RESET, community engagement intervention for remote Indigenous communities and services agencies	Australian article. Risk of harm to First Nations children are 'estimated at between 5 and 8 times that of non-Indigenous children, despite lower rates of reporting and convictions' (1303). Prevalence is often the subject of inquiries and media but quantitative evaluations have been lacking 'constraining ... ability to make evidence-based decisions about policy and procedure' (1304). Absence of good evaluation data; one of the problems is under-reporting, a 'code of silence' (1304). Barriers: inadequate understanding of the nature of the crime and relevant laws, systemic barriers (shame and fear of reprisal). (1304). Involved 'genuine consultation' between the ops team, local stakeholders and community, proactive	Include. Population: First Nations	Include. Goes to the issue of awareness-raising, support and capacity building, self-determination and setting up of initiatives that may

⁶⁵⁴ Natalie Amos et al, 'Experiences of Reporting Family Violence Among LGBTQ + Adults in Australia: Findings from the Private Lives 3 National Survey' (2023) *Journal of Family Violence* <<https://doi.org/10.1007/s10896-023-00612-9>>.

⁶⁵⁵ Cate Bailey et al, 'Evaluation of a collaborative operation to improve child sexual abuse reporting in Western Australian Indigenous communities' (2015) *Criminal Justice and Behavior* (2015) 42(12) 1303.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
		supporting child sexual abuse. 2007-2012 data. Aim: to determine if this was associated with increased reporting.	service delivery via capacity building, strong emphasis on self-determination. Intent was for Indigenous communities themselves to prevent sexual abuse of their children with support; complaints made to police and child protection to be investigated thoroughly and expeditiously. Constellation of associated risk factors including alcohol/substance abuse, family violence, poverty, mental health issues, histories of neglect or abuse. (1305). RESET involved proactive planned visits for awareness raising (school staff, families), increasing support to victims after arrests, connecting victims and families to support services, plus reactive visits for investigations. Exit strategy to enable initiatives to be maintained in the long term. Sample of cases of child sexual abuse collected as referred to RESET team, data included reports, investigations, victim interviews and arrests plus information on team daily activities. Findings: more than 72% of reports were made during or within 3 days of RESET's presence (proactive or reactive). For those charged, conviction rate of 54% (1309). First 9 months, 12 cases charged, 7 prosecuted, 5 convicted; Second 9 months 12 cases reported, 8 prosecuted, all 8 convicted. Concludes an improvement in conviction rate when the RESET model was applied. Unclear what the baseline data comparison was. Pre-post data was collected for reporting, indicating 'reports and arrests increased .. in the intervention areas, but not in the non-intervention areas'. (1312).		be maintained by the community
4.	Janine Benedet and Isabel Grant (2020) ⁶⁵⁶	Study examined all reported Canadian decisions involving sex offences against girls 12-17 years over a three year period.	<p>Canadian article. Findings: more than one quarter of all reported decisions involved sexual assault committed by stepfathers and biological fathers. Patterns of coercive control evident, similar to that of adult women in IPV. Conviction rates were 'relatively high' but lower for fathers than other perpetrators. Authors state sexual abuse by fathers 'may be the easiest to perpetrate, the hardest to uncover, and the most damaging to victims'. (240).</p> <p>Of 625 complainants, 47% reported sexual abuse by a family member, 27% reported sexual abuse via a father. Abuse in families targeted younger girls 'but often continued over many years', some started as young as four and continued until the girl was within the study inclusion ages (12-17). (249). Around 20% of prosecutions were historical, of these 70% involved intra-family abuse, of which 37% alleged abuse by a father. These findings consistent with the assertion it is 'particularly difficult for girls to report sexual abuse against a father or to be believed by the authorities when they do'. (249). Girls in state care may face the greatest barriers in having their allegations believed and taken seriously by child welfare authorities (249), and were 'disbelieved or otherwise silenced for years' (249). Overall conviction rate 71% biological fathers 65% and stepfathers 61%. Sexual assaults by strangers were sentenced more severely than those by fathers even though it was rarely isolated and often continued over many years (250).</p> <p>On victim-blaming: 'The ways in which adolescent girls can be socially constructed as sexual temptresses were visible in the ways that fathers rationalized the abuse. In many of these</p>	<p>Excluded via the exclusion criteria, although interesting discussion of Canadian experience and prevalence of father-daughter abuse, stereotypes which could be of potential use, so include if appropriate</p> <p>Population: children</p>	Include, relevant to insights on father daughter abuse and stereotypes

⁶⁵⁶ Janine Benedet and Isabel Grant, 'Breaking the Silence on Father-Daughter Sexual Abuse of Adolescent Girls: A Case Law Study' (2020) 32 *Canadian Journal of Women and the Law* 239.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			<p>cases, fathers blamed the daughters for initiating the sexual activity or coming on to them.¹⁰⁴ These were clearly cognitive distortions based on the facts; we did not see any cases in which girls spontaneously initiated sexual activity with their fathers ... in most cases, the accused had to use some combination of threats, pressure, coercion, and/or physical force' (255-256). 'In many cases, defence counsel sought to undermine the complainant's credibility by pointing to her bad behaviour in other contexts, such as skipping school or lying' (256).</p> <p>'Consistent with the literature, sexual abuse by a father had a particularly devastating impact on the girls in our study.¹⁴⁸ Girls reported an inability to develop trusting relationships with other adults¹⁴⁹ and profound impacts on every aspect of their lives. The abuse affected their school performance, interest in extracurricular activities, and their self-image and sense of self-worth. Some girls expressed guilt, blaming themselves' (262). 'Others engaged in self-harming behaviours such as cutting themselves or overeating in an attempt to make themselves unattractive.' (263). Discusses the victim-blaming and stereotypes employed in argument (265).</p>		
5.	Horan (2021) ⁶⁵⁷	Doctrinal analysis of the 'justice gap' for sexual assault victims and also a case study of two victim advocates and their role in law reform (Nina Funnell, Grace Tame).	Australian article. Historical and doctrinal legal analysis of the rape offence, right to a fair trial and law reform generally. Not relevant for this particular review.	Excluded, focus not relevant.	Excluded. Not relevant.
6.	Maureen MacGinley, Jan Breckenridge and Jane Mowll (2019) ⁶⁵⁸	Scoping review of 28 peer reviewed studies examining victims' experiences of shame following sexual assault.	<p>Australian article. The adverse effects of CSA across the life course are well established; it can contribute to negative self-referential or self-conscious emotions of which shame is prominent (1136). One 2009 systematic review indicated CSA survivors have a significantly higher risk of medical, psychological, behavioural, interpersonal and social difficulties (1136). CSA is also a risk factor for depression, anxiety, PTSD, sexual exploitation, IPV, suicidality, substance abuse. No other reviews have specifically focused on shame for adult survivors of CSA.</p> <p>The studies demonstrated 'the centrality of shame' in the psychological effects (and including sexual revictimization) (1141).</p>	<p>Include.</p> <p>Population: children, historical CSA</p>	<p>Include. Relevant in relation to children's experiences of sexual violence and the reasons why so many adult survivors of CSA can wait decades to disclose.</p>

⁶⁵⁷ Jacqueline Horan, '#LetHerSpeak: Victims as Catalysts for Law Reform in Sexual Assault Trials' (2021) 47 *Monash University Law Review* 48.

⁶⁵⁸ Maureen MacGinley, Jan Breckenridge and Jane Mowll, 'A scoping review of adult survivors' experiences of shame following sexual abuse in childhood' (2019) 27 *Health and Social Care in the Community* 1135.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			<p>Findings: there were five themes that emerged: 1. Psychological effects and trauma symptoms; 2. Relationships and social connections and disconnections; 3. Disclosure; 4. Self-concept; 5. The process of recovery. Three key gaps in the literature are the need for further research in specific populations, therapeutic interventions re shame, and investigation of lived experiences of shame.</p> <p>As to disclosure, 'disclosure is not a single event but rather a recurrent process in recovery through reconnection and healing through relationships. Shame may act as a barrier to disclosure thus limiting or distorting help-seeking'. (1142).</p> <p>'shame, or its absence, is a major influence on the decision to disclose, and that responses by others following disclosure can illicit shame. For instance, 76% of participants in Taylor and Norma's (2013) qualitative study of women reported shame was the most frequently mentioned reason for not disclosing CSA and seeking help. The experience of the double-bind (shame as a motivator and as inhibitor to disclosure), described in a qualitative mixed gender study' ... 'To protect the self from further shame, survivors take steps to avoid exposure of their shame or the shame they anticipate that they and others will have' (1142).</p>		
7.	Carla Treloar, Jan Idle and kylie valentine (2023) ⁶⁵⁹	Re-analysis of data from the Royal Commission to investigate how trauma is narrated in ACEs, alcohol and drug use and contact with the criminal justice system and how it is interpreted by others in policy and law.	Australian article. The data indicates 'damaging and unjust experiences of childhood, which were compounded by subsequent contact with the criminal justice system'. Trauma is important to both the experience and synthesising of this experience into narratives. 'the absence in the narratives of systems of care, that could address rather than exacerbate trauma, is striking' (122).	Include. Population: children, historical CSA	Include. Relevant in relation to the long-term sequelae of trauma following on from CSA
8.	Mary N Woodward, Ilana J Hepner and Jeanette Stewart (2014) ⁶⁶⁰	Examines the obstacles faced by children involved as witnesses in the	Australian article. Cross-examination techniques for children have proved problematic – children 'do not understand around half of what is said to them because of a significant mismatch between their language and that of the questioner' (27). In early analysis of sexual abuse trials with children 5-13 years, Zajac et al found high rates of	Not included; outdated.	Excluded. Outdated

⁶⁵⁹ Carla Treloar, Jan Idle and kylie valentine, 'Child sexual abuse, alcohol and other drug use and the criminal justice system: the meanings of trauma in survivor narratives for a national Royal Commission' (2023) 33(1-2) *Qualitative Health Research* 117.

⁶⁶⁰ Mary N Woodward, Ilana J Hepner and Jeanette Stewart, 'Out of the mouths of babes: Enabling children to give evidence in the justice system' (2014) 39 *Alternative Law Journal* 27.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
		criminal justice system.	<p>misunderstanding and compliance with leading and closed questions and a low rate of clarification-seeking. Over 75% changed at least one part of their earlier testimony during cross-examination (28).</p> <p>Notes that s 41 of the <i>Evidence Act</i> was introduced to counter difficult cross-examination – but notes ‘reluctance of judicial officers to intervene’ (28). Notes Cossins’ recommendation for intermediaries. Developments have progressed such that this article is not really relevant to current issues.</p>		
9.	Holly Jeanine Boux (2022) ⁶⁶¹	Legal doctrinal	<p>American article. Discusses sexual abuse of persons with intellectual disability after the #MeToo movement. Examines a suite of American legislative reforms, some of which are argued to be too paternalistic.</p> <p>The rate of rape victimization for White women is 18.8% in the US while it is 33.5% for multiracial non-Hispanic women. Women ages 18-24 experience higher rates of assault than in other age groups. Men who had sex with other men were six times more likely to have had non-consensual sex as an adult, compared with hetero men. (137)</p> <p>‘The rate of sexual assault victimization is 2.1 per one thousand for people with disabilities and 0.6 per one thousand for persons without.²⁵ For persons with ID, the picture is even starker. People with ID are sexually assaulted at a rate of 4.4 per one thousand people. ²⁶ Disaggregating these figures by gender, the rates are a staggering 7.3 for women with intellectual disabilities and 1.4 for similarly situated men.²⁷ These data are based on the noninstitutionalized population, so they likely underestimate these rates, but widely accepted estimates indicate that women with cognitive disabilities are twelve times more likely to be sexually assaulted than are people without disabilities.’ (138) Discusses women with ID being the ‘perfect victim’ (139) “[t]he vast majority of sexual assault cases against victims with mental disabilities pass without legal intervention.” ³⁸ This is partly due to “exceptionally low” reporting rates and inadequate response by the criminal legal system when reports are filed’ (140).</p>	Excluded. Not Australian article.	Excluded. Not Australian, focus of article not relevant.
10.	Fogden et al (2016) ⁶⁶²	Case linkage study	Australian article. The study used three Australian databases from disability services, mental health services and police records. Compared to community sample without disability. Although people with ID were less likely to have an official record of victimisation, rates ‘of violence and sexual victimisation ... were significantly higher’. Comorbid mental illness increased the likelihood of victimisation.	Include. Population: disability	Include. Relevant for prevalence rates

⁶⁶¹ Holly Jeanine Boux, “#UsToo”: Empowerment and protectionism in responses to sexual abuse of women with intellectual disabilities’ (2022) 37 *Berkeley Journal of Gender Law and Justice* 131.

⁶⁶² Billy C Fogden et al, ‘Crime and victimisation in people with intellectual disability: a case linkage study’ (2016) 16 *BMC Psychiatry* 1.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			<p>Cites studies indicating people with ID are between three and seven times more likely to be victimised. 'Of particular concern are the high rates of sexual victimisation [19–22] and the finding that the majority of crimes were committed multiple times [23], across a range of ages and environments [13, 24]. Of note, these victimisation experiences are rarely reported to authorities [6, 7, 19, 23].' (2).</p> <p>Study involved 2600 participants, with community comparison of 4830. The rate of sexual victimisation was nearly six times higher compared to the community; effect sizes were moderate to large. (4). Those with ID and mental illness had the highest rates of victimisation – ten-fold increase in likelihood of sexual victimisation compared to the community. (4)</p>		
11.	Jessica Fox (2024) ⁶⁶³	Study examining the social factors that impact autistic women's vulnerability to interpersonal violence	<p>Australian article by an autistic survivor. Discusses stigma and intersectional disadvantage, the gender-based dynamics of 'masking' or 'social camouflaging' so that an autistic person can 'pass' as 'normal' – driven by pressure to conform (4).</p> <p>Does not really define 'interpersonal violence' – just says that it 'encompasses a range of violent, abusive, and exploitative acts that occur within personal relationships ... commonly perpetrated against women in the form of sexual violence and intimate partner abuse' (2).</p> <p>'Autistic people have a higher risk of interpersonal violence, as 49%–80% report having experienced violence and abuse within personal relationships perpetrated by family, friends, romantic partners, or carers.35,71,74 The complex and intertwined connection between mental health struggles, interpersonal trauma, and internalized stigma is also an overarching theme within the literature about autistic people's experiences of victimization' (5). 49.4% of Australian autistic adults reported experiencing physical or sexual abuse during childhood compared with 22.4% of non-autistic Australians. Difficulty in recognising implicit intentions and manipulative behaviour from others 'is also a key theme within autistic people's experiences of interpersonal violence' (5). Where multiple incidents occurred, autistic people 'commonly felt like they were at fault' (5).</p> <p>Key theme: autistic women 'experience disproportionately high rates of sexual violence' – 2 in 5 (46.5%) autistic women surveyed experienced sexual assault in the prior 2 years compared with 1 in 5 (20%) non-autistic women. A French study found 88% of autistic women had experienced at least 1 sexual assault and 69% reported rape. (5). Another study found 78% of autistic women had experienced sexual victimisation compared with 57% of non-autistic women. (6). They are also more likely found autistic women also significantly more likely to have experienced multiple and repeated incidents (78% compared with 46% for non-autistic women).</p>	Include Population: disability	Include, for prevalence rates, experiences

⁶⁶³ Jessica Fox, 'The impact of intersectional disadvantage on autistic women's experiences of interpersonal violence: A narrative review' (2024) *Autism in Adulthood* 1.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			'service delivery needs of autistic women are unmet across all fields of practice' (7) – and for AW with intersecting identities, service support issues are compounded by additional factors of marginalisation but 'research has yet to explore this' (7). Autistic women are less likely to report than autistic men and non-autistic women (7). Interactions with police and support practitioners 'were often harmful and impeded their recovery' .. studies show the justice system is 'inaccessible' for autistic women (7) given stigma towards autism and survivors of sexual violence; victims felt police did not believe them 'due to their communication differences in eye contact, body language, and vocal tone' (7).		
12.	Morrison et al (2019) ⁶⁶⁴	Systematic review	English study designed to delineate the communication needs for children and adults with ID during cross-examination. Findings: communication challenges included suggestibility to leading questions and negative feedback, acquiescence, accuracy, memory and understanding of court language (366, 389). In particular, delays between the event and police interview may have a negative impact on the amount of detail a witness with ID will remember (389). People with ID are less likely to understand legal language. Question format can have significant impact on suggestibility, accuracy and acquiescence (390). Specialist training 'will become mandatory for those working in sexual offence cases involving vulnerable witnesses' (392). Notes a lack of empirical evidence on advocacy especially for vulnerable witnesses (392).	Not expressly included because not Australian, but does examine some Australian literature. Population: disability.	Included. Relevant to PWD experience in court
13.	Nixon et al (2017) ⁶⁶⁵	Case linkage study	Australian article. A study of 2220 PWID registered with disability services were linked with statewide police database and a community comparison sample. Overall, the risk of victimisation was 1.5 times higher for the community sample than PWID (because of increased risk for nonviolent offences such as theft, which PWID did not experience to the same extent either because they own less property, live in secure settings or face obstacles in reporting to police). (623). Nearly one in 5 (19.3%) of PWID had been victim of one or more violent offence. The risk of sexual victimisation was nearly 5.5 times greater for ID males compared to males in the community comparison group. For females with ID there was a 5.5 times greater risk of sexual offences when compared to females in the community comparison group (621).	Include Population: disability	Included, relevant for prevalence data
14.	Rubin (2020) ⁶⁶⁶	Legal doctrinal.	American article on the rights of people with ID to dating, sexuality, and relationships.	Excluded, not Australian, not relevant.	Excluded. Focus of the article not relevant.

⁶⁶⁴ Joanne Morrison et al, 'Communication and cross-examination in court for children and adults with intellectual disabilities: A systematic review' (2019) *The International Journal of Evidence and Proof* 366.

⁶⁶⁵ Margaret Nixon et al, 'Estimating the risk of crime and victimisation in people with intellectual disability: a data-linkage study' (2017) *52 Social Psychiatry and Psychiatric Epidemiology* 617.

⁶⁶⁶ Shoshana Rubin, 'Access to sex: Sexuality support for adults with intellectual and developmental disabilities' (2020) *20 Connecticut Public Interest Law Journal* 125.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
15.	Pamela Saleme (2023) ⁶⁶⁷	Study of interventions to protect people with disability from DFV.	Australian article. DFV is not a focus of this review. Defined in this article as 'physical, violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence' as between family members as well as current/former partners and includes coercion (2). 'intervention strategies reported reflect a strong homogeneity. Most strategies focus on training and education or setting up channels and facilities for victims to seek help. Also communication campaigns, education for PWD.	Excluded.	Excluded, regarding DFV more broadly rather than sexual violence.
16.	Charlton et al (2022) ⁶⁶⁸	Analysed outputs on DV from 1984 to 2019.	Australian article. Examined bibliographic trends in the literature on DV. Not relevant.	Excluded.	Excluded, not relevant.
17.	Kylie Cripps ⁶⁶⁹	Examination of print and online news media from 2011 to 2018	Australian article. Examines media reporting of two cases of alleged sexual homicide. It 'illustrates that, when taken together the colonialism, racism and sexism prevalent in the news reporting served to characterise the victims as unworthy of the public's sympathy' (300). Stereotypes of Aboriginal women in 'popular culture are pervasive, grounded in a dominant hegemony deeming them racially inferior and as a "deviation from the ideal woman"' (304). Stereotypes oscillate in America (Indian princesses and lascivious squaws) and in Australia (powerless victims or 'Gins'). The victim stereotype is a 'good' submissive woman, 'rescueable' ... 'The squaw and gin stereotype is often framed as being wanton, sexually available, and promiscuous'. Direct parallels are made between her as an Indigenous woman and that of a prostitute, she is used and abused with impunity, historically by white men (304). Cites a Canadian case: 'Justice Moldaver in R v Barton [2019] SCC 33 notes that 'we live in a time where myths, stereotypes and sexual violence against women – particularly Indigenous women and sex workers – are tragically common' (32, [1]). He goes further to state that 'our society has yet to come to grips with just how deep-rooted these issues truly are, and just how devastating their consequences can be' (32, [1])' (304). The article goes on to examine the framing and reporting of the two cases.	Include Population: First Nations	Include. Relevant in relation to stereotyping, myths
18.	Lindeman and Togni (2022) ⁶⁷⁰	Qualitative study, participatory action workshops, First-Nations led	Australian article. The predominantly non-Aboriginal staff of Domestic and Family Violence Service in Central Australia felt they had a limited understanding of Anangu women's experience of sexual violence – looked for a way to explore and deeply understand their experience to respond more effectively. 'Aboriginal understandings of the nature and experience of sexual assault are critical to developing effective responses that meet	Definitely include. Very insightful discussions around the importance of	Include. Highly relevant.

⁶⁶⁷ Pamela Saleme et al, 'An integrative literature review of interventions to protect people with disabilities from domestic and family violence' (2023) 20 *International Journal of Environmental Research and Public Health* 1.

⁶⁶⁸ Chloe Charlton et al, 'Bibliometric and Density Visualisation Mapping Analysis of Domestic Violence in Australia Research Output 1984–2019' (2022) 19 *International of Environmental Research and Public Health* 1.

⁶⁶⁹ Kylie Cripps, 'Media constructions of Indigenous women in sexual assault cases: reflections from Australia and Canada' (2021) 33(3) *Current Issues in Criminal Justice* 300.

⁶⁷⁰ Melissa A Lindeman and Samantha J Togni, 'Improving Services for Aboriginal Women Experiencing Sexual Violence: Working at the Knowledge Interface', (2022) 75(3) *Australian Social Work* 372.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
		process of knowledge sharing	<p>Aboriginal women's needs – how we understand an issue relates directly to the identification and development of a suitable response' (373). 'Indigenous people must be regarded as the principal bearers of knowledge' (373). Discusses research with Maori women that indicated 'public policy ... did not engage with Maori understandings of what constitutes sexual violence' - policy responses located sexual violence only at the level of individual violence so the collective experiences for Maori of colonial violence 'remain invisible in a healing context'. Other studies emphasise the 'centrality of family and community ... that fundamentally alters the desired approaches to ... women who have been victims of violence' (374). Indigenous-led initiatives ... are now understood to offer the best chance for developing effective responses ... and need to be guided by trauma theory' (374). Discusses an earlier collaboration, uti kulintjaku which means to 'listen, think and understand clearly' (374); the team comprised senior Anangu women who developed the Uti Kulintjaku Iwara (way of working) to 'talk about difficult issues at the interface of knowledge systems' (374). This project involved a multicultural team of different ages.</p> <p>Understanding language – a list of approximately 200 words and phrases in Pitjantjatjara and Ngaanyatjarra was compiled relating to sexual behaviour, sexual assault and its impact, abuse of power, kinship and protective relationships, and ways of working and learning. The non-Aboriginal staff 'came to appreciate the crucial role of language and knowledge of culture and community – Anangu women described the way of speaking "sideways" or "kit-kiti wangkanyi" as the appropriate way of 'talking about sensitive issues to ensure that further hurt, distress, shame or offence is avoided' (378). 'It was revelatory to non-Aboriginal participants that there is no direct translation of the English word "trust" ... words used related to context and relationships' (378). Excellent discussion (379).</p> <p>Deep listening – 'process created safety and time for deep listening and reflection. Through this process the complexities of sexual violence, its impacts, and context could be thoughtfully explored without judgement' (379). Discussions were embedded in a context that included articulation of the 'devastating impact of colonisation and the dominance of the Australian legal system ... Anangu understandings of sexual assault were discussed within this complex context and situated within the intergenerational experience' (379). 'Central to this is awareness of, and reflection upon, power and privilege within this context and an ability to learn in a different way, which we understand to be a foundational skill of cultural safety' (381).</p>	<p>language for First Nations people</p> <p>Population: First Nations</p>	
19.	Mason and Stanic (2019) ⁶⁷¹	First study of official bias crime data held by NSW police	Australian article. Discusses hate crime and reporting of hate crimes generally by minorities to police. Focuses on hate crime generally.	Exclude. Not relevant.	Exclude. Insufficient focus on sexual assault.

⁶⁷¹ Gail Mason and Rachael Stanic, 'Reporting and recording bias crime in New South Wales', (2019) 31 *Current Issues in Criminal Justice* 164.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
20.	Randall (2021) ⁶⁷²	Legal doctrinal	Canadian article. Not expressly included. Main focus of the article (a case study of the poor treatment of one Canadian victim) is indicative of the shocking experiences in and systemic failure of, the criminal justice system, but very specific and not directly relevant to this study. However does discuss some Australian literature. Discusses the constellation of intersecting factors facing indigenous women. In Australia – ‘the same themes of colonialism and its harms are evident in data on indicia of inequalities such as homelessness, unemployment rates, poorer health outcomes, and overincarceration.’ (332). Provides statistical information around these themes. ‘Being Indigenous in contemporary society, then, is typically a marker for various kinds of systemic inequality’ (333).	Exclude. Not relevant.	Exclude. Insufficient focus on sexual assault, too narrow for this review
21.	Cations et al (2022) ⁶⁷³	Secondary analysis of data from the Longitudinal Study of Women’s Health over 20 years 1996 up to 2017	Australian article. Analysis of 12,085 women 70-75 years at baseline from all states and territories. Date of death determined from National Death Index; dementia status was self-reported or from administrative data. At baseline, 728 women (6.0%) reported historical IPV (defined as physical and/or sexual violence), 121 (1%) reported current violence, 38 reported both (0.3%). Historical IPV increased 20-year mortality risk (after controlling for relevant variables), no relationship between current violence and mortality, no relationship between IPV and risk for incident dementia. Older women with exposure to IPV over the lifespan ‘die significantly earlier than women who do not’ (NP2606). ‘Mortality risk was highest where the women reported both historical IPV and current violence at baseline, though this was a small group’ (NP2614). ‘The results provide further evidence that stress processes likely create pathways to ill-being even after the violence has ended and suggest that close clinical monitoring is essential for survivors as they age. The sequelae of violence are chronically under-recognized and addressed in aged care settings’ (NP2617).	Include. Population: older women	Include. Relevant in relation to sequelae of IPV/ sexual violence
22.	Dow et al (2020) ⁶⁷⁴	Qualitative study looking at elder abuse by children	Australian article. Barriers to reporting are similar as for older women experiencing sexual violence. 4 key barriers: fear of negative consequences for the abuser, including homelessness, fear of negative consequences for themselves, belief the abuse was not the perpetrator’s fault, and stigma (shame and embarrassment). Overarching explanatory category was the power of the parental bond. Not directly relevant to this present study but highlights similarities in barriers.	Exclude.	Exclude. Not relevant. Not focused on sexual violence
23.	Finfgeld-Connett (2014) ⁶⁷⁵	Qualitative systematic review	American article but does include one study from Australia. Reviews 20 qualitative studies. Provides interesting comparative insights into older women’s experiences of IPA in America, Australia, Canada, Israel, Ireland, and the UK. Primary objective was to ‘present contextually grounded inferences regarding the lives and health care needs of older women who experience IPA’ (674). No discussion of how the studies defined intimate partner violence.	Include, for further evidence of barriers. Population: older women	Include, further evidence of barriers

⁶⁷² Melanie Randall, ‘The shackled sexual assault victim: Trauma, resistance, and criminal justice violations of an indigenous woman’ (2019) 39 *Minnesota Journal of Law and Inequality* 317 (2021).

⁶⁷³ Monica Cations et al, ‘Intimate partner violence and risk for mortality and incident dementia in older women’ (2022) 37(5-6) *Journal of Interpersonal Violence* NP2605.

⁶⁷⁴ Briony Dow et al, ‘Barriers to Disclosing Elder Abuse and Taking Action in Australia’ (2020) 35 *Journal of Family Violence* 853 (2020).

⁶⁷⁵ Deborah Finfgeld-Connett, ‘Intimate partner abuse among older women: Qualitative systematic review’ (2014) 23(6) *Clinical Nursing Research* 664.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			<p>Four main themes emerged: abuse as a way of life, abuse later in life, effects of IPA later life, and barriers to change. Abuse is often multigenerational and not 'openly acknowledged or discussed', for those enduring long-term abuse, they were often from families embracing patriarchal mores and intact families. Feel responsibility for maintaining a traditional household – especially for the children's benefit (674). Later in life, sexual violence wanes and physical violence increases; also abuse from children may commence/continue. At old age, 'older women are likely to perceive that their situations are immutable' – may lack independent living skills and financial independence, and feel too ashamed and humiliated to ask for help. Also have many physical and psychological problems to lifetime IPA. Barriers include accepting their situation as unalterable, lack of independent living skills, financial independence, fear of isolation/loneliness, co-dependency on caregiver due to health. Friends and family reluctant to be involved. Shame prevents help-seeking. They perceive health care workers avoid getting involved as it is a 'private family matter'. Fear of retribution. In rural locations, families might favour patriarchal paradigms; police apt to overlook abuse and less likely to intervene especially if the perpetrator is well known (676). Support services are sparse, and transportation options for those who do not drive are limited. (677).</p> <p>Many have a 'make the best of it' mindset to 'gain feelings of personal dignity and equanimity' – perceiving the alternative as a life of self-doubt, anger, loss, or worse, despair. May attribute abuse to ethnic and cultural mores, developmental issues, and mental and physical problems. They may choose to forgive, or the perpetrator may become ill and they are then able to 'cultivate sanctuaries for themselves within their homes' (677).</p>		
24.	Garma (2017) ⁶⁷⁶	Systematic review	Spanish article but conducts international review including Australian literature. Lack of terminological consistency and training was indicated as contributing to lack of identification of elder abuse, or lack of confidence in identifying abuse leading to reluctance to interfere, also concern for the victim, risk of a long judicial process (88). Fewer health professionals recognised abuse than students in training.(88). For institutional nurses, one barrier was that reporting abuse would place them in conflict with other professionals and colleagues – with an attendant fear of retaliation (89). Studies indicated the importance of 'support and guidance from [frontline workers'] supervisors' (89). Training was recommended.	Include Population: older women	Include. Provides some insights into reluctance of health professionals to report
25.	Gill (2022) ⁶⁷⁷	Scoping review	Canadian scoping review of 12 articles, with some analysis of Australian literature. RQ was barriers to help-seeking. Barriers were the same consistently reported throughout other reviews and studies: dependency, fear, shame, personal well-being, self-blame, destiny and	Include	Include. Relevant in relation to adding to evidence base on

⁶⁷⁶ Carmen Touza Garma, 'Influence of health personnel's attitudes and knowledge in the detection and reporting of elder abuse: An exploratory systematic review' (2017) 26 *Psychosocial Intervention* 73.

⁶⁷⁷ Jessica K Gill, 'Barriers to Help Seeking among Victims of Elder Abuse: A Scoping Review and Implications for Public Health Policy in Canada' (2022) 41(3) *Canadian Journal on Aging* 460.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			fate. One study indicated 72% of individuals experiencing physical or sexual assault sought help, and less (60%, 50%) for financial and psychological abuse (469). Older adult women are less likely to recognise violent acts when the perpetrator was their spouse (469). Other barriers include being in a relationship of power and trust, protection and fear of losing connection, as well as structural, community and cultural barriers (469). Finally there was a general lack of awareness or ignorance about support services, difficulty with access and overall disappointment in the quality of services (470).	Population: older women	barriers for older women
26.	Meyer, Lasater and Garcia-Moreno (2020) ⁶⁷⁸	Systematic review of qualitative literature	Swiss/US article on a systematic review of international literature including Australia. Notes the lack of consistent theoretical frameworks, study design, data collection and analysis. Notes again a shift in type of violence from physical and/or sexual to psychological over the life span and with changing life milestones eg husband's retirement, children leaving home illness (25). Again, barriers were social and gender norms shaping the women's experiences – resulting in silence. Stigma and family concerns regarding leaving a marriage. (30) feeling obliged to care for a sick partner so staying in the relationship (30). Also, perceptions of violence as 'normal', not identifying as a victim of violence (especially for women exposed to violence as a child) (31). Chronic illnesses as a result of exposure to violence. Also specific barriers around accessing support and health care: lack of awareness of services, health care providers' assumptions older women cannot experience violence due to age, minimising behaviours and lack of confidentiality (31). Coping mechanisms included leaving the relationship isolation, substance abuse (32). Some called police or applied for formal legal support such as a protection order. 'In several instances, legal authorities, including police, provided limited support, leaving women unable to find long-term solutions to the violence they experienced' (32).	Include Population: older women	Include. Relevant in relation to adding to evidence base on barriers for older women
27.	Smith et al (2022) ⁶⁷⁹	Qualitative study	Australian article. Survey n = 53 of Australian aged care nurses. Few reported unwanted sexual behaviour either resident-resident (<35%) or staff-resident (<22%) happened once a year. Most were not informed by another resident of USB (>75%) or personally reported (>77%). Most unaware if their facility had lodged an incident report to the regulator or authorities in the past 12 months (73.9%). Most considered there to be no barriers to reporting (77.8%). (153). Almost half believed it occurred once a decade (157). Another retrospective cohort study of aged care facilities in Victoria found 1 in 13 residents were targeted for WSB in a 12 month period. In a 4-week observation prevalence study in US, 20.2% experienced resident to resident aggression of which 2.95% were sexual violence (157). Prevalence of inappropriate sexual behaviour varies between 1.8% and 38.1%. Given nearly half of the respondents (48.9%) worked in large, aged care homes (61-120 beds) and worked 5+ shifts per week (77.8%) it was 'surprising' that most had not experienced an	Include Population: older women	Include. Surprising insights into lack of understanding of unwanted sexual behaviour by nurses in aged care facilities

⁶⁷⁸ Sarah R Meyer, Molly E Lasater and Claudia Garcia-Moreno, 'Violence against older women: A systematic review of qualitative literature' (2020) 15(9) *PLoS One* e0239560.

⁶⁷⁹ Daisy E Smith, Meghan T Wright, Joseph E Ibrahim, 'Aged care nurses' perception of unwanted sexual behaviour in Australian residential aged care services' (2022) 41 *Australasian Journal of Aging* 153.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			<p>incident in the last 12 months (157). Health and social workers 'often do not recognise, record or report elder abuse, and education regarding USB in RACS is largely absent. Indeed, most respondents had not completed any previous sexual violence training in the past 12 months' (157). It was postulated low levels of understanding drove the lack of awareness (157).</p> <p>Conclusion: awareness and estimates of unwanted sexual behaviour directed at residents were significantly lower than known national prevalence rates. 'This lack of awareness could be a substantive barrier to recognition and optimal management of this form of abuse' (153).</p>		
28.	Dowse et al (2016) ⁶⁸⁰	Secondary data analysis	Re-analysis of Personal Safety Survey data and difficulties with data analysis for sexual violence against women with disabilities. Argues for a 'comprehensive national response to violence against women with disabilities' (341). Relevant only to support the discussion around difficulties with data collection.	Include Population: Disabilities	Include, relevant to challenges with data collection
29.	Stardust and Caldwell (2023) ⁶⁸¹	Book chapter	Chapter discusses how the law conceptualizes sex, money and consent, which has implications for survivors of sexual violence. Discusses a particularly interesting case, <i>Attorney-General v Harris</i> , (1981, unreported) with clear utilisation of stereotyping and stigma. Much of the latter part of the chapter (regarding consent laws and failure to pay) not relevant to this project.	Include Population: Sex workers	Include, very relevant to the discussion on stigma
30.	Fraser-Barbour et al (2018) ⁶⁸²	Qualitative study, interviews with seven participants	<p>Small study, aims to canvass perspectives of people with ID and support providers regarding barriers to reporting sexual violence and accessing supports.</p> <p>One key barrier – failure to 'actively plan for and engage with people who have an ID' (9), often assumed to be 'inherently vulnerable and incapable of participating' (9). All participants saw a need to 'develop a sense of trust and rapport with individuals reporting violence as central to enabling them to experience a sense of being heard, valued and respected' (9). Examples of secondary trauma of people 'talking as if they weren't there' (9). Police inadvertently triggered a fight or flight response, which could have been avoided if they had 'taken the time to identify key support people and worked collaboratively with them to effectively support the individual with ID' (9) – need the 'time and space to process the information' and then were able to contribute. (9). Widespread misconceptions led to disempowerment and inability to participate in discussions and decisions affecting them. (10). 'people with ID are often denied any sense of citizenship, choice and control over what happens after abuse has been disclosed or identified' (11).</p>	Include Population: Disabilities	Include, relevant to barriers

⁶⁸⁰ Leanne Dowse et al, 'Mind the gap: the extent of violence against women with disabilities in Australia' (2016) 51(3) *Australian Journal of Social Issues* 341.

⁶⁸¹ Zahra Stardust and Hilary Caldwell, 'Archetypal Sluts' (2023) *New Directions in Sexual Violence Scholarship* 45.

⁶⁸² Ellen Frances Fraser-Barbour, Ruth Crocker and Ruth Walker, 'Barriers and facilitators in supporting people with intellectual disability to report sexual violence: perspectives of Australian disability and mainstream support providers' (2018) 20(1) *The Journal of Adult Protection* 5.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			Strong emphasis on trauma-informed education and training, relevant to building bridges which needed further funding and resourcing (11). 'The development of best practice was seen by participants as depending on training professionals across various habilitation and justice systems to better understand and embody a supportive approach cognisant of the needs of people with ID. Such training might include strategies for identifying abuse, violence and neglect with specific consideration of people with ID, and a sensitive trauma informed approach to supportive decision making. Most participants felt that education and training was a critical way to dismantle dominant negative attitudes' (11).		
31.	Zark, Toumbourou and Satyen (2023) ⁶⁸³	Quantitative survey study of university students	<p>The study aimed to analyse the help-seeking behaviour of student victim-survivors of IPV and FV and how the patterns vary cross-culturally. Australian tertiary students.</p> <p>The literature review indicates a systematic review found Black/African American/Latinx/Hispanic women were more likely to use emergency departments while white women are more likely to use mental health and social services. Immigrant and refugee women in Australia are generally less likely than non-immigrant women to report IPV to authorities and access mainstream services, yet are overrepresented as users of crisis services. Another Australian study found that the rate of perceived need of help from services did not differ between migrant (68%) and non-migrant (71%) IPV victim-survivors but the rate of help-seeking was significantly lower among migrants (51% vs 67%). This may reflect increased barriers even after recognising the problem (494-495). Research with students indicates a general reluctance to engage in help-seeking. For international students, there was a fear of deportation, fear for personal and family safety, shame of not living up to family expectations, lack of knowledge of services, and lack of gender-based violence education and support programs on campus. (495)</p> <p>Findings: less than half (48.7%) participants sought formal help, although two thirds (66.2%) perceived a need for such help. (500). Two thirds (65.5%) reported barriers to help-seeking 'which were predominantly attitudinal or normative in nature' (500). Cultural minority students were 'generally less likely to perceive a need for help and to seek help than the majority' (500). However cultural identity was not associated with the likelihood of reporting barriers to help-seeking. (503). The most commonly cited barriers were perception the violence was not serious enough, embarrassment, love for the perpetrator, desire to keep the matter private (consistent for whole sample); lack of perceived need is itself a barrier (502).</p>	<p>Include</p> <p>Population: Culturally and linguistically diverse</p>	<p>Include, relevant to discussions around barriers</p>
32.	Ussher et al (2022) ⁶⁸⁴	Qualitative study of 31 interviews	The study examines the 'subjective experiences of sexual violence for 31 trans women of color living in Australia'. Photovoice activity also completed.	Include	Include. Relevant to illustrating the

⁶⁸³ Laura Zark, John W Toumbourou and Lata Satyen, 'Help-Seeking for Intimate Partner and Family Violence Among Tertiary Students in Australia: Nature, Extent, and Cross-Cultural Differences' (2023) 38 *Journal of Family Violence* 491.

⁶⁸⁴ Jane M Ussher et al, 'Crossing boundaries and fetishization: experiences of sexual violence for trans women of color' (2022) 37(5-6) *Journal of Interpersonal Violence* NP3352, NP3569.

No.	Reference	Type of study	Findings	Reviewer's conclusions	Relevance to study
			<p>Themes to emerge were 'tinged violation of boundaries', 'defining sexual violence' (which included conduct such as staring, verbal abuse, sexual touching and assault), 'crossing people's boundaries', 'sexual harassment'.</p> <p>Rich description of trans women's lived experience. Definite for inclusion.</p>	Population: LGBTIQ+	experiences of LGBTIQ+ especially stereotyping
33.	Ibrahim (2022) ⁶⁸⁵	Qualitative study of 10 interviews	<p>The study aimed to explore if there are any cultural, systemic and religious constraints in accessing the CJS in Australia that makes Muslim female IPV victim-survivors withdraw from the CJS and reduce confidence in it.</p> <p>Participants indicated 40% of the women perceived the local police as doing a "poor job" with regard to promptness of responding to calls and fair treatment of victims' (NP2371). However, they also indicated Queensland police were 'more responsive, quicker, respectful and had good communication skills' compared to their home countries, where police openly engaged in victim blaming and shaming ('you are not a good daughter-in-law') (NP2371). Only two out of the 10 reported IPV to police (NP2372).</p> <p>Motivators: all (100%) agreed primary reason was to 'stop or receive protection for themselves and their kids', 'feared for their safety', 'hope of avoiding repetition [in front of] children', 'belief that the police would be fair' (NP2372).</p> <p>Barriers: Matter considered private and to be handled informally; didn't want to leave the relationship; didn't want others to know; considered as minor behaviour; embarrassment, shame; fear of retribution; past inadequate experiences with police, also past experiences with police in home country; lack of knowledge or understanding of reporting procedures; concern for the partner and the law; loneliness; perception of 'no harm intended'; fear of losing children; no physical harm; reported elsewhere (social workers, doctors, lawyers rather than police; unsure if reporting would 'go against faith requirements on IPV and often they didn't know what the religious actually said about IPV' (NP2373-NP2376). In addition, community and culturally prescribed roles; systemic barriers such as distrust with the CJS – lack of cultural and religious sensitivity' (NP2379).</p>	<p>Include</p> <p>Population Culturally and linguistically diverse</p>	Include, relevant to supporting discussions on barriers

⁶⁸⁵ Nada Ibrahim, 'Experiences of Abused Muslim Women With the Australian Criminal Justice System' (2022) 37(3-4) *Journal of Interpersonal Violence* NP2360.