

# ANROWS

AUSTRALIA'S NATIONAL RESEARCH  
ORGANISATION FOR WOMEN'S SAFETY  
*to Reduce Violence against Women & their Children*

**Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability**  
GPO Box 1422  
Brisbane, QLD 4001  
By email: [DRCEnquiries@royalcommission.gov.au](mailto:DRCEnquiries@royalcommission.gov.au)

## **Re: Criminal justice system issues paper**

Dear Commissioners

Australia's National Research Organisation for Women's Safety (ANROWS) would like to thank the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) for the extended opportunity to respond to the *Criminal justice system issues paper*.

ANROWS is an independent, not-for-profit organisation established as an initiative under Australia's *National Plan to Reduce Violence against Women and their Children 2010–2022*. ANROWS is jointly funded by the Commonwealth and all state and territory governments of Australia. ANROWS was set up with the purpose of establishing a national-level approach to systematically address violence against women and their children.

Our mission is to deliver relevant and translatable research evidence which drives policy and practice leading to a reduction in the incidence and impacts of violence against women and their children. Every aspect of our work is motivated by the right of women and their children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and their children, and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

The answers below apply relevant ANROWS research evidence to selected questions set out by the Royal Commission in the *Criminal justice system issues paper*. We would be very pleased to assist the Royal Commission further, as required.

Yours sincerely

  
**Dr Heather Nancarrow**  
Chief Executive Officer

20 May 2020

**QUESTION 2:**

A. What do you think causes violence, abuse, neglect and exploitation of people with disability in the criminal justice system? What can be done to stop this from happening?

B. In particular, what changes would help people with disability avoid the criminal justice system in the first place?

ANROWS research by Dyson, Frawley and Robinson (2017) identified broad agreement across a range of studies concerning good practice standards for working with women with disability who have experienced or are at risk of experiencing violence. Key to all studies was the empowerment of women with disability through their participation in the development of policy and practice. The current criminal justice system was not designed with input from people with disability, so in thinking about how violence, abuse, neglect and exploitation of people with disability might be remedied, working in partnership with people with disability is key (Dyson et al., 2017).

Another reason for violence, abuse, neglect and exploitation of people with disability in the criminal justice system is the lack of collaboration between domestic and family violence services and disability services (Dyson et al., 2017), partly as a result of silos (Dowse, Soldatic, Didi, van Toorn, & Frohmader, 2013; Thiara, Hague, & Mullender, 2011), and also because of a lack of clarity about how services can learn from each other (Maher et al., 2018). This can result in a cycle of successive referrals for women with disability in which their needs are not met (Dowse et al., 2013). Underlying this lack of collaboration is a “culture clash” between disability services that focus on protection of the client, and domestic and family violence services that tend to promote women’s agency and independence (Dyson et al., 2017). The silos can also impact data collection (necessary to implement change), with domestic and family violence services rarely uniformly and systematically collecting data on disability, while disability services do not uniformly and systematically collect data on experiences or risks of violence (Dowse et al., 2013).

Violence, abuse, neglect and exploitation of people with disability in the criminal justice system is not limited to victims/survivors. People with disability also enter the criminal justice system by being perpetrators of violence. ANROWS research, *The PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home*, indicates that failures:

to respond fairly and appropriately to the alleged crimes of children and adults with disabilities—whether in relation to truly harmful behaviour such as serious violence, or more disruptive, survival-driven and over-criminalised behaviour—remain a feature of contemporary legal systems. (Campbell, Richter, Howard, & Cockburn, 2020, p. 95)

One of the problems that emerges from this research is that by using a deficit model of disability, legal systems can “read disability as a barrier to engaging in programs and services that are relevant to rehabilitation and risk of further offending” (Campbell et al., 2020, p. 95). Legal systems can also be prone to responding to “differences between people by reading disability as a causal factor in criminality” (Campbell et al., 2020, p. 95).

The research highlights the way that trauma and diagnoses of disability can intersect and add complexity, meaning there is a need to take a broader view that encompasses the child's experiences and environment which might also be contributing to the behaviours they are exhibiting, and have led to the particular diagnosis (Campbell et al., 2020). As this research points out, there is emerging evidence that trauma contributes to observable differences in brain function, with the developmental trauma (adverse childhood experiences) causing impairment in a similar way to cognitive disability from physical (traumatic brain injury) or chemical (FASD) trauma (Campbell et al., 2020). Adolescents involved in the criminal justice system often have a wide range of risk factors, which can make a straightforward diagnosis difficult (Campbell et al., 2020).

Employing a social model and a strengths-based lens would assist in choosing the kind of support and responses an adolescent might receive, as well which supports are offered to their wider family (Campbell et al., 2020). Courts also need to carefully consider the capacity of the person with disability to understand and comply with court processes and orders, particularly when those orders name a protected person who is not just their parent, but also their primary caregiver as a person with disability (Campbell et al., 2020).

Equitable responses to people with disability using violence who enter the criminal justice system depend upon addressing the significant gap in service provision, so that appropriate dispositions that depend upon program participation are an option for people with disability, who may already be at greater risk of criminalisation because of a lack of appropriate disability support in the community (Campbell et al., 2020). As the Council for Intellectual Disability notes in an open letter to the NSW Attorney-General Mark Speakman, ongoing funding for programs like the Cognitive Impairment Diversion Program aimed at diverting alleged offenders from the Local Courts into support from disability and other human services are vital parts of how we shift people with disability who use violence towards more positive lifestyles, and in doing so, reduce rates of offending and costs across the justice system, and impacts to victims/survivors (2020, May 11). Greater disability support in the community are also key to helping people with disability who use violence avoid the criminal justice system in the first place.

**QUESTION 3:**

A. What do you think prevents people with disability who have experienced violence, abuse, neglect, or exploitation from getting protection or justice from the police or the courts?

Women with disability can find that gender-based discrimination and discrimination based upon ableism intersect and increase their risk of violence (Cox, 2016), particularly when they are substantially dependent upon their caregivers (Barger et al., 2009 in Cox, 2015). Courts may not support equitable access, which is particularly significant given that the key tactic of abuse for women with disability is limiting access to disability support services or mainstream service providers, along with threats related to these women's mothering and care-giving roles (Maher et al., 2018). Structural changes need to accompany changes to the attitudes and stereotypes that impede safe access for women with disability experiencing domestic, family and sexual violence (e.g. improvements to accessibility, such as wheelchair access, and alternatives to verbally calling matters to assist service users who are deaf or have reduced hearing capacity to know when their case is being called). Regular disability awareness training for all people working within the criminal justice system would be a very good start.

ANROWS research also highlights that all jurisdictions should have a disability strategy that is underpinned by a national disability justice strategy (Maher et al., 2018). This has occurred in some jurisdictions, while in others disability sector organisations, like People with Disability Australia (2019, February 26), are still lobbying for this to happen: “We must have a NSW Disability Justice Strategy that will both help people with disability get justice, but also to stop the terrible over-representation of people with cognitive and/or psychosocial disability in prison.” This call to action echoes the Australian Human Rights Commission’s report, *Equal before the law: Towards disability justice strategies*, which outlined that each jurisdiction should have a disability justice strategy to support people with disability to claim their human rights and exercise full and effective legal capacity (Australian Human Rights Commission, 2014).

**QUESTION 4:**

A. What supports do people with disability need to participate in the criminal justice system on an equal footing as others without disability?

ANROWS research highlights that creating real accessibility for women with disability requires more than physically modifying courts or providing interpreters for people with sensory impairments (Dyson et al., 2017). Real accessibility requires an update to attitudinal factors (how services think about disability) and changes to how service information is made available to women with disability, going beyond the *Disability Discrimination Act 1992 (Cth)* (Dyson et al., 2017). The research explains that all tertiary supports, including the criminal justice system, need to take a broad view of accessibility to ensure they are approachable to women with disability; acceptable and appropriate to these women, with any barriers to communication removed; and both affordable and available to women with disability (Dyson et al., 2017).

To ensure women with disability are on equal footing with those without disability would also mean the criminal justice system needs to consider access for women whose disability might not be “officially” recognised. This would include women not accessed as eligible for disability services; women who have kept their disability to themselves, including not disclosing their disability to government organisations; plus special attention paid to women whose disabilities are a direct result of living with sustained violence, which is sometimes not easily identified because it is compounded by other life experiences (Dyson et al., 2017).

Addressing the needs of women with disability requires high-quality collaboration between the criminal justice system and disability services, including referring, collaboration and ongoing engagement (Dyson et al., 2017). Ongoing collaboration with disability services (rather than simply referring and handing over to these services) also provides opportunity for cross-sector training. Women with disability require more than a one-size-fits-all approach—they need adequate time and flexibility to meet individual needs (Dyson et al., 2017). This ANROWS research highlighted that women with disability particularly value relationships with workers that involve trust, and taking as much time as is needed (Dyson et al., 2017).

**QUESTION 5:**

How does violence, abuse, neglect or exploitation in the criminal justice system vary for particular groups of people with disability? For example, how does a person's gender, race, age, cultural or sexual identity, or geographic location (metropolitan, regional, remote) impact on their experiences of violence, abuse, neglect and exploitation?

Women with disability have different experiences of violence, abuse, neglect and exploitation when they have intersecting geographical, social and cultural factors. Women and girls with disabilities have limited access to services and support in remote and rural communities (Dowse et al., 2013). These areas have a higher proportion of women and girls from Aboriginal and Torres Strait Islander communities. Women with disability from culturally and linguistically (CALD) diverse communities, LBQIT women and women living in institutional settings are also disadvantaged in regard to the availability of appropriate services (Dowse et al., 2013). There is little data available on the level of demand for services, and this is particularly the case for services for women from Aboriginal and Torres Strait Islander communities (Dowse et al., 2013). Women from CALD backgrounds may also face barriers to accessing services due to their visa status, dependence on the perpetrator, and language and cultural factors, and a lack of services that can address these barriers (Vaughan et al., 2016).

**QUESTION 6:**

- A. What are the experiences of First Nations people with disability engaging with the criminal justice system? For example, are the processes and services culturally appropriate and safe?
- B. A high proportion of young people in detention are First Nations people with disability or with an undiagnosed disability. How can they be better supported to access justice when they are in the system? What should be done to help them transition out of the criminal justice system?

There is an emerging theory that a high percentage of Aboriginal women incarcerated for violent crime have a possible diagnosis of complex trauma. Recent ANROWS research, *Kungas' trauma experiences and effects on behaviour in Central Australia*, centred upon the life experiences of Aboriginal women who were all incarcerated for alleged violent offences in Central Australia (Bevis, Atkinson, McCarthy, & Sweet, 2020). This research found that almost all of the women studied had endured violence by an intimate partner (IPV) prior to entering prison (Bevis et al., 2020). By exploring the life events that led to their incarceration, the research demonstrates the critical need for services that can effectively respond to the trauma of women's lives and prevent future incarceration (Bevis et al., 2020).

This research highlighted the extent of disability among the women in the program, with one stakeholder observing:

“In all the time I was there I would say 20 percent of the women had FASD [foetal alcohol spectrum disorder], or an acquired brain injury from the repeated beatings. I was told because she is so brain-damaged she can't give evidence against him and so therefore, police say they can't charge him. Now why does a woman have to give evidence when there is evidence from hospital, medical services, and other services that he has severely beaten her repeatedly so that she has an acquired brain injury from his beatings? ... All the women I worked with in KSVP had experienced high levels of violence on them before they committed a crime.” (Bevis et al., 2020, p. 53)

This demonstrates the need to improve the appropriate diagnoses of complex trauma, FASD and acquired brain injury for First Nations people (Bevis et al., 2020). It also points out the need for continuity of care at all levels, including the coordination of care for women who have undiagnosed permanent disability and complex trauma (Bevis et al., 2020). Rehabilitation is less likely when there are limited examples of trauma-informed programs in prisons specifically designed for Aboriginal and Torres Strait Islander women (Bevis et al., 2020). Programs like the five-year-old Kunga Stopping Violence Program, which currently provides trauma-informed pre-and post-release support to Aboriginal and Torres Strait Islander women in the Alice Springs Correctional Centre, represent an opportunity for alternatives to custodial sentences (Bevis et al., 2020). The research emphasises the need for diversionary programs for women and young women, so people who have already been brutalised by the system are not further separated and traumatised by incarceration (Bevis et al., 2020).

With an estimated 80 percent of Aboriginal and Torres Strait Islander women in prisons being mothers (Sherwood & Kendall, 2013), another key consideration to support First Nations people with disability would be avoiding incarcerating Indigenous mothers, which can potentially fracture the mother–child relationship (Perry, 2013). Incarcerating Aboriginal mothers can lead to children suffering emotional and behavioural impacts, as well as experiencing poor health, insecure housing and disrupted education, all of which heighten the risk of the young person entering child protection or justice systems (Bevis et al., 2020; Sherwood & Kendall, 2013), compounding the intergenerational effects of trauma. Solutions for First Nations peoples need to look beyond protecting the community from the perpetrator, and recognising community harm done by the perpetrator, to also considering the long-term, cumulative, intergenerational effects of female Indigenous DFV victims/survivors and perpetrators being removed from their families and communities (Human Rights Law Centre & Change the Record Coalition, 2017).

**QUESTION 7:**

A. What barriers are there to effectively identify, disclose and report instances of violence, abuse, neglect or exploitation in the criminal justice system?

In a study of the access to justice for women with disability, Maher et al. (2018) noted that women with disability need to be listened to, have their experiences of violence taken seriously, and have domestic and family violence services respond to disclosures in an “effective, respectful and prompt” manner. Upcoming ANROWS research led by Associate Professor kylie valentine highlights that “safety” for mothers with disability is more holistic than a focus on violence (ANROWS, 2020). For this group, safety from violence is inextricably linked to having access to resources, having their basic needs met, having access to supports, community networks and to people to talk to (ANROWS, 2020). This research highlights that tying access to support to diagnosis or identification of disability is a barrier to access (ANROWS, 2020). The research also emphasises that flexibility in support is required, so that support is not restricted to a specific program or package, but can be appropriately tailored to meet the needs of the woman with disability (ANROWS, 2020).

**QUESTION 9:** What else should we know? Have we missed anything?

Pathways into the criminal justice system rely upon attitudinal changes that include women with disability being believed when they report gender-based violence levelled against them, and being

considered reliable witnesses when they enter the criminal justice system. Women with disability have expressed concern that their disclosures are sometimes not believed and they are not given a say in shaping what will happen after making a disclosure (Maher et al., 2018). ANROWS research highlights a variety of circumstances where for women with disability, this might not be occurring. In *Preventing gender-based violence in mental health inpatient units*, ANROWS research led by Dr Juliet Watson, women experiencing mental illness (which might include psychosocial disability) reported that they were ignored or not taken seriously when they reported incidents of gender-based violence to staff (Watson, Maylea, Roberts, Hill, & McCallum, 2020). This research highlighted that many inpatient units have policies that either implicitly or explicitly allow for service providers to deny women access to police reporting (Watson et al., 2020).

New ANROWS research led by Associate Professor Michael Salter highlights that women with experiences of complex trauma (cPTSD) rarely have successful criminal justice outcomes, despite having been extensively victimised (Salter et al., 2020). Across interviews with both women with experiences of complex trauma and the professionals who work with them, the research demonstrates that both groups feel police and prosecutorial decisions made in these women's cases were not transparent or accountable (Salter et al., 2020). Both groups indicated that initial assessments and informal judgements made by police have a significant effect on access to justice for the women with experiences of complex trauma (Salter et al., 2020). For example, one sexual assault worker commented on “the ways in which police could pre-judge the likelihood of prosecution and conviction, truncating investigations and attempting to “cool” women out from pursuing their complaint” (Salter et al., 2020, p. 100). This research emphasised that this could be improved with a move to trauma-informed prosecution for women with experiences of complex trauma (Salter et al., 2020). This would optimally involve continuity of contact and care in a case from a trusted individual, and more careful handover from police to prosecution, and from lawyer to lawyer (Salter et al., 2020).

The importance of not limiting disability supports in the criminal justice system to those with confirmed diagnoses can also be deduced from this research. At present, cPTSD is not covered under the National Disability Insurance Scheme (NDIS), which can place women with experiences of complex trauma, and professionals who work with them, in a double bind:

Applying for NDIS funding also placed Lena [a woman with cPTSD] in the uncomfortable position of choosing between psychiatric diagnoses. While she said her psychiatrist feels that the most appropriate diagnosis is complex PTSD, he is worried that the exclusion of this diagnosis from the psychiatric diagnostic system (DSM-V) might compromise her chances of success. However, the closest diagnostic label available in DSM-V is “borderline personality disorder”, which Lena's psychologist refuses to endorse. (Salter et al., 2020, p. 84)

The research recommends improved access to comprehensive treatment for complex trauma under the current policy arrangements, including Medicare and NDIS (Salter et al., 2020). ANROWS research into adolescents who use violence in the home, which includes adolescents with disability, also highlights that disabilities may go undiagnosed when families lack the resources to have expensive assessments done (Campbell et al., 2020).

## References

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Australian Human Rights Commission. (2014). *Equal before the law: Towards disability justice strategies*. Retrieved from <https://humanrights.gov.au/our-work/disability-rights/publications/equal-law>

Bevis, M., Atkinson, J., McCarthy, L., & Sweet, M. (2020). *Kungas' trauma experiences and effects on behaviour in Central Australia* (Research report, 03/2020). Sydney, NSW: ANROWS.

Campbell, E., Richter, J., Howard, J., & Cockburn, H. (2020). *The PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home (AVITH)* (Research report, 04/2020). Sydney, NSW: ANROWS.

Council for Intellectual Disability. (2020, May 11). *Eminent Australians call for vital court diversion program to be saved* (Open letter). Retrieved May 14, 2020 from <https://cid.org.au/our-stories/eminent-australians-call-for-vital-court-diversion-program-to-be-saved/>

Cox, P. (2015). *Sexual assault and domestic violence in the context of co-occurrence and re-victimisation: State of knowledge paper* (ANROWS Landscapes, 13/2015). Sydney, NSW: ANROWS.

Cox, P. (2016). *Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal safety survey, 2012*. (ANROWS Horizons, 01/2016). Sydney, NSW: ANROWS.

Dowse, L., Soldatic, K., Didi, A., van Toorn, G. & Frohmader, C. (2013). *Stop the violence: Background paper*. National Symposium on Violence against Women and Girls with Disabilities, Sydney. Hobart, TAS: Women with Disabilities Australia.

Dyson, S., Frawley, P., & Robinson, S. (2017). *"Whatever it takes": Access for women with disabilities to domestic and domestic violence services: Final report* (ANROWS Horizons, 05/2017). Sydney, NSW: ANROWS.

Human Rights Law Centre & Change the Record Coalition. (2017). *Over-represented and overlooked: The crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*. Retrieved from <https://www.hrlc.org.au/reports/2017/5/18/reportover-represented-and-overlooked-the-crisis-of-aboriginal-and-torres-strait-islanderwomens-growing-over-imprisonment>

Maher, J. M., Spivakovsky, C., McCulloch, J., McGowan, J., Beavis, K., Lea, M., ... Sands, T. (2018). *Women, disability and violence: Barriers to accessing justice* (ANROWS Horizons, 02/2018). Sydney, NSW: ANROWS.



People With Disability Australia. (2019, February 26). *Time to get serious about inclusion for people with disability* (Media release). Retrieved May 13, 2020 from <https://pwd.org.au/time-to-get-serious-about-inclusion-for-people-with-disability/>

Perry, B. (2013). *Bonding and attachment in maltreated children: Consequences of emotional neglect in childhood*. Retrieved from [https://childtrauma.org/wp-content/uploads/2013/11/Bonding\\_13.pdf](https://childtrauma.org/wp-content/uploads/2013/11/Bonding_13.pdf)

Salter, M., Conroy, E., Dragiewicz, M., Burke, J., Ussher, J., Middleton, ... Noack- Lundberg, K. (2020). *“A deep wound under my heart”: Constructions of complex trauma and implications for women’s wellbeing and safety from violence* (Research report, 12/2020). Sydney, NSW: ANROWS.

Sherwood, J. & Kendall, S. (2013). Reframing space by building relationships: Community collaborative participatory action research with Aboriginal mothers in prison. *Contemporary Nurse: A Journal for the Australian Nursing Profession* 46, 83–85. doi:[10.5172/conu.2013.46.1.83](https://doi.org/10.5172/conu.2013.46.1.83)

Thiara, R. K., Hague, G., & Mullender, A. (2011). Losing out on both counts: Disabled women and domestic violence. *Disability & Society* 26(6), 757–711. doi:[10.1080/09687599.2011.602867](https://doi.org/10.1080/09687599.2011.602867)

Vaughan, C., Davis, E., Murdolo, A., Chen, J., Murray, L., Quiazon, R., ... Warr, D. (2016). *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia. The ASPIRE Project: Research report* (ANROWS Horizons 07/2016). Sydney, NSW: ANROWS.

Watson, J., Maylea, C., Roberts, R., Hill, N., & McCallum, S. (2020). *Preventing gender-based violence in mental health inpatient units* (Research report, 01/2020). Sydney, NSW: ANROWS.

### **Forthcoming Research**

Australia’s National Research Organisation for Women’s Safety. (2020). *Mothers and children with disability using early intervention services: Identifying and sharing promising practice* (Project page). Retrieved from <https://www.anrows.org.au/project/mothers-and-children-with-disability-using-early-intervention-services-identifying-and-sharing-promising-practice/>