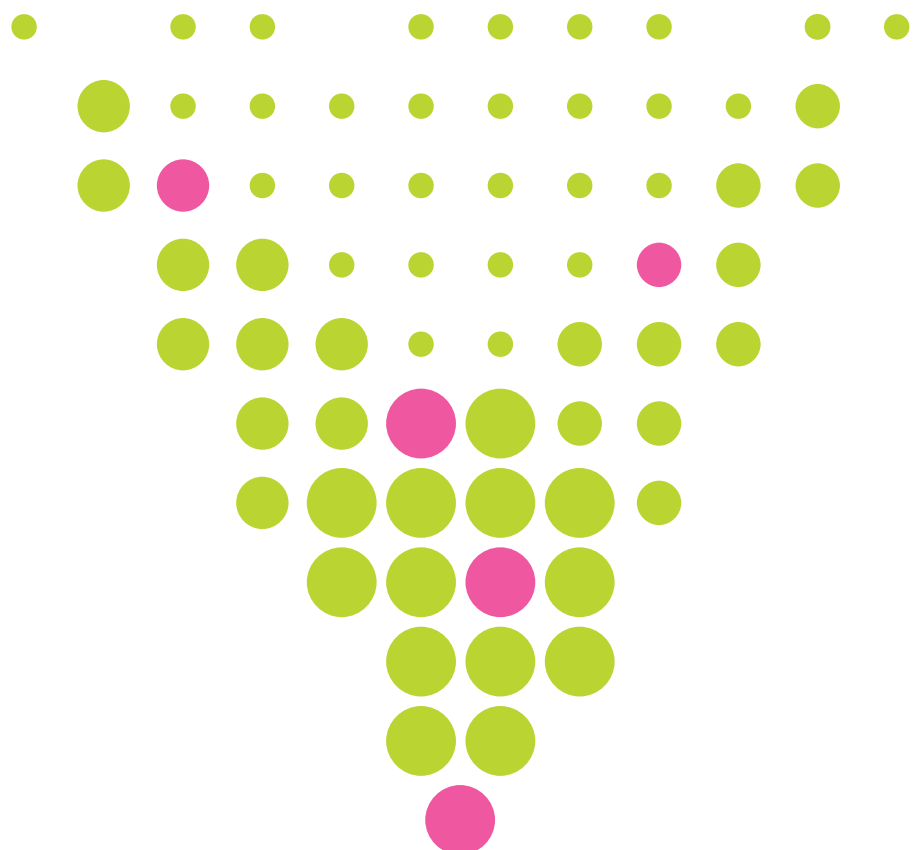


GENDER PERSECUTION

VOICES FROM
LUTRUWITA / TASMANIA



4 NOVEMBER 2024

Acknowledgement

We recognise the unceded land of *Lutruwita* (Tasmania) and acknowledge the Aboriginal people of *Lutruwita* as the traditional owners and custodians of the land, the waters and the sea of this place we are privileged to now also call our home.

We pay our deep respects to the traditional and continuing custodians of *Lutruwita*, the *palawa* people, and to Elders past and present and to emerging elders and leaders.

Your ancient sovereignty, with its deep cultural and spiritual connections to Country, has been passed on faithfully for more than one thousand five hundred generations and was never ceded nor extinguished. Neither violent dispossession nor the pronouncement of the legal fiction of *terra nullius* annulled your sovereignty and we long for it to shine through as a fuller expression of what it means to be Tasmanian. We promise to listen, to learn and to walk beside you.

Table of contents

Introduction to this report	i
Experiences of Gender Persecution	ii
Experiences of Systemic Causes of Gender Persecution	ii
Gender Persecution Violations	ii
Persecution on Intersecting Grounds	iii
Vulnerability to Gender Persecution	iii
Invisibility and Gender Persecution	iii
About this Report	iii
Part 1: Methods	1
Project ethical conduct framework	1
Project team	1
Method	1
Notes	4
Glossary	5
Part 2: <i>palawa</i> people	10
Colonial genocide and a continuum of harm	10
<i>tyerelore</i>	13
Reproductive violence	15
Domestic violence	19
Youth injustice	22
Part 3: Migrants, refugees and asylum seekers	26
Introduction	26
Understanding migration pathways	26
The continuum of risk and harm	28
Persecution and harm pre-displacement or departure	29
Persecution and harm during the migration or asylum journey	31
Persecution and harm in Australia	34
Structural harms	35
Interpersonal harm	39
Nexus between migration status and persecution/harm	45
Intersections	46
Resilience, prevention and accountability	49

Conclusion	49
Part 4: LGBTIQ+ and people with disability.....	52
Introduction	52
A backdrop of gendered structured inequalities.....	52
Shared identities and experiences of persecution.....	53
Life-long and changing forms of persecution.....	54
The sources of gender persecution.....	54
Understandings of underlying crimes and gender persecution informing this research	55
Common themes	56
The bulk of gender persecution is in principle unauthorised by the Tasmanian or Australian governments.....	56
Non-consensual medical procedures or psychological interventions, however, remain a notable permitted exception	57
Failure by governments to adequately prevent and respond	57
Inadequate policing/oversight.....	57
Inadequately trained services	57
Inadequate protection.....	58
Inadequate provision of essential supports such as housing	58
Persistence in the general community of gender persecution points to the precarity even of legislated gains	59
Part 4A: People with disability	62
Introduction	62
Key themes	62
Women and girls with disability	66
Men and boys with disability	68
LGBTIQ+ people with disability.....	69
Part 4B: LGBTIQ+	73
Introduction	73
Key themes	73
Lesbian, gay and bisexual ('LGB') people.....	74
Trans people	75
Non-binary people.....	78
Asexual/aromantic/agender people.....	79
People with innate variations of sex characteristics ('intersex').....	79

Harmful practices in medical settings.....	80
Discrimination.....	80
Obstructions to medical care based on binary assumptions.	81
A lack of support	81
Appendix: Participant information sheet	83
What is the 'Understanding the Crime of Gender Persecution' project?	83
Why the ICC is doing this work	83
How our team is doing its work.....	83
The work will help the ICC to develop Principles on the Crime Against Humanity of Gender Persecution.....	84

Introduction to this report

Indira Rosenthal

... all this violence stems from a societal system that depends on power imbalances for its existence.

As part of MADRE-led global consultations on the development of principles on the crime against humanity of gender persecution, a steering committee of legal experts was convened in *Lutruwita*/Tasmania, Australia, to consult with local communities on their lived experiences of gender persecution.

We identified four cohorts to include in the research: Tasmanian First Nations peoples (*palawa*), LGBTIQ+ communities, people with disability and refugee, migrant and asylum seeker communities.

Lutruwita/Tasmania has a uniquely tragic history in the context of the colonisation of Australia by Britain. A concerted genocidal campaign to round up all remaining *palawa* bands and exile them to offshore islands to ensure the colony was free of 'native savages' very nearly succeeded in complete annihilation of our First Peoples. A false re-telling of this history, including in school curricula, led to the widespread belief in Australian society that there are no First Peoples remaining in Tasmania. As a result, *palawa* are confronted with double discrimination, facing racism because they are Aboriginal and, paradoxically, that they are not 'Aboriginal enough'.

Lutruwita/Tasmania is also dubiously distinguished as the last Australian state to decriminalise consensual same sex sexual activity. It has the highest per capita number of people with disability in Australia. The last two decades have seen a notable increase in the number of migrants, refugees and asylum seekers settling in *Lutruwita*/Tasmania. The enduring impacts of colonisation and patriarchy continue to cause harm for each of the four cohorts and influence perceptions of gender to this day in *Lutruwita*/Tasmania.

Globally, women and girls are disproportionately targeted for all forms of gendered violence, including gender persecution. While acknowledging this, we decided not to add women as a separate cohort in this research. There were several reasons for this, including that women/girls/females are members of every community and sub-community, including the four identified above. For this reason, including

women as a stand-alone cohort would have made the research pool impossibly large.

Following one-on-one interviews with representatives from each of these groups, participants were given the opportunity to review the key research findings and raise further issues.

Several important, common themes emerged from the research project.

Experiences of Gender Persecution

Members of each of the four communities have experience of conduct they identified as persecution on the ground of gender. Some experienced it only in *Lutruwita*/Tasmania, while for others, especially some members of the refugee, asylum seeker and migrant communities, gender persecutory attacks occurred prior to their arrival here. In some cases, the persecution continued after their arrival. Members of the Tasmanian Aboriginal Community identified attacks amounting to gender persecution throughout the period of white settler colonialism, from the arrival of Europeans to the present day.

Experiences of Systemic Causes of Gender Persecution

Members of each of the four communities also have first-hand knowledge and understanding of the systemic causes of gender persecution, for example, racism, sexism, misogyny, trans- and homo-phobia, ableism and patriarchy, and the ways in which these causes also deny them redress and protect perpetrators. Some participants noted that gender persecution occurs within a broader context of structural inequalities at every level that marginalise women and girls, as well as many men and boys. Many viewed gender persecution not merely as acts committed by individuals against other individuals, but rather as a manifestation of an entire system of power imbalances stemming from racism, xenophobia, ableism sexism, misogyny, heterosexism, trans- and homo-phobia and patriarchy.

Gender Persecution Violations

While each group experienced rights violations unique to their situation within society, they were also targeted for many of the same types of gender-based persecutory conduct, including forced sterilisation and other forms of reproductive violence, sexual violence and enforced disappearance. They also experienced failure, complicity or the active participation of the Australian and Tasmanian authorities to protect them

from gender persecutory attacks or the harms they caused. The impact of prevailing discriminatory beliefs about the nature of gender, especially that it is binary and fixed rather than socially constructed, was also evident in the participants' stories.

Persecution on Intersecting Grounds

It was clear that people experienced persecution on gender *and* other intersecting grounds, such as disability, migration status, First Nations status and sexual orientation and gender identity. While these are not listed grounds for persecution under the Rome Statute, it is essential that the gender persecution principles acknowledge this reality.

Vulnerability to Gender Persecution

Those targeted for gender-based persecutory attacks were among marginalised communities and therefore less likely to be able to access services, support or redress. This has compounded the harms caused by the violation and reinforced their marginalisation and disadvantage.

There was also a shared experience of precarity. In particular, some participants spoke of the fact that the very identity, status and rights recognition of individuals and groups within all these cohorts is precarious, subject to changes in leadership in authorities and to prevailing attitudes in the broader community.

Invisibility and Gender Persecution

Each of the four communities was rendered invisible in multiple ways, compounding the harms of gender persecution and limiting their access to justice, support, and essential services. One significant factor was the inadequacy of data systems to account for them and their unique experiences. The lack of inclusive, disaggregated data has obscured them as individuals, as well as the realities of their lives. Additionally, forced disappearances and the absence of accountability for crimes and other harms committed against them further contributed to their invisibility.

About this Report

This report sets out the key findings from the research process. Part 1 explains the methodology used. Part 2 reports on findings from the conversations with members of the *palawa*/Aboriginal Community of *Lutruwita*/Tasmania. Part 3 reports on migrant, refugee and asylum

seeker experiences, Part 4 on the experiences of people with disability (4A) and of members of the LGBTIQ+ communities (4B). The letter and information sheet inviting members of the four communities to participate in the research is attached to the report as an appendix.

The steering committee and researchers sincerely thank MADRE for the opportunity to conduct this groundbreaking research in *Lutruwita*/Tasmania. We feel honoured to be able to amplify the voices of marginalised communities in our remote home, shedding light on their experiences of gender persecution and contributing to the development of the gender persecution principles. We especially wish to thank all the research participants who generously gave their time and shared their expertise and experiences. We also wish to thank the University of Tasmania, Faculty of Law for its support, in particular Rachael Ormerod.

- The Steering Committee (University of Tasmania Law Faculty): Dr Robin Banks, Cleo Hansen-Lohrey, Professor Tim McCormack, Indira Rosenthal and Dr Tamara Wood.
- Dr Susan Banks, Project Manager
- The Research Team: Maggie Blanden, Taya Ketelaar-Jones and Dr Wynne Russell.

Throughout the report we have drawn on the contributions of the participants. Where we have directly quoted from a participant it is formatted as follows:

Direct quote from participant

Part 1: Methods and Glossary

Dr Susan Banks and Dr Robin Banks

Part 1: Methods and glossary

Dr Susan Banks and Dr Robin Banks

Project ethical conduct framework

The Tasmania project team developed guidelines for the conduct of the research, in line with Australia's *National Statement on Ethical Conduct in Human Research*, and to the AIATSIS *Code of Ethics for Aboriginal and Torres Strait Islander Research*. The guidelines were reviewed by an independent academic researcher with relevant qualifications and experience.

Project team

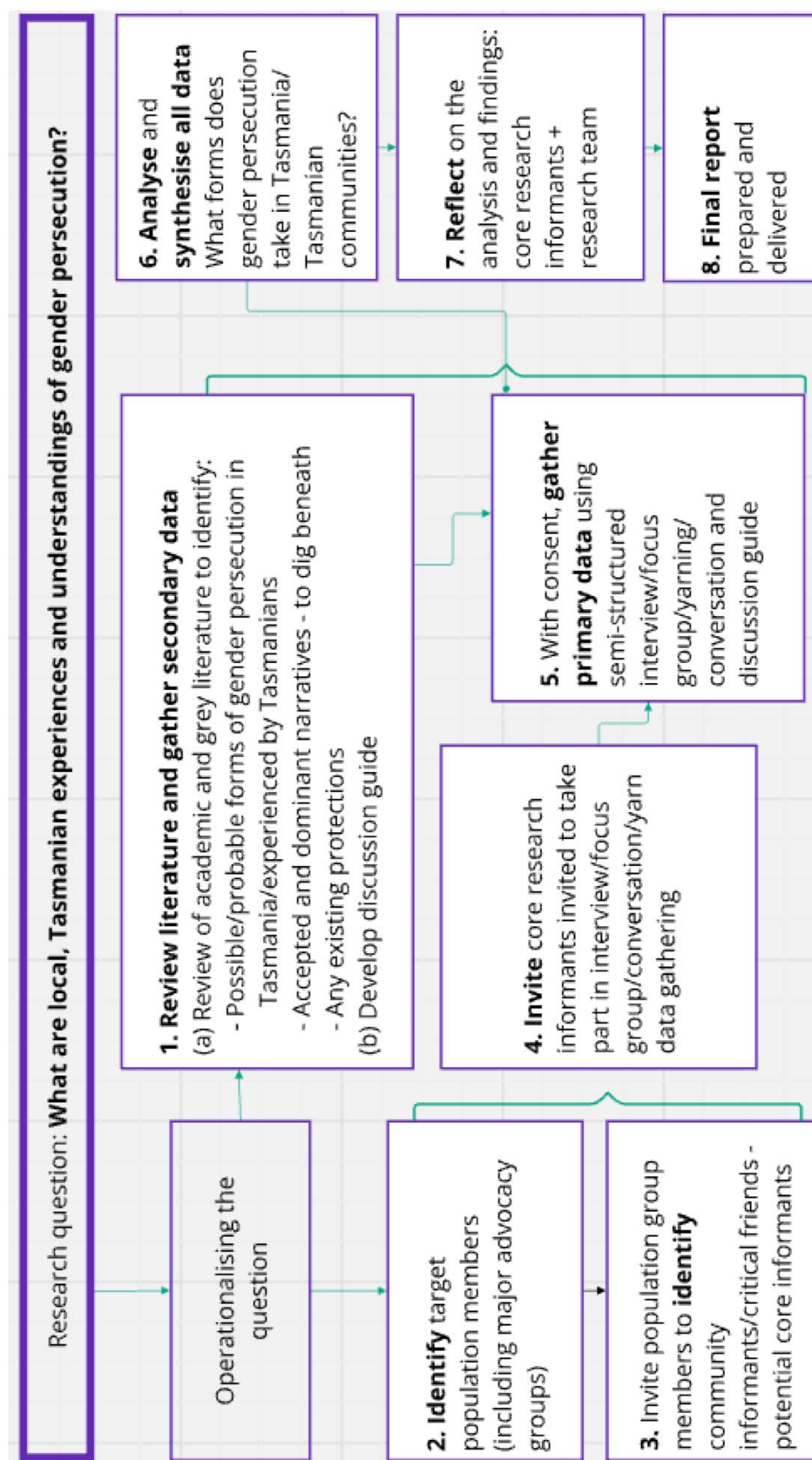
- Professor Tim McCormack, Project co-lead and Aboriginal cohort research lead
- Indira Rosenthal, Project co-lead
- Dr Robin Banks, Disability and LGBTIQ+ cohorts research co-lead
- Cleo Hansen-Lohrey, Refugee, asylum seeker, and migrant cohort research co-lead
- Dr Tamara Wood, Refugee, asylum seeker, and migrant cohort research co-lead
- Dr Wynne Russell, Disability and LGBTIQ+ cohorts researcher
- Maggie Blanden, Aboriginal cohort researcher
- Taya Ketelaar-Jones, Refugee, asylum seeker, and migrant cohort researcher
- Dr Susan Banks, Project manager

All team members have collaborative relationships with one or more of the focus communities, enabling rapid identification of critical community participants.

Method

The work sought to understand local, Tasmanian experiences and understandings of gender persecution. The project was operationalised via eight steps. These are shown in Figure 1, and described below. The rapid reviews were conducted by Maker, Blanden, Ketelaar-Jones and Russell. Blanden, Ketelaar-Jones and Russell did the primary data gathering and analysis was conducted by the whole project team.

Figure 1: Gender persecution in Tasmania, project flowchart



- Review literature and gather secondary data
Inform the project via:
- **Gathering secondary data:** A rapid review of academic and grey literature was completed to identify:
- Possible/probable forms of gender persecution in the local context or experienced by people in Tasmania, whether here or elsewhere
- Accepted and dominant narratives about gender persecution/ gender norms and deviance.
- **Developing a Discussion Guide** based on the rapid review for use in primary data gathering.
- Concurrently, **identify** (through existing team knowledge and snow-ball sampling) target population members who represented demographic and political diversity.
- Through **survey** of target population members, identify core informants: community members most likely to offer valuable insights into community member experiences of gender persecution. Those surveyed were provided with a briefing note (see Appendix).
- **Invite** core research informants and
- **Gather primary data** from the core informants who consent to participation. A one-person-removed approach was used in primary data gathering.
- The Discussion Guide (1(b), above) was used to support consistent data gathering and to reduce risk of harm.¹
- The semi-structured interview/focus group/conversation/yarning sessions were audio-recorded and researchers made fieldnotes during and after the sessions. Audio-recordings were transcribed in part or in full, as needed.
- **Analysis and synthesis** of primary (de-identified) and secondary data was guided by the Research Question and themes identified in the rapid review.
- Core research participants and research team members were invited to **reflect on the analysis**.
- The **Final report** was prepared by cohort teams in collaboration with the rest of the project team.

More than 50 people contributed primary data to the research, in steps 3, 5 and 7.

¹ This approach is adapted from recent Tasmania work with young people in the justice system. And see, J Tilsen, *Narrative Approaches to Youth Work: Conversational Skills for a Critical Practice* (2018, Routledge); New South Wales Government, '[Youth work theories and approaches](#)' (13 February 2023) *The Evidence Portal*.

All participants will receive a copy of the final report. The research team is also preparing to disseminate findings from the project to a range of audiences.

Notes

Aggregation and de-identification of the primary data mean it should be impossible for participants to recognise themselves, or anyone else, in the reporting.

Participants in the project were offered (and most accepted) an *ex gratia* payment, determined as per the Melbourne Social Equity Institute's *Guidelines for Equitable and Fair Remuneration for Community Research Participants*.² Where it was inappropriate to pay individuals, a donation was made to their organisation.

² Charlene Edwards, [*Guidelines for Equitable and Fair Remuneration for Community Research Participants*](#) (June 2024, Melbourne Social Equity Institute).

Glossary

ASD	Autism-spectrum disorders
asexual	'Asexuality is a sexual orientation in which a person usually does not feel sexual attraction to any gender identity.' (source: Nonbinary Wiki)
aromantic/aro	'Aromanticism ... is a romantic orientation in which a person usually experiences no romantic attraction towards any genders.' (source: Nonbinary Wiki)
agender people	'Agender individuals find that they have no gender identity, although some define it more as having a gender identity that is neutral.' (source: Nonbinary Wiki)
cis or cisgender	'means non-transgender. A cisgender person is a person who isn't transgender, in that their gender identity matches the gender they were assigned at birth (source: Nonbinary Wiki)
conversion practices	'Sexual orientation and gender identity (SOGI) conversion practices involving conduct directed to changing, suppressing or eradicating a person or group's sexual orientation or gender identity' (source: Tasmanian Law Reform Institute, Sexual Orientation and Gender Identity Conversion Practices, Final Report No 32 , April 2022, xiii)
deadnaming	referring to a trans or non-binary person by their previous name

gender	'includes the social, psychological, cultural and behavioral aspects of being a man, woman, or other gender identity'. (source: Wikipedia)
gender diverse	An umbrella term that describes people whose gender is different to what was presumed for them at birth
gender non-conforming person	A person who does not conform to prevailing social narratives that define accepted gender expressions.
ICC	International Criminal Court
legal aid	The provision of free or means-tested legal services by state authorities and non-profit, community-based organisations
LGB	Lesbian, gay and bisexual
LGBTIQA+	Lesbian, gay, bisexual, transgender, intersex, queer, asexual and other identified persons.
<i>Lutruwita</i>	The <i>palawa</i> name for Tasmania
Medicare	Australia's universal health care system
National Disability Insurance Scheme	An Australian government statutory program that provides funding and support to eligible Australians with disabilities
non-binary person	A person who does not identify exclusively as a man or a woman, or as a boy a girl.
OTP	Office of the Prosecutor for the International Criminal Court

<i>palawa</i>	The First Nations peoples of Tasmania
person/people with disability	The use of this form reflects the continuing use of 'people first' language in Australia. We note and acknowledge, however, the increasing use of 'identity first' language, for example, Deaf person, Blind person, autistic person, disabled person.
person/people with innate variations of sex characteristics	The preferred term used to replace person/people with 'intersex characteristics' or 'intersex variations'
sex	Categories into which humans and most other living things are divided on the basis of their reproductive functions.
sex characteristics	Sex characteristics refers to each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.
trans/transgender	'an umbrella term covering all gender identities or expressions that transgress or transcend society's rules and concepts of gender. To be trans usually means to identify as a gender other than the gender one was assigned at birth' (source: Nonbinary Wiki)

trans-feminine

'describes a person, transgender or otherwise (generally but not exclusively one who was assigned male at birth) who seeks to present femininely, identifies as more female than male, or wishes to transition to look more feminine' (source: [Nonbinary Wiki](#))

trans-masculine

'describes a transgender person (generally, but not exclusively), who was assigned female at birth, and whose gender is masculine and/or who express themselves in a masculine way' (source: [Nonbinary Wiki](#))

Part 2: *palawa* people

Maggie Blanden
with Professor Tim McCormack

Part 2: *palawa* people

Maggie Blanden with Professor Tim McCormack

Colonial genocide and a continuum of harm

The colonial history of *Lutruwita*—named by white colonisers as Van Diemen’s Land until 1853 and as Tasmania since—is characterised by violent genocide against the *palawa*. British colonisation here involved a calculated and systematic effort to eliminate the *palawa* through violent killings, forced exile to offshore islands, forced child removals and policies aimed at erasing *palawa* people and culture. That such systematic and violent attempts at eradication failed, is an enduring testament to collective resilience and to unbreakable connection to Country. However, the failure to attain complete eradication does not alter the reality that what occurred here constituted an ‘intent to destroy, in whole or in part, a ... racial group’.³

In the 1940s, as the Polish scholar Raphaël Lemkin coined the term ‘genocide’ and promoted the concept as a unique category of international crime, he used the British treatment of Tasmania’s Aboriginal People as a foundational example to illustrate the crime.⁴ Other scholars have characterised the devastation of *palawa* as genocide but not all of them acknowledge a continuum of inter-generational violence and devastation that continues to flow from genocide. We agree with Patrick Wolfe’s framework of settler colonialism, where the continued marginalisation and attempted erasure of the *palawa* (and other Aboriginal and Torres Strait Islander people) serves to maintain white dominance in so-called Australia.⁵

One significant manifestation of this ongoing genocide is the phenomenon of Disappeared and Murdered Indigenous women, girls and gender-diverse people. This framework parallels the experiences of Indigenous women and girls, in other parts of the world including Canada, of historical and contemporary instances of gendered human rights and Indigenous rights violations and abuses: Missing and Murdered

³ [*Convention on the Prevention and Punishment of the Crime of Genocide*](#), opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art 4.

⁴ Anne Curthoys, ‘[Raphaël Lemkin’s “Tasmania”: An introduction](#)’ (2006) 39(2) *Patterns of Prejudice* 162, 162.

⁵ Patrick Wolfe, ‘[Settler colonialism and the elimination of the native](#)’ (2006) 8 *Journal of Genocide Research* 387.

Indigenous Women.⁶ However, the reframing to Disappeared and Murdered Indigenous Women arguably confronts the reality that Indigenous women are not simply going ‘missing’, instead they are ‘violently disappeared by individuals operating within the structures of racial violence in the colony.’⁷

When the colonisers arrived in these lands, they soon realised that Aboriginal women fall at the centre of Aboriginal culture and community, as matriarchs, the life-givers, nurturers and custodians of culture. Thus, to further their Indigenous extinguishment agenda, the colony began to target Aboriginal women’s bodies to destabilise and dismantle Aboriginal society.⁸

From conversations with *palawa* women, this chapter will recount a spectrum of violence against Aboriginal women, including physical, sexual, psychological, cultural, spiritual, and systemic harms. This violent ‘crime spree’ against Aboriginal women works to ultimately strip Aboriginal women of their humanity, agency and autonomy.⁹ Thus, these intersecting forms of violence manifest in the perception of Aboriginal women’s bodies as mere sites of control, used to assert white power and domination. For example:

- ° Aboriginal women are up to twelve times more likely to be murdered than Aboriginal men;¹⁰

⁶ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (2019) 60 <<https://www.mmiwg-ffada.ca/final-report/>>.

⁷ Amy McQuire, Sisters Inside and Institute for Collaborative Race Research, (‘Sisters Inside Submission’), *Submission No 54 to Senate Legal and Constitutional Affairs Committee (Cth), Senate Inquiry into Missing and Missing and Murdered First Nations Women* (16 December 2022).

⁸ Jennifer Vidal, ‘*Analysis: Understanding how women’s bodies are turned into battlefields*’, in Jennifer Vidal, Bryan Thomas, Kristin Walters and Lauren Rodriguez (eds), *Beyond the System: Conceptualising Social Structures, Power and Change* (2021, SOC 189); Harry Blagg, Victoria Hovane, Tamara Tulich, Donella Raye, Suzie May and Thomas Worrigal ‘*Law, culture and decolonisation: The perspectives of Aboriginal elders on family violence in Australia*’ (2022) 31(4) *Social & Legal Studies* 535.

⁹ McQuire et al (n 6) 10; Sarah Collard, ‘*“Horrific: First Nations missing and murdered cases to be focus of Australia-wide inquiry”*’, *The Guardian* (online, 4 August 2023).

¹⁰ Bridget Brennan, Suzanne Dredge, Brooke Fryer and Stephanie Zillman, *How many more?* (ABC Four Corners, 24 October 2022). See also, Victorian Aboriginal Legal Service (VALS), *Submission No 59 to Senate Legal and Constitutional Affairs Committee (Cth), Senate Inquiry into Missing and Missing and Murdered First Nations Women* (December 2022). Between 1 July 1989 and 30 June 2023 a total of 476 Indigenous women were victims of homicide, with 72% killed by their current or former intimate partner. See, Samantha Bricknell and Hannah Miles,

- ° One in three Aboriginal women and girls will be raped in their lifetime.¹¹

Aboriginal women's sexuality was and continues to be represented as 'something to be exploited and mythologised'.¹² Since the 18th century, white men in Australia have been imposing a 'narrative of sexualisation disassociated from whiteness' as well as sexual deviance, onto Aboriginal women's bodies.¹³ Aileen Moreton-Robinson deems this sexualisation a clear instance of white men exercising their control, white privilege and dominance over the colony. In the words of Pat O'Shane, Blak women were and continue to be seen as 'easy game for the racist rapist'.¹⁴ At the heart of this violence is the need to portray Aboriginal women as 'primitive or exotic sexual subjects', distinct from 'civilised' white women.¹⁵ We heard personal stories for many women, including:

By the time [Aboriginal women] reached puberty, they had learned never to leave home in form-fitting clothing and to always walk together, knowing they couldn't be safe on their own. These girls spent most of their lives in fear... Young women knew that sexual violence was a way of life ... the oversexualisation of Aboriginal women began with the sealing boats, this violence is a consequence of that damage done.

Our research into, and conversations with, *palawa* women revealed that violence against Aboriginal women continues to perpetuate the legacy of colonisation by dehumanising and marginalising them further.¹⁶ Most

[*Homicide of Aboriginal and Torres Strait Islander women*](#). Statistical Bulletin no. 46. (2024; Canberra: Australian Institute of Criminology).
<<https://doi.org/10.52922/sb77604>>.

¹¹ Hannah McGlade, Bronwyn Carlson and Marlene Longbottom, 'An open letter in response to the lack of public concern or responses to the killings of Aboriginal and Torres Strait Islander women', *Croakey Health Media* (online, 2021) <<https://www.croakey.org/an-open-letter-in-response-to-the-lack-of-public-concern-or-response-to-the-killings-of-aboriginal-and-torres-strait-islander-women/>>.

¹² Aileen Moreton-Robinson, *Talkin' up to the white woman: Indigenous women and feminism* (20th anniversary edition) (University of Queensland Press, 2020) 169.

¹³ bell hooks, 'Selling hot pussy: Representations of Black female sexuality in the cultural marketplace' in Katie Conboy, Nadia Medina and Sarah Stanbury (eds), *Writing on the body: Female embodiment and feminist theory* (Columbia University Press, 1997) 113, 114.

¹⁴ Moreton-Robinson (n 12) 223.

¹⁵ Moreton-Robinson (n 12) 170.

¹⁶ Harry Blagg and Thalia Anthony, *Decolonising criminology: Imagining justice in a postcolonial world* (Palgrave Macmillan, 2019) 85.

important, these violent acts are not merely accidents or isolated tragedies—this violence is a systematic outcome of genocide and settler colonialism against Aboriginal women.

tyerelore

The harrowing story of the *tyerelore* women, or the so-called ‘Island wives’¹⁷ marks one of the earliest instances of gender persecution against Aboriginal women in *Lutruwita*.

As early as 1810, European invaders began migrating to the uninhabited Furneaux Islands in the north east of the state to participate in the lucrative seal fur trade. These men, often convicts or indentured labourers from backgrounds of poverty, sought economic benefits from the seal trade.¹⁸ Although there are some accounts of trade deals with local tribes, the sealers often engaged in violent raids to abduct and enslave young *palawa* women, some as young as twelve. This practice of ‘raiding for women’ was described by Robinson as the ‘African slave trade in miniature’.¹⁹

It is difficult to know the precise extent of this slave trade and sexual abuse of *palawa* women. However, James Kelly, a local sealing captain, reported in 1830 that ‘every man [had] from two to five [*tyerelore*] for his own use.’²⁰ George Augustus Robinson confirmed this number and recorded 50 sealers who collectively had abducted and continued to enslave 124 women.²¹ The scale of the practice is indicative of the systematic reality of this persecution.

The women were forcibly taken and enslaved for two main purposes. The primary motivation was to exploit and force the women into sexual servitude to satisfy the sexual appetites of the sealers.²² The reality of an

¹⁷ The use of the term ‘wives’ must be critically examined and challenged. This can serve to romanticise or bluntly conceal the brutal reality of their enslavement. The agency of the *tyerelore* comes into question, particularly as this occurred in the context of an invasion, a subsequent genocide and a colony set out to extinguish *palawa*.

¹⁸ Nicholas Clements, *Black war: Fear, sex and resistance in Tasmania* (University of Queensland Press, 2014) 190.

¹⁹ Brian Plomley and Kristen Anne Henley, ‘[The sealers of Bass Strait and the Cape Barren Island community](#)’ (1990) 37 (2-3) *Tasmanian Historical Research Association* 37, 54; George Augustus Robinson, *Friendly mission: The Tasmanian journals and papers of George Augustus Robinson, 1829–1834* (Queen Victoria Museum and Art Gallery, 2008) 91.

²⁰ Clements (n 18) 192.

²¹ Ibid.

²² Henry Reynolds, *The other side of the frontier: Aboriginal resistance to the European invasion of Australia* (UNSW Press, 2006) 38.

‘almost woman-less (white) population’²³ in the colony paved the way for this violence against Aboriginal women. Records reveal that there were six times as many men in the colony as there were women.²⁴ The *tyerelore* proved a tempting target and because the sealers and the women were living so far from the reach of colonial authorities, impunity for abduction and enslavement was rampant.²⁵

A secondary purpose became evident to the sealers. The *tyerelore* possessed specialised skills as sea gatherers—a traditional role of Aboriginal women. The *tyerelore* were particularly valued for their expertise in capturing seals and mutton-birds, which became essential for the sealers’ survival.²⁶ Unlike *palawa* men, who were land hunters and generally did not know how to swim, the women possessed vital skills for hunting on, under and near the water. They were excellent divers and caught lobster and abalone. Consequently, the sealers grew increasingly dependent on them for food and resources and demand for the women intensified. This increasing demand, in turn, worsened the conditions of the *tyerelore* and further entrenched their exploitation.

The sexual violence against the *tyerelore* was often coupled with brutalisation and physical violence. Various forms of physical violence and torture were imposed for ‘disobedience’ toward their so-called ‘husbands’, including the use of whips and clubs, tying women to trees, and using fire to burn them.²⁷ Plomley’s accounts suggest there were high casualty rates among the *tyerelore* as a result of this violence, leading to the further eradication and erasure of Aboriginal people.²⁸ Plomley also argues the greatest damage of the abduction and enslavement of the *tyerelore* was the irreparable damage to the Aboriginal tribes and families from whom they were taken.²⁹ The removal of our women resulted in our way of life being ‘disrupted and destroyed’.³⁰

To the sealers, the women were seen as disposable commodities to be taken, traded, and exploited. This dehumanisation and violence demonstrated a brutal disregard for the lives and dignity of *palawa*

23 Ibid 88.

24 Clements (n 18) 33.

25 However, these demographics do not excuse the atrocities and violence inflicted upon Aboriginal women; instead, they provide context for the abductions and ‘trade’ of women.

26 Clements (n 18) 190.

27 Ibid 192.

28 Plomley and Henley (n 19) 54.

29 Ibid.

30 Ibid.

women. The significance of this history lies in the fact that many of today's *palawa* community trace their lineage back to the *tyerelore*. This is a constant reminder of the resilience of the *palawa* community and of our unbreakable spirit. Their story is a testament to the strength and determination of the *palawa* community, who have preserved culture, identity, and connection to land through generations of genocide and dispossession.

However, gendered violence and persecution against Aboriginal women is not limited to the 18th century and, in fact, continues today. This will be evidenced by two contemporary examples of gender persecution:

- Reproductive violence; and
- Domestic violence.

Reproductive violence

Sterilisation and the use of uninformed (and often forced) birth control have historically been used as tools of continued colonial violence in Australia by controlling Aboriginal women, their bodies and their families. Targeted reproductive control represents another, more recent, instance of gender persecution in *Lutruwita*, directed at limiting the cultural and demographic resurgence of Aboriginal communities.

In 1967, Australia held a national referendum to change the *Constitution*. Prior to that referendum, section 127 of the *Constitution* stated that 'in reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted'.³¹ In the compulsory vote to change the *Constitution* so that Aboriginal people would be counted in the national census like all other Australians, 90.77% of the electorate voted resoundingly 'Yes'. That moment in the constitutional history of Australia is celebrated as a breakthrough—a watershed reaction to the negativity and dehumanisation of Australia's First Peoples since colonial invasion and dispossession.

Tragically, in a perversion of the motivation of equality and respect inherent in the 'Yes' vote, the referendum of 1967 was also a catalyst for further debilitating colonial interventions into Aboriginal women's lives.

The first national census after the referendum was officially recorded in 1971. Before this, data about Aboriginal populations involved rough estimates from missions and settlements. Policymakers, after decades of

31

[*Australia Constitution, s 127*](#) (as enacted).

the protectionist assimilation era, conceptualised the Aboriginal population as a *dying race*, doomed to inevitable extinction. However, the data from the 1971 census was met with significant concerns from policymakers and medical practitioners in response to a rapid Aboriginal 'population bulge'.³² The new demographic shift was framed as a direct societal threat, with medical 'experts' like ethno-psychiatrist John Cawte and physician Jarvis Nye suggesting it endangered the 'quality' of Australian society. To counter this emergent 'threat' they advocated for sterilisation of Aboriginal women.³³ Cawte and Nye were far from alone in this stance; they were joined by other medical practitioners and policymakers, including Dr Douglas Everingham, who would later serve as Minister for Health in the Whitlam government.³⁴ Media narratives, including coverage in *The Canberra Times*, cast blame on Aboriginal women for 'having too many babies',³⁵ who were not deemed 'the so-called "right kind" of babies'.³⁶

Across the nation, one policy response to the threat to white supremacy involved the direct targeting of Aboriginal women and their reproductive freedoms. Allegations continue to surface around state medical services' coercive and uninformed administration of sterilisation drugs such as Depo-Provera as well as uninformed and non-consensual use of various contraceptive devices, including intrauterine devices (IUDs) and contraceptive pills.³⁷ These initiatives provided little to no information about potential side effects, processes or dangers associated with birth control and sterilisation methods. In our conversations with *palawa* women, we heard stories from those who experienced alarming side effects from these methods, often without receiving adequate information or assistance.

³² 'Fears of growing apartheid' *The Canberra Times* (Canberra, 19 August 1972) 3.

³³ Jarvis Nye, 'Big Families in Low Intelligence Groups' *The Courier Mail* (Brisbane, 3 March 1969).

³⁴ Commonwealth, [Parliamentary Debates, House of Representatives, 4 March 1969, 327](#) (Douglas Everingham).

³⁵ 'Fears of growing apartheid' (n 32).

³⁶ Laura Rademaker, Jakelin Troy and Julia Hurst, 'Friday essay: 'too many Aboriginal babies' – Australia's secret history of Aboriginal population control in the 1960s', *The Conversation* (online, 12 April 2024) <<https://theconversation.com/friday-essay-too-many-aboriginal-babies-australias-secret-history-of-aboriginal-population-control-in-the-1960s-189249>>

³⁷ Colin Tatz, 'Confronting Australian genocide' (2001) 25 *Aboriginal History* 16, 24.

[medical interventions are] used as tools of social control, shaping and regulating behaviours—particularly around sexuality—in ways that extend beyond health into the realm of control.

This serves as a stark reminder of the extensive harm that can arise from a single act of gender persecution.

We also spoke with non-*palawa* health workers who confirmed how these policies and initiatives specifically targeted and impacted *palawa* women. Testimonies revealed distressing instances of coercion, inadequate information and significant adverse physical effects (including 3–6 month infertility for some *palawa* women in *Lutruwita*). Laura Rademaker captures this harmful experience:³⁸

The history of contraception in Australia has been told largely through the lens of increasing liberation for women (albeit noting that Aboriginal women often tell a different story). Aboriginal scholars Larissa Behrendt, Jackie Huggins, and Aileen Moreton-Robinson have presented resounding critiques of this narrative, arguing that while white feminists demanded contraception and abortion, Aboriginal women insisted on their right to have and raise children.

The literature also reveals allegations of permanent sterilisation of Aboriginal women occurring during the 1960s and '70s. Colin Tatz, for example, in his searing call on 'Confronting Australian Genocide' refers to 'a series of "non-explained" tubal ligations' in Queensland and he rightly asserts that 'these birth prevention issues need careful research'.³⁹

It is essential to acknowledge the use of sterilisation and birth control imposed on Aboriginal women and girls within institutional settings, such as youth detention centres, where these practices were reportedly employed to facilitate and enable sexual violence, including rape, against vulnerable individuals. The recent Government Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings in *Lutruwita* revealed compelling evidence of these abuses and highlighted the systemic exploitation and violation

³⁸ Laura Rademaker, '[Being Counted: Family Planning and Aboriginal Population 1967–75](#)' (2024) 55(3) *Australian Historical Studies* 506, 509 citing: Heather Goodall and Jackie Huggins, 'Aboriginal women are everywhere: Contemporary struggles,' in Kay Saunders and Raymond Evans (eds), *Gender relations in Australia* (Sydney: Harcourt, 1992) 402; Moreton-Robinson (n 10) 171.

³⁹ Tatz (n 37) 24.

endured by Aboriginal women and girls in such environments.⁴⁰ These findings underscore the broader pattern of institutionalised control and violence inflicted upon the bodies of *palawa* women under the guise of medical and social intervention.

Our discussions revealed that these interventions, under the guise of ‘family planning’ and sexual liberation, sought to control Aboriginal family units and hinder cultural revitalisation post invasion. It is clear that policymakers framed these policies in the language of choice and modernity, yet their objectives echoed the colonial agenda of regulating Aboriginal growth and autonomy.

Policies of sterilisation and enforced birth control occurred within the backdrop of the so-called ‘Stolen Generations’—the forced removal of Aboriginal children from their families under government policies designed to assimilate them into white society. This separation caused profound, lasting trauma for Aboriginal children and their families and led to deep cultural disconnection, loss of language and significant intergenerational trauma. The legacy of these policies is a painful reminder of the state’s attempt to dismantle Aboriginal identities, cultures and family bonds. *Bringing Them Home*,⁴¹ the 1997 Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, is a harrowing record of unimaginable loss and suffering on a truly massive national scale.

In *Lutruwita*, policies of forcible removal of *palawa* children occurred across the island, wreaking havoc and devastation on *palawa* families. In some of our conversations we learned that colonial policies during this period exacerbated harm to Aboriginal women and their families. *palawa* women explained to us that following forcible removal of children, some *palawa* mothers were charged with criminal ‘neglect’ of the children, not for any failure of maternal love or care on their part, but as a direct consequence of colonial policies that dismantled families and punished mothers for the state’s own actions. Many of the women charged were subsequently convicted and, in some cases, incarcerated. Even if their children were released from state institutions, in some cases they could not return to their familial homes because their

40 [*Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings*](#) (‘Commission of Inquiry’) (Final Report, 2021) 136.

41 Australian Human Rights Commission, [*Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*](#) (Report, April 1997).

mothers were locked up and precluded from caring for their own children.

This deep-seated violence against Aboriginal women's bodies, autonomy and cultural integrity is a clear manifestation of gender persecution. By targeting their reproductive freedom, this violence has not only dehumanised Aboriginal women but also helped to eradicate future generations of Aboriginal people.

Domestic violence

The epidemic of domestic violence against Aboriginal women in Australia, including in *Lutruwita*, reflects a deeply entrenched legacy of gendered and racialised violence. Statistics reveal that three in five Aboriginal women experience physical or sexual violence at the hands of a male intimate partner.⁴² Aboriginal women are not only 33 times more likely to be hospitalised due to family violence, but they are also 11 times more likely to lose their lives to this violence than non-Aboriginal women.⁴³ This violence embodies the brutal intersection of patriarchal and colonial power structures. This epidemic relentlessly perpetuates harmful stereotypes that strip Aboriginal women of the dignity, safety and humanity readily afforded to others.

The domestic violence epidemic faced by *palawa* women in *Lutruwita* is exacerbated by two intersecting yet distinct issues: under-policing and over-policing.

Systemic racism embedded within the state, particularly within police forces, plays a central role in the violence and harm faced by Aboriginal women. Discriminatory practices in law enforcement do not simply maintain the status quo, they actively intensify the threats against Aboriginal women, which leads to a continuous cycle of trauma and neglect. These patterns reveal how deeply ingrained biases within the policing system contribute to, and compound, the gendered persecution faced by Aboriginal women.

Under-policing

There are concerns of under-policing and inadequate responses from the criminal justice system and police, with 75% of Aboriginal women

⁴² Josh Nicholas, 'Family violence: First Nations women 33 times more likely to be hospitalised than non-Indigenous women', *The Guardian* (online, 2 May 2024) <<https://www.theguardian.com/news/ng-interactive/2024/may/02/family-violence-first-nations-women-33-times-more-likely-to-be-hospitalised-than-non-indigenous-women>>

⁴³ Australian Human Rights Commission, *Wiyi Yani U Thangani (women's voices): Securing our rights, securing our future* (Report, October 2020) 165.

being victims of police reluctance and inaction following domestic violence.⁴⁴ We repeatedly heard in testimonies that *palawa* women's calls for help in domestic violence cases were often ignored or dismissed. There are well-documented patterns of police inaction, settler 'blindness' and a lack of sense of urgency when confronted with the issue of violence against Aboriginal women, particularly, *in contrast with white women*.⁴⁵ Aboriginal women also have reported instances where they received incorrect advice, had their experiences downplayed, or were ignored entirely when they reported domestic violence.⁴⁶

Noongar Yamatji Senator The Hon Dorinda Cox, a former police officer, describes this police approach as 'alarmingly casual', highlighting how the critical first 72 hours following a person's disappearance — a window crucial to any investigation — are routinely missed for Aboriginal women.⁴⁷ This entrenched apathy perpetuates cycles of violence and gender persecution against Aboriginal women.

Over-policing

On the other hand, the police also engage in over-policing and excessive surveillance upon *palawa* women and their families. All too often, where Aboriginal women seek help, they encounter criminalisation and are met with racialised and gendered violence from the very institutions meant to protect them.

A glaring example of this injustice is the frequent misidentification of Aboriginal women as aggressors rather than victims. In our conversations with *palawa* women we heard stories of police commonly wrongly identifying the Aboriginal women as the primary offender. This misidentification often stems from the stereotypes and biases that police officers carry, which lead to Aboriginal women being seen not as victims, but as the troublemakers or aggressors in their own homes.

Police intervention can lead to the arrest of these women for unrelated offenses, such as outstanding fines or minor legal breaches, rather than

44 Emma Buxton-Namisnyk, '[Domestic violence policing of First Nations Women in Australia: 'Settler' frameworks, consequential harms and the promise of meaningful self-determination](#)' (2022) 62(6) *The British Journal of Criminology* 1325

45 VALS (n 10).

46 Change the Record and Djirra, [Submission No 85 to Senate Legal and Constitutional Affairs Committee, Senate Inquiry into Missing and Missing and Murdered First Nations Women](#) (June 2023).

47 Brooke Fryer, '[Vanished: The unsolved cases of First Nations women](#)' *SBS News* (online, 28 June 2022) <<https://www.sbs.com.au/news/the-feed/creative/vanished-the-unsolved-cases-of-missing-first-nations-women/w9fsk4m99>>.

offering protection from the violence they report.⁴⁸ This hyper-focus on minor legal infractions is a driving factor behind the rapid rise in incarceration rates for Aboriginal women and girls. This occurs with a backdrop of Australia's notorious status as the world's most incarcerating nation of Indigenous people.⁴⁹

Aboriginal Australians are grossly disproportionately represented in prisons, and yet, are not innately criminal.⁵⁰ So much of Aboriginal criminality arises out of relatively minor and low-level offences, including unpaid fines; assault; breaking and entering; motor vehicle offences; property offences; and justice procedures offences. These offenses, in large part, speak to socio-economic conditions shaped by a history of dispossession, systemic racism and marginalisation.

Thirty years ago Australia established a Royal Commission into Aboriginal Deaths in Custody ('RCIADIC') to seek to understand the huge numbers of Aboriginal inmates dying while incarcerated. The recommendations of that Royal Commission call for a major overhaul of the readiness to award custodial sentences to Aboriginal defendants.⁵¹ Despite this, identified essential reforms continue to be ignored. Prisons have repeatedly failed Aboriginal people, leading to tragic deaths in custody and perpetuating cycles of state violence. This over-criminalisation of First Nations people in Australia is a modern form of colonial harm.

In so-called Australia, Aboriginal women and youth are the fastest growing category of prison inmates.⁵² The over-criminalisation of *palawa* women further victimises Aboriginal women and entrenches the ongoing cycle of gender persecution. The experience of being both over-policed and under-protected reflects a broader system where Aboriginal women are not seen as deserving of protection, but rather as subjects of control and punishment.

48 Marlene Longbottom, Hannah McGlade and Kyllie Crips, '[Indigenous women are most affected by domestic violence but have struggled to be heard. It's time we listened](https://theconversation.com/indigenous-women-are-most-affected-by-domestic-violence-but-have-struggled-to-be-heard-its-time-we-listened-229720)', *The Conversation* (online, 11 May 2024) <<https://theconversation.com/indigenous-women-are-most-affected-by-domestic-violence-but-have-struggled-to-be-heard-its-time-we-listened-229720>>.

49 Thalia Anthony, '[FactCheck: Are first Australians the most imprisoned people on Earth?](https://theconversation.com/factcheck-are-first-australians-the-most-imprisoned-people-on-earth-78528)', *The Conversation* (online, 6 June 2017) <<https://theconversation.com/factcheck-are-first-australians-the-most-imprisoned-people-on-earth-78528>>.

50 [Uluru Statement from the Heart](#) (2017).

51 [Royal Commission Into Aboriginal Deaths In Custody](#) (Final Report, 15 April 1999).

52 Australian Human Rights Commission (n 43) 42.

Youth injustice

One further dimension of the inter-generational and continuing harm that persists here is the disproportionate surveillance, policing, and detention of *palawa* boys. In *Lutruwita*, Aboriginal children currently represent 44% of the youth detention population, despite making up only 10% of the youth demographic.⁵³

In Aboriginal culture, young people are the future and uphold the legacy of our ancestors. They carry forward our ways of knowing and being, despite historical and ongoing attempts to erase us. They keep traditional languages alive, continue bloodlines, and emerge as powerful leaders and advocates for our community, driving the fight for justice and equality. Consequently, the overwhelming criminalisation of Aboriginal children, particularly boys, reflects a form of forced child removal, a continuation of colonial policies that historically sought to control and oppress Indigenous communities, by targeting future leaders.

The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings also revealed that over 50% of children return to the State's youth detention centre (Ashley) within 12 months of their release. Given the gross over-representation of *palawa* youth in detention, this shocking level of recidivism clearly has its most devastating impact on the *palawa* community. Many Tasmanians already share the disturbing view that the Ashley Youth Detention Centre is 'the kindergarten for Risdon Prison' for our young people.⁵⁴

Colonisation is at the core of the injustice system and the over-criminalisation of young *palawa* boys—put simply, it is why our young people are forced into contact with the criminal punishment system in the first place. This can be through contact with police, courts, prisons and other intervening authorities, for instance, child protection. CEO of the Tasmanian Aboriginal Centre, Heather Sculthorpe, reflected in her statement to The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings that:⁵⁵

[The colony] endorsed and rewarded the killing of Tasmanian Aboriginal people and the elimination of Tasmanian Aboriginal

⁵³ *Commission of Inquiry* (n 40) 905.

⁵⁴ *Commission of Inquiry* (n 40) 906.

⁵⁵ Heather Sculthorpe, '[Witness Statement' Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings](#) (June 2022) 5.

men—a practice that has obvious and catastrophic consequences for Aboriginal youth and men (today).

Perhaps it is unsurprising, given the relentless hunting down of Aboriginal men in the perpetration of the initial genocide flowing from colonial invasion and dispossession, that in the continuum of harm so many *palawa* people experience, youth prisons are teeming with a grossly disproportionate number of *palawa* boys. Aboriginal people, including children, are not inherently violent, yet the state continues to portray us as trouble-makers and *criminals*. Racial profiling and restrictive policies on bail and arrest lead to over-incarceration and perpetuate cycles of marginalisation.⁵⁶ We heard from participants that these practices further embed the stereotypes and racialised conceptualisations of Aboriginal men—and, by extension, boys—as inherently threatening or predisposed to criminality. This perception provides the state with a rationale to justify excessively punitive and damaging measures against Aboriginal boys.

Harry Blagg and Thalia Anthony confirm the continuum of devastation inflicted upon Aboriginal people through gross over-representation in the prison system:⁵⁷

The colonial state's treatment of Indigenous peoples was not so much a civilising mission as a criminalising and brutalising one... Penal violence is a continuing feature of prison life and police practices for Indigenous people... The legacy of colonisation operates through dehumanisation of Indigenous people as victims and offenders.

In *Lutruwita*, the devastating and lasting damage caused by youth detention was powerfully articulated by a *palawa* person in testimony to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings:⁵⁸

A very high percentage of our young people have been to Ashley [Youth Detention Centre]. Those young people then started getting into trouble as adults. Once they came out [of Ashley], they should have been proud of who they are and have aspirations of what they want to do, but they were so mistreated in there. It's another layer of abuse—layer upon layer upon layer.

⁵⁶ Harry Blagg, 'Aboriginal Youth and Restorative Justice: Critical Notes from the Australian Frontier' in Allison Morris and Gabrielle Maxwell (eds), *Restorative justice for juveniles: Conferencing, mediation and circles* (Hart Publishing, 2001) 227, 228.

⁵⁷ Blagg and Anthony (n 16) 84–85.

⁵⁸ *Commission of Inquiry* (n 40) 1680.

Despite all the overwhelming evidence of devastating harm, the state continues to lock *palawa* boys in cages, exacerbating their own trauma and also that of their families and their communities.

Part 3: Migrants, refugees and asylum seekers

Taya Ketelaar-Jones
with the support of Cleo Hansen-Lohrey and
Dr Tamara Wood

Part 3: Migrants, refugees and asylum seekers

Taya Ketelaar-Jones, with the support of Cleo Hansen-Lohrey and Dr Tamara Wood

Introduction

This chapter explores the experiences of gender persecution among migrants, refugees and asylum seekers in *Lutruwita/Tasmania*.

In it, we draw on insights gathered from interviews and consultations with 18 individuals and six organisations. Participants included individuals with personal experience of gender persecution and representatives from organisations working with migrant, refugee and asylum seeker communities.

The experiences of migrants, refugees and asylum seekers living in *Lutruwita/Tasmania* reveals a continuum of risk and harm across the migration journey—beginning before displacement or departure and continuing in transit and through to post-arrival in Australia.

Experiences of persecution across the migration or asylum journey are deeply interconnected. The impacts of past trauma and violence often persist long after arrival, affecting mental health, well-being, and the ability to rebuild lives. These past experiences can also heighten the risk of experiencing further persecution in Australia, such as discrimination, exploitation or domestic violence.

Risk of gender persecution is not evenly distributed, with certain groups—such as women, children, LGBTQIA+ people and people with disabilities—facing heightened risks. The heterogeneity of migrant, refugee and asylum seeker populations is mirrored in their diverse and varied experiences of gender persecution.

Understanding migration pathways

Australia's migration system creates a framework for individuals to travel to, enter, and remain in Australia on a temporary or permanent basis. The various migration pathways come with specific eligibility criteria,

conditions, and restrictions that influence an individual's access to services, legal protections and opportunities for long-term settlement.⁵⁹

Broadly, there are three key components to Australia's visa framework:⁶⁰

- **Temporary visas** allow individuals to stay for specific purposes or periods. Common types of temporary visas include visitor, student, working holiday, and temporary skilled visas. A person who is granted a visa in this stream is referred to as a 'temporary visa holder'.
- **Permanent visas** offer permanent settlement through two streams: a 'skilled' stream and 'family' stream. Skilled visas provide re-settlement opportunities for people with qualifications and skills needed in the Australian labour market. Family visas allow eligible people to reunite with family members such as partners, children or parents, by sponsoring their application for a visa. Many permanent visa pathways include a preliminary temporary visa stage, under which the temporary visa must be held for a certain period before a permanent visa is granted. A person who is granted a visa in this stream is referred to as a 'permanent resident' or a 'permanent visa holder'.
- **Refugee and Humanitarian visas** provide resettlement for individuals fleeing persecution or human rights violations. There are two components: 'offshore' (the visa applicant is outside of Australia when applying for the visa) and 'onshore' (the visa applicant is in Australia when applying for the visa). A person who is granted a visa in this stream is referred to as a 'humanitarian entrant' or a 'refugee'.

Australia's migration laws and policies frequently change but are broadly characterised by a punitive approach to people seeking asylum. This approach includes the use of immigration detention for those arriving without valid visas, and temporary protection visas that require refugees to re-apply and re-establish their refugee status.

Increasing global human mobility is blurring the distinction between 'migrant,' 'asylum seeker' and 'refugee'. Individuals may move between categories or occupy multiple categories at once—a temporary visa holder might seek asylum due to changing conditions in their home country, while an asylum seeker may become a permanent migrant by pursuing an alternative migration pathway such as through

⁵⁹ Alissar El-Murr, *Intimate partner violence in Australian refugee communities: Scoping review of issues and service responses* (2018, Child Family Community Australia (CFCA) Paper No 50) 5.

⁶⁰ The legislative framework is set out in the *Migration Act 1958* (Cth) and the *Migration Regulations 1994* (Cth). The Regulations stipulate different subclasses of visas and the associated conditions.

employment.⁶¹ There are differing levels of risks, as well as forms, of gender persecution associated with each group.

This chapter explores common themes of gender persecution experienced by migrants, refugees and asylum seekers, examining how these experiences intersect and diverge across different categories. It highlights shared risks and forms of harm while also discussing key differences shaped by legal status, pathways of migration, and individual circumstances.

The continuum of risk and harm

Migrants, refugees and asylum seekers living in *Lutruwita*/Tasmania reported experiences of gender persecution spanning multiple stages of the migration journey—beginning with the conditions that drive displacement, continuing through the migration or asylum process, and extending to post-arrival challenges in Australia.

Gender persecution doesn't end when you flee.

Studies indicate that women and girls are disproportionately affected by sexual and gender-based violence among migrants and forcibly displaced people.⁶² The risk of human rights violations, including gender persecution, increases when multiple forms of prejudice and discrimination intersect—such as those based on sexual orientation, gender identity, race, ethnicity, religion, economic status or disability.⁶³

⁶¹ El-Murr (n 59).

⁶² Jeanine Hourani, Karen Block, Jenny Phillimore, Hannah Bradby, Saime Özçürümez, Lisa Goodson and Cathy Vaughan, '[Structural and symbolic violence exacerbates the risks and consequences of sexual and gender-based violence for forced migrant women](#)' (2021) 3(769611) *Frontiers in Human Dynamics* 1; Tam O'Neil, Anjali Fleury and Marta Foresti, [Women on the move: Migration, gender equality and the 2030 Agenda for Sustainable Development](#) (2016, Overseas Development Institute); Sandra Pertek and Jenny Phillimore, with Selin Akyüz, Karen Block, Hannah Bradby, Saime Özçürümez, Anna Perez Aronsson, and Cathy Vaughan, ["Nobody helped me": Forced migration and sexual and gender-based violence: findings from the SEREDA project](#) (2022, University of Birmingham) 18; Lorena Rivas, '[A safe haven? Women's experiences of violence in Australian immigration detention](#)' (2024) 26(3) *Punishment & Society* 547.

⁶³ Hourani et al (n 62) 1. It should be noted that actions and decisions under the *Migration Act 1958* (Cth) are not subject to the relevant federal discrimination law, the *Disability Discrimination Act 1992* (Cth). This means that few people with disability come to Australia through the migration pathways. There are, however, many reported experiences of discrimination for families who have

Migration to a safer country may offer greater opportunities for freedom, autonomy and social equality. However, the journey itself is marked by significant risks, and arrival in a destination country can create exposure to new risks, as well as contributing to or exacerbating existing challenges.⁶⁴

It is important to highlight that gender inequality is 'a global, trans-national phenomenon characterising the polities of both the so-called First and Third worlds.'⁶⁵ Some forms of persecution may be more prevalent in nations of the South, however, as Randall notes:⁶⁶

Other constitutive features of gender inequality that are present in virtually all known societies include women's exclusion from or underrepresentation in the state and other powerful social institutions, gender segregated employment patterns and unequal pay, inadequate reproductive health care, lesser access to general health services, education, and other social goods and resources, and greater-if not often exclusive responsibility for the care of children and domestic work.

For many migrants, refugees and asylum seekers, arriving in Australia does not mark the end of gender persecution. Instead, it can introduce new challenges and risks, as they navigate discrimination, systemic barriers and social isolation that may perpetuate or exacerbate their previous trauma.

Persecution and harm pre-displacement or departure

Many migrants, refugees and asylum seekers in *Lutruwita*/Tasmania have experienced gender persecution prior to departing or being displaced from their country of origin. In many cases, these experiences are a catalyst for leaving—whether voluntarily or by force.

For refugees and asylum seekers, a fear of gender persecution can form the basis of a claim for protection. To be granted a refugee or humanitarian visa, the applicant must demonstrate there is a real chance they will face persecution or significant harm in their country of

come through one or other of these pathways and who have children with disability born in Australia.

⁶⁴ Ibid.

⁶⁵ Melanie Randall, '[Refugee law and state accountability for violence against women: A comparative analysis of legal approaches to recognising asylum claims based on gender persecution](#)' (2002) 25 *Harvard Women's Law Journal* 281, 286.

⁶⁶ Ibid.

origin such that they are unable or unwilling to return to that country. This is the case both for visa applicants located 'onshore' (within Australia) or 'offshore' (outside Australia and their country of origin).

The assessment is forward-looking—even if a person has suffered persecution in the past, they must also demonstrate there is a real risk they will be persecuted or face significant harm in their country of origin if they were to return now. Past experiences of persecution can be a useful indicator of future risk and are therefore highly relevant to the assessment of refugee and humanitarian visa applications.

Pre-departure experiences of gender persecution reported by participants included:

- sexual violence—rape (including as a tool of war or form of torture), sexual assault, sexual harassment, sexual exploitation (including trafficking and forced prostitution);
- forced marriage—in particular, women, children, and LGBTQIA+ individuals;
- family/domestic violence;
- reproductive abuse—forced sterilisation or pregnancy, abortion and the murder of children after birth if they are the 'wrong' sex;
- harmful cultural practices such as female genital mutilation, dowry abuse, and purdah;
- imprisonment and deprivation of liberty;
- forced conscription—particularly men;
- punishment for transgression of social mores including 'honour' killings and stoning; and
- societal and legal discrimination—exclusion from educational, economic, or social opportunities—particularly against women and LGBTQIA+ individuals.

These findings are consistent with existing literature on migrant, refugee and asylum seeker experiences of gender persecution before leaving countries of origin. Randall reports that:⁶⁷

In addition to sexual violence, women around the world face a variety of other forms of persecution and human rights violations which are gender specific, including female genital mutilation ('FGM'), dowry deaths, purdah, coerced or forced adherence to religious dress codes and other restrictive customs, and the use of mass rapes as a weapon of war.

⁶⁷

Ibid 285–86.

Traumatic pre-arrival experiences can have harmful lasting impacts post-departure or displacement.⁶⁸ Experiences of harm before displacement can put individuals at a higher risk of exploitation and abuse in their new environment.⁶⁹

Many of our clients carry deep trauma that can heighten their risk of future harm and make them more vulnerable to exploitation and abuse.

Past experiences of persecution have been reported to adversely affect the settlement experiences including by undermining the 'the ability of individuals from refugee backgrounds to cope in a new environment and [worsening] family functioning issues during and post-settlement.'⁷⁰ It was anecdotally reported by service providers working with migrants, refugees and asylum seekers in *Lutruwita*/Tasmania that women were disproportionately affected by trauma-related mental health impacts including psychosocial disabilities. Women's experiences of trauma and psychosocial distress significantly affected their ability to build social connections and integrate,⁷¹ resulting in higher levels of social isolation.⁷²

Persecution and harm during the migration or asylum journey

Migrants, refugees and asylum seekers continue to be exposed to risks of gender persecution after leaving or being displaced from their country of origin.⁷³

Refugees and asylum seekers are often forced to undertake dangerous and unpredictable journeys in search of asylum.⁷⁴ Many seek safety in neighbouring countries — often referred to as 'countries of first refuge' —

⁶⁸ Jessica Taylor and Greer Lamaro Haintz, '[Influence of the social determinants of health on access to healthcare services among refugees in Australia](#)' (2018) 24(1) *Australian Journal of Primary Health* 14.

⁶⁹ Department of Social Services (Cth), '[Getting settled: Women refugees in Australia](#)' (2013) 14.

⁷⁰ El-Murr (n 59) 7.

⁷¹ Pertek et al (n 62) 21.

⁷² El-Murr (n 59).

⁷³ Hourani et al (n 62).

⁷⁴ El-Murr (n 59).

where they may spend years living undocumented or in refugee camps.⁷⁵

Refugees and asylum seekers are 'confronted with continuous threats of violence when fleeing conflict and insecurity to seek safety, and the impacts of resultant harms are often gendered.'⁷⁶

In the chaos of fleeing, I was separated from my family. Being alone with my children in the camp made us easy targets.

Many participants reported experiencing gender persecution in various forms across the journey from their home country to a place of first refuge.⁷⁷ In many instances, countries of first refuge were unable to protect individuals from further victimisation.

Sexual violence was a recurring and pervasive threat. Many women recounted being forced to engage in 'transactional' or 'survival sex' in return for basic necessities such as food, shelter or safe passage. This exploitation often extended to interactions with traffickers, smugglers, camp guards or even other refugees. Instances of rape, sexual assault and forced prostitution were also widespread, with women and girls frequently coerced or trafficked into these situations as a means of control or financial gain.

Kidnapping and enslavement were additional threats faced by women and girls, often perpetrated by those involved in human trafficking networks or within the volatile environments of refugee camps.

Family violence was a particularly pervasive form of gender persecution encountered during transit and in countries of first refuge. Women and girls traveling with family members or within their communities often experienced violence at the hands of intimate partners or other family members. This is consistent with the finding that '[f]orced migrant women are known to experience higher rates of IPV in countries of refuge than they did pre-conflict.'⁷⁸

Participants also highlighted forced marriage and separation from family as significant issues. In some cases, women and girls were pressured into marriage to secure basic needs or gain protection, sometimes as a family decision to ensure the daughter's perceived safety or economic

⁷⁵ Hourani et al (n 62).

⁷⁶ Ibid 6.

⁷⁷ El-Murr (n 59).

⁷⁸ Hourani et al (n 62) 7.

security. Forced separations also occurred, with young women often taken away from their families by traffickers or community members who sought to exploit their situational vulnerability.

The experiences and forms of gender persecution reported by participants were consistent with existing research on forcibly displaced people's experiences of sexual and gender-based violence. A 2022 study reported that:⁷⁹

During transit and at borders, survivors reported experiencing beatings, imprisonment, torture, sexual assault, harassment, blackmail, threats, human trafficking and modern slavery at the hands of smugglers, traffickers, border guards, militia and authorities, often in the absence of state protection.

It was consistently reported that migration-related vulnerabilities were seen as heightening the risk of victimisation during transit or in countries of first refuge.⁸⁰

Living illegally and undocumented made me invisible. I couldn't seek help when I was abused because I was afraid of being deported.

Irregular and undocumented legal status emerged as a significant contributor, as individuals without secure legal standing often face heightened risk of exploitation and abuse. This lack of status not only limits their access to rights but also restricts their opportunities to seek justice or protection without fear of deportation.

Restrictions on work rights were also highlighted as a crucial issue. Many participants reported that prohibitions on or limited rights to employment exacerbated their economic dependence, making them more susceptible to coercion and abuse. This economic precarity left them trapped in exploitative situations, unable to escape due to their reliance on abusers or exploitative employers.

The absence or inadequate access to basic necessities—such as shelter, food, water and clothing—further compounded these challenges. Without these essentials, individuals were forced into situations where they had to compromise their safety for survival, increasing their exposure to gender-based violence and exploitation.

⁷⁹ Pertek et al (n 62) 18.

⁸⁰ Hourani et al (n 62).

Additionally, limited legal protections left many unprotected from harm. The absence of comprehensive legal frameworks to safeguard rights meant that seeking assistance was often risky and ineffective, perpetuating a cycle of exposure to risk and marginalisation.

Consistent with previous research, several participants reported that intersecting identities including religion, age, sexual orientation and gender identity, were seen as increasing an individual's risk of victimisation.⁸¹

Persecution and harm in Australia

Many migrants, refugees and asylum seekers arrive in Australia seeking safety, security, and a chance to rebuild their lives. For many, however, the reality falls far short of these expectations.⁸² Australia's migration laws and policies interact with gender persecution in ways that can be protective, but equally have the capacity to exacerbate existing vulnerabilities and in some cases increase the risk of victimisation and harm.⁸³

Migration to Australia follows multiple trajectories, shaped by different legal statuses, pathways and personal circumstances. Each path presents its own challenges, with risks varying based on visa restrictions, support systems and access to key services.

In general, participants' experiences of gender persecution were defined by experiences of structural, as well as interpersonal violence.⁸⁴ The reported experiences can be grouped into two categories: harm resulting directly from the migration and asylum process—such as mistreatment in detention, visa insecurity, and exploitative labour conditions—and harm that, while not exclusive to migrants and refugees, disproportionately affects them due to their status as a migrant or refugee.⁸⁵ These include domestic violence, workplace exploitation, and discrimination, which are exacerbated by factors such as limited access to social services, language barriers, economic dependence, and fear of deportation or legal repercussions.⁸⁶

⁸¹ Pertek et al (n 62) 18.

⁸² Rivas (n 62) 561.

⁸³ Pertek et al (n 62) 5, 7, 23, 38; Hourani et al (n 62).

⁸⁴ Reflecting the findings of Pertek et al (n 62) 18.

⁸⁵ Ibid.

⁸⁶ Hourani et al (n 62) 3.

Structural harms

The migration and asylum process itself was perceived by many participants as persecutory, with numerous reports of harmful and traumatic interactions with the system. Many migrants, refugees and asylum seekers in *Lutruwita*/Tasmania also reported having adverse experiences with the justice system. These experiences are often gendered, as well as racialised.

Structural harm associated with the migration/asylum processes

Perhaps the most visible example of structural harm associated with the asylum process is Australia's use of immigration detention.⁸⁷

Australia's use of immigration detention punishes forcibly displaced people for attempting to exercise their right to seek asylum.

The infrastructure of, and conditions in, immigration detention facilities, put detainees at risk of various forms of gender persecution or harm.⁸⁸ Many of the negative consequences of immigration detention are gendered.⁸⁹ This is perhaps most evident in female asylum seekers' experiences of physical and sexual violence while being held in immigration detention.⁹⁰ Participants reported that sexual violence against women in detention was a 'common' occurrence and was perpetrated by family members, other detainees and guards. Consistent with previous research, we heard that that some female detainees experienced reproductive abuse including inadequate prenatal care, denial of abortion services, and pressure to carry pregnancies to term.⁹¹

It was also reported that LGBTIQ+ individuals were frequently subjected to targeted abuse and discrimination, both from guards and other detainees. Immigration detention facilities are structured according to a strict gender binary—male and female. This fails to accommodate the needs of transgender and non-binary asylum seekers, who are frequently

⁸⁷ Hourani et al (n 62).

⁸⁸ Francesca Esposito, Raquel Matos and Mary Bosworth, '[Gender, vulnerability and everyday resistance in immigration detention: Women's experiences of confinement in a Portuguese detention facility](#)' (2020) 9(3) *International Journal for Crime, Justice and Social Democracy* 5, 15–16.

⁸⁹ Hourani et al (n 62).

⁹⁰ Wendy Bacon, Pamela Curr, Carmen Lawrence, Julie Macken and Claire O'Connor [Protection denied, abuse condoned: Women on Nauru at risk](#) (2016, Australian Women in Support of Women on Nauru).

⁹¹ Rivas (n 62) 552.

housed according to their birth-assigned sex rather than their gender identity. This not only denies their identity but also increases their exposure to verbal abuse, physical violence and exclusion.

The prolonged nature of detention added layers of psychological harm, with uncertainty about case outcomes and the possibility of deportation fostering a sense of hopelessness. Women have been found to be disproportionately affected by psychosocial stress associated with the prolonged uncertainty of immigration detention.⁹²

Family separation policies in immigration detention disproportionately affect women, often placing them in high-risk situations as single parents or caregivers. Poor living conditions and minimal access to healthcare—particularly mental health support—left detainees struggling to manage both past and present trauma.

Consistent with findings by Hourani et al, participants reported that women were denied access to appropriate prenatal and maternal health care, as well as being denied essential hygiene supplies such as menstrual products.⁹³ This not only had health impacts but also led to feelings of humiliation and shame. Similarly, transgender detainees were denied access to gender-affirming care or treatment such as hormone therapy.

Detention is hard for everyone, but for women, it's worse.

Australia's visa processing requirements dictate that visa applicants in the refugee and humanitarian program must undergo interviews to assess their claims for protection. For many, these interviews are deeply traumatic, characterised by lengthy, aggressive, inappropriate and repetitive questioning.⁹⁴

Victims of sexual violence were often forced to recount their most distressing experiences without sufficient sensitivity or support. Some reported being questioned by a male interviewer, or with a male interpreter present. This caused significant distress, and in many cases prevented visa applicants from disclosing their experiences.⁹⁵ Similarly,

⁹² Hourani et al (n 62) 6.

⁹³ Ibid.

⁹⁴ Pertek et al (n 62) 25.

⁹⁵ Melinda McPherson, Leah S Horowitz, Dean Lusher, Sarah Di Giglio, Lucy E Greenacre, Yuri B Saalman, '[Marginal women, marginal rights: Impediments to gender-based persecution claims by asylum-seeking women in Australia](#)' (2011) 24(2) *Journal of Refugee Studies* 332.

LGBTIQA+ asylum seekers encountered insensitivity and homophobia when being questioned, including being asked invasive and inappropriate questions.

Further, the fear of disbelief and the potentially life-threatening consequences of being denied asylum compounded the challenges associated with providing coherent testimony under immense emotional pressure.⁹⁶

The purpose of an asylum interview is to determine whether an applicant qualifies for refugee protection by assessing the risk the applicant will be persecuted, including on gendered grounds, if they were to return to their home country. There are two deeply problematic aspects to the asylum interview process: it not only risks re-traumatising applicants but also undermines their ability to present coherent accounts, thereby affecting their prospects of obtaining protection.

The irony is that these interviews, intended to facilitate protection from gender persecution through asylum, often become another form of gendered harm.

Hourani et al argue that '[t]he Burden of proof on people seeking asylum to prove they were the victim of persecution in order to access a positive asylum claim, comprises a form of structural violence.'⁹⁷ The trauma induced by recounting these experiences, combined with fear, inadequate support and distressing interview conditions, undermines individuals' ability to provide coherent testimony. This, in turn, adversely affects the likelihood of their visa being granted, creating a cruel paradox: the very process meant to provide refuge from persecution instead perpetuates harm, making it harder for applicants to escape the dangers they fled.

As Pertek et al note:⁹⁸

On the one hand, trauma prevented victims from disclosing their experiences, yet disclosure was necessary to access treatment or support and, in many cases, to support an asylum or resettlement application. On the other, the processes and experiences of disclosure carried the risk of retraumatisation.

⁹⁶ Pertek et al (n 62) 8, 25.

⁹⁷ Hourani et al (n 62) 6.

⁹⁸ Pertek et al (n 62) 21.

Outside the refugee and humanitarian programs, Australia's wider migration system also perpetrates structural gendered harm. Many women migrate to Australia as 'dependents' on their husband's visa—often a student or temporary skilled visa. Partner or prospective marriage visas, which allow Australian citizens or permanent residents to sponsor visa applications made by their partner, are another common migration pathway for women.

These migration pathways entrench women's dependence on their partners, as their legal status is tied directly to their partner's visa or sponsorship. This dependency can create a power imbalance, making it difficult for women to leave abusive relationships without risking their residency status.⁹⁹

Australian migration law includes provisions allowing some temporary visa holders to seek permanent residency if their relationship ends due to family violence. However, this safeguard is limited to specific types of visas, such as partner or family-type visas, excluding many other temporary visa holders. Participants reported that the process of applying for this concession can be deeply traumatic, as it demands a high level of evidence to substantiate claims of family violence. This often requires victims to gather extensive documentation—such as medical reports, police statements, and testimonies from social workers—which can be difficult to obtain and emotionally exhausting to revisit.

Participants reported that a particularly harmful aspect of the process was the practice of requiring visa applicants to undergo lengthy interviews to interrogate their claims of family violence. Applicants reported being subjected to inappropriate and invasive questions about the authenticity of the relationship. This was especially common for visa applicants in same-sex relationships, who faced greater scrutiny and scepticism from officials.

The family violence provisions are meant to help, but navigating them is so traumatic for clients that it doesn't provide a real path out of abuse. In many ways, the system is just as violent as their abuser.

It was widely reported that applicants were compelled to recount their experiences of abuse in explicit detail, which frequently led to significant psychological distress and re-traumatisation. Visa applicants are not permitted to have legal representation present during the interview, and

⁹⁹ Pertek et al (n 62) 4, 5.

some participants reported being interviewed without an interpreter present.

As Segrave comments '[t]he system that is trying to offer support to temporary visa holders is also contributing to their experiences of abuse.'¹⁰⁰

Adverse justice system experiences

In relation to adverse justice system experiences, police response to family violence was the most frequently cited issue amongst participants. This reflects the fact that migrant and refugee women are around three times more likely to be misidentified as the predominant aggressor in family and domestic violence cases than their Australian-born counterparts.

Although police are required to use interpreters, it was widely reported that police frequently asked family members—including children, or even the abuser—to interpret.

Participants cited discriminatory and racist attitudes among police officers as a significant factor contributing to adverse experiences. Police biases about how the 'perfect victim' should present can result in victims not being believed or being misidentified as the perpetrator. Cultural differences in the expression of anger or distress are often misunderstood or misinterpreted as aggression.

Some participants reported that young migrant and refugee boys, particularly those from certain ethnic backgrounds, experienced over-criminalisation and discriminatory policing practices. Racial profiling and discrimination contribute to negative interactions with police, which deepens distrust within communities and adds to the challenges faced by migrant families as they navigate Australian society.

Interpersonal harm

Migrants, refugees and asylum seekers in *Lutruwita*/Tasmania reported experiencing various forms of interpersonal harm arising from, or interconnected with, their status as a migrant, refugee or asylum seeker.

100

Marie Segrave, '[Temporary migration and family violence: How perpetrators weaponise borders](#)' (2021) 10(4) *International Journal for Crime, Justice and Social Democracy* 26, 36.

Family and relationship-based abuse

Family and domestic violence was the most consistently reported form of gendered harm across migrant, refugee and asylum seeker communities.

A 2021 survey of migrant and refugee women found that 33% had experienced family violence, with temporary visa holders experiencing disproportionately higher rates of victimisation.¹⁰¹

For some, this was a continuation of violence that began prior to arrival. In contrast, and consistent with other studies, some participants reported that ‘negotiating gender norms in countries of refuge threatened their spouses’ ideas of masculinity and triggered family violence.’¹⁰² The power dynamics within migrant households can be intensified by factors such as economic dependence, limited language proficiency and cultural expectations that reinforce patriarchal norms.¹⁰³

We often see that young men step into the ‘head of house’ role which can lead to controlling behaviour and aggression as these young men try to assert power in the family.

The types of violence reported by participants included physical, sexual, emotional, financial, spiritual and reproductive abuse, as well as coercive control.

Many participants identified economic abuse as a common feature of family violence experiences of migrants, refugees and asylum seekers. There were reports of abusers controlling access to income, restricting employment opportunities and withholding financial resources.¹⁰⁴ Some women from refugee backgrounds were discouraged—and in some cases ‘prohibited’—by their husbands from engaging in paid work. This is consistent with findings that unemployment rates for migrants, refugees and asylum seekers are significantly higher for women compared with men.¹⁰⁵ Employment outcomes in Australia differ greatly by migration program and visa type. Migrants on skilled visas typically achieve high labour force participation and employment levels, with 76% earning

¹⁰¹ Marie Segrave, Rebecca Wickes and Chloe Keel, [*Migrant and refugee women in Australia: the safety and security study*](#) (2021, Monash University) 9.

¹⁰² Pertek et al (n 62) 18.

¹⁰³ Hourani et al (n 62).

¹⁰⁴ El-Murr (n 59) 5.

¹⁰⁵ Harmony Alliance, [Submission No 138 to the Department of Prime Minister and Cabinet \(Cth\), Review of the Workplace Gender Equality Act 2012](#) (25 November 2021).

personal income in the 2019–20 financial year.¹⁰⁶ In contrast, humanitarian entrants face much lower employment outcomes, with only 49% reporting earned personal income during the same period.¹⁰⁷

A recent study found employment rates for recently arrived (less than one year) humanitarian entrants are low overall, but the situation is significantly worse for women.¹⁰⁸ Flavel et al report that, while only 10% of refugee men were employed, the rate for women was an alarming 1%.¹⁰⁹

Women on temporary visas are at particular risk of economic abuse and they are more likely to be dependent on their partner for economic and housing security as well as for their visa.¹¹⁰

Reproductive abuse was also widely cited by participants as being part of family violence experiences. Many women have been forced into or denied pregnancies, prevented from accessing reproductive healthcare, or pressured to meet cultural childbearing expectations.¹¹¹ This is consistent with other reported findings that migrant, refugee and asylum seeker women experience poorer health outcomes compared with Australian-born women: they are less likely to access sexual and reproductive health care and are at greater risk of poorer child and maternal health outcomes, both physical and psychological.¹¹²

One of the most reported forms of family violence was coercive control. This was primarily identified by service providers working with migrants, refugees and asylum seekers in *Lutruwita/Tasmania*. Participants identified that women were frequently subjected to a range of behaviours aimed at dominating and restricting their independence including in decision-making.

¹⁰⁶ Australian Bureau of Statistics, [*Migrant settlement outcomes: Selected economic and social outcomes of permanent migrants: Reference period 2024*](#) (26 June 2024).

¹⁰⁷ Ibid.

¹⁰⁸ Joanne Flavel, Clemence Due, Joanna Howe and Anna Ziersch, '[Refugee women and work: Evidence from an Australian longitudinal study](#)' (2024) 00 *International Migration* (advance) 1, 8.

¹⁰⁹ Ibid.

¹¹⁰ Segrave et al (n 101).

¹¹¹ El-Murr (n 59).

¹¹² Hannah Billet, Martha Vazquez Corona and Meghan A Bohren, '[Women from migrant and refugee backgrounds perceptions and experiences of the continuum of maternity care in Australia: A qualitative evidence synthesis](#)' (2022) 35(4) *Women and Birth* 327.

Migrants, refugees and asylum seekers were found to be more likely to experience violence perpetrated by multiple family members including parents-in-law and adolescent sons.¹¹³

Sexual and physical violence

Sexual violence, including rape, sexual assault, harassment and exploitation, was reported as a pervasive issue. This violence often occurred in settings like workplaces, housing and public spaces, where individuals may be more vulnerable due to unstable legal or economic circumstances. Migrant women on temporary visas are often employed in low-wage or domestic labour roles and reported frequent harassment and exploitation from employers, often with precarious immigration status being used as leverage to prevent them from reporting abuse.

Public harassment and abuse also emerged as a significant theme, particularly for women wearing religious or cultural attire, such as the hijab. Participants reported being verbally assaulted, spat on, and even physically attacked in public spaces. This reinforces social exclusion, with many women hesitant to engage fully in public life for fear of further harassment.

I'm too scared to catch the bus since a man shouted at me and tried to pull my hijab off. I don't know how to drive so I just stay home.

Many LGBTQIA+ migrants, refugee and asylum seekers in Lutruwita/Tasmania face homophobic and transphobic violence, including verbal abuse and physical attacks. Many participants reported feeling most at risk of harm perpetrated by members of their own cultural communities. LGBTQIA+ migrants, refugees and asylum seekers reported being subjected to 'corrective rape,' by community members who disapproved of their sexual orientation or gender identity.¹¹⁴

Modern slavery

Modern slavery affects many migrants, refugees and asylum seekers in Lutruwita/Tasmania, particularly women and LGBTQIA+ individuals who face elevated risks of exploitation.

Modern slavery is an umbrella term used to collectively refer to human trafficking, slavery and slavery-like practices. It includes slavery, human

¹¹³ El-Murr (n 59) 5.

¹¹⁴ Hourani et al (n 62).

trafficking, forced labour, domestic servitude, sexual exploitation, debt bondage, forced marriage, deceptive recruitment and child labour.

Forced labour was commonly reported in industries prone to exploitation globally, such as agriculture, domestic work, construction and sex work. These industries heavily rely on migrant workers on temporary visas, making them particularly at risk of forced labour exploitation. There were reports of sexual exploitation of migrant women who were deceived about job terms or coerced into the commercial sex industry through illicit debts or drug manipulation.

Trafficking networks target migrants with unstable legal or economic status, particularly those with limited language skills or social support, making it difficult for them to seek help. Migrant women in the sex trade account for most trafficking prosecutions in Australia.

Instances of domestic servitude also predominantly affect migrant, refugee and asylum seeker women.

I came to Australia thinking I'd be working for a family, but they treated me like a slave. They took my passport and wouldn't let me leave the house. Sometimes they locked me in a room when they went out.

Forced marriage was identified by participants as a persistent and pervasive form of gender persecution. Women and girls reported being coerced or forced into marriages to fulfill cultural or religious expectations, maintain family honour, and to secure stable immigration status for their partners.

LGBTQIA+ individuals also face the threat of forced marriage, often in an attempt by family members to 'correct' their sexual orientation or gender identity. This has sometimes involved coercion through physical violence or psychological manipulation.

Harmful cultural practices

In some migrant, refugee and asylum seeker communities, harmful cultural practices such as female genital mutilation ('FGM'), dowry abuse and purdah (the seclusion of women) persist after resettlement in Australia. Fear of community repercussions or legal consequences can keep these practices hidden, making it difficult for those affected to access support or escape harmful situations.

Dowry abuse was most commonly reported as being perpetrated by the person's in-laws, but some participants cited cases of their partner, or

their own family, being the perpetrator. The 'prospective entitlement to a visa can be used as a form of control, enabling escalating demands for dowry payments'.¹¹⁵

FGM 'affects not only women living in regions where FGM/C is commonly practised but also, due to migration, women in other parts of the world, including Australia.'¹¹⁶ There is some evidence that attitudes towards FGM are changing among migrant communities in Australia.¹¹⁷ However, some participants gave anecdotal accounts of mothers being pressured by their husbands or by community members to carry out FGM on their daughters, either in Australia or—more commonly—by sending the girl overseas.

Visa-related abuse

Visa-related abuse is a significant form of control and exploitation experienced by migrants, refugees and asylum seekers in Australia. This type of abuse disproportionately affects women and often exploits the dependency that individuals have on their partners, sponsors or employers for their legal status.

My husband says I'll be deported if I leave him. I don't know if it's true but I'm too scared to find out.

Participants consistently reported that abusers used threats of deportation or visa cancellation as a powerful means to intimidate and maintain control. The resulting fear is particularly acute for those on temporary visas, as their right to stay in the country is often tied to maintaining a specific relationship or employment status. For many, the prospect of losing their visa status means facing potential deportation and returning to the situation they left, including conditions of persecution.

For women, visa-related abuse in intimate relationships is particularly damaging. Abusive partners may manipulate shared immigration processes, withhold important documents and delay visa applications to maintain control. This type of abuse is often compounded in situations where a temporary visa holder has children with an Australian citizen—

¹¹⁵ Legal and Constitutional Affairs References Committee, Parliament of Australia, [*The practice of dowry and the incidence of dowry abuse in Australia*](#) (Report, February 2019) 48.

¹¹⁶ Australian Institute of Health and Welfare ('AIHW'), [*Towards estimating the prevalence of female genital mutilation/cutting in Australia*](#) (Infocus, 6 February 2019) 3. The 'C' here refers to 'cutting'.

¹¹⁷ Ibid 7.

the threat of being forcibly separated from their children (who automatically inherit citizenship from the other parent) further discourages victims from reporting violence or seeking support. Many participants reported the risk of losing custody or being separated from their children resulted in them feeling trapped in abusive situations.

There is a dearth of data on abuse of temporary visa holders or that is visa related. There is, however, one Australian study that indicated 44% of women on temporary visas were threatened by a partner or family member with withdrawal of sponsorship for their visa applications, while 39% had been threatened with deportation by their partners or family members.¹¹⁸

Visa-related abuse was also reported in the context of workplace exploitation, particularly for migrants on employer-sponsored visas. Employers may threaten to report visa violations or fabricate complaints to immigration authorities if workers resist exploitation, speak up about workplace conditions or attempt to leave abusive environments.

Nexus between migration status and persecution/harm

The experiences of migrants, refugees and asylum seekers in *Lutruwita*/Tasmania reported by participants reflect Rivas' statement that 'rather than Australia being a safe haven for asylum seekers, it instead perpetuates their conditions of vulnerability.'¹¹⁹

In addition to the structural harm caused by the migration or asylum process itself, there are particular structural, social, legal, and economic factors associated with the status of 'migrants', 'refugee' or 'asylum-seeker' that produce increased risks of gender persecution as compared to the wider population of *Lutruwita*/Tasmania.

Visa status can dictate whether individuals have access to essential services, stable employment or long-term support—such as healthcare, education, housing assistance, and social security benefits—and pathways to permanent residency. It can also determine eligibility for family reunification, legal aid, mental health services, language training, childcare, employment support programs, and protection from deportation.¹²⁰

This project identified four factors that contributed to a heightened risk of gender persecution for migrants, refugee sand asylum seekers:

118 Segrave (n 100).

119 Rivas (n 62) 548, 548.

120 El-Murr (n 59) 3, 6.

- **Visa-related vulnerabilities** such as dependency on an abusive sponsor or primary visa holder partner, fear of visa cancellation or deportation, risk of separation from children, restrictions on work rights, ineligibility for services such as social security, Medicare, and housing assistance.
- **Barriers to reporting harm and seeking support** arising from language and communication barriers, distrust of authorities, visa status, community norms discouraging disclosure, fear of racist assumptions and cultural stigma.
- **Economic and employment challenges** including discrimination and racism in the labour market, non-recognition of overseas qualifications, underpayment and exploitation, visa restrictions on work rights and access to services.
- **Intersecting identities** resulting in different forms of gender persecution.

Intersections

This chapter has explored the connections and intersections between gender persecution and the status of being a migrant, refugee or asylum seeker within the broader discussion of the various forms of harm experienced by these groups. These connections are critical to understanding the full context of migrant, refugee and asylum seeker experiences of gender persecution in *Lutruwita*/Tasmania.

I can't stress enough how profoundly migration status affects a person's exposure to and experience of gender persecution.

The experiences of gender persecution faced by migrants, refugees and asylum seekers also often intersect with other forms of marginalisation, such as those related to sexual orientation, gender identity and disability.¹²¹ For individuals with these intersecting identities—such as LGBTQIA+ or disabled asylum seekers and refugees—their risk of experiencing gender persecution is often amplified by overlapping systems of oppression.¹²²

This section summarises some of the key themes around these intersections that emerged from consultations.

LGBTQIA+ refugees frequently endure compounded persecution. Many face extreme forms of persecution in their countries of origin including

¹²¹ Migration Council Australia and Forcibly Displaced People Network, *Gender responsive settlement: Broader learnings from LGBTQIA+ refugees*, 9.

¹²² Hourani et al (n 62) 1.

criminalisation and death. Currently, there are 60 United Nations member states that have laws criminalising homosexuality, and the death penalty is the legally prescribed punishment for same-sex sexual acts in at least seven countries.¹²³

Participants identified various forms of violence—including sexual, physical, emotional and domestic violence—perpetrated against LGBTIQ+ refugees and asylum seekers at various stages across the asylum journey. As reported by Pertek et al, there was a variety of perpetrators including ‘family and community members, state actors, smugglers, militia and other forced migrants’.¹²⁴ It was reported that lesbian and transgender refugees and asylum seeker women were subjected to ‘corrective rape’ and that gay, bisexual and transgender men frequently experienced homophobic violence across their asylum journeys.¹²⁵

In detention centres and refugee camps, transgender and gender-diverse refugees and asylum seekers are often misgendered or placed in housing that does not correspond with their gender identity, exposing them to heightened risks of harassment, assault and isolation.

LGBTIQ+ migrants, refugees and asylum seekers continue to face persecution and harm despite relocating to Australia (voluntarily or otherwise).¹²⁶ Communities from the same ethnic background are generally a source of social support for newly arrived refugees, migrants and asylum seekers.¹²⁷ However, this is often not the case for those in the LGBTIQ+ community.¹²⁸

Some participants reported hiding their sexuality or gender identity out of fear of repercussions from members of their cultural community. Others reported being ostracised, subjected to transphobic and homophobic abuse, and being sexually or physically assaulted.

LGBTIQ+ asylum seekers face additional hurdles in seeking protection in Australia, where immigration laws and policy frequently fail to

¹²³ ‘[Criminalisation of consensual same-sex sexual acts](https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts)’, *ILGA World Database* (Web page) <<https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>>.

¹²⁴ Pertek et al (n 62) 15.

¹²⁵ Melinda W Moore and John R Barner, ‘[Sexual minorities in conflict zones: A review of the literature](#)’ (2017) 35(46) *Aggression and Violent Behavior* 33.

¹²⁶ Migration Council Australia & Forcibly Displaced People Network (n 121).

¹²⁷ Ariel Shidlo and Joanne Ahola, ‘[Mental health challenges of LGBT forced migrants](#)’ (2013) 42 *Forced Migration Review* 9.

¹²⁸ Ibid.

adequately recognise asylum claims based on sexual orientation, gender identity and expression, and sex characteristics. It was reported that protection visa applicants faced invasive and inappropriate questioning from immigration officials and unreasonable evidentiary requirements.¹²⁹

LGBTIQ+ asylum seekers navigating Australia's immigration system often report experiences of neglect, stereotyping, and widespread distrust toward their claims.

Migrants, refugee and asylum seekers who are disabled face persecution and harm that is both gendered and ableist. Many face significant persecution in their home countries and in displacement settings. Women with disability are particularly exposed to risks of sexual violence, exploitation and neglect, as they are perceived as less capable of defending themselves and more dependent on others for care.¹³⁰

When disability intersects with precarious migration status in Australia, access to legal and social services becomes even more restricted, and the risk of violence and exploitation significantly increases. Participants reported that many migrant, refugee and asylum seeker women face additional barriers in accessing healthcare, education and support services, which are often not designed with their needs in mind.

Many refugee women become disabled as a result of the hardships and violence experienced during their displacement. Lack of adequate sexual and reproductive health care, as well as high fertility and poor birth spacing, can result in long-term health issues and disabilities.¹³¹

One participant reported that their service has identified that refugee and asylum seeker women experience psychosocial disabilities at higher rates than men.

¹²⁹ Roman König and Nathan Eastwood, '[Fleeing persecution: experience of LGBTI asylum seekers in Australia](https://www.ibanet.org/article/e2f3ae51-c72c-456c-bfd2-1e33abc73675)', *International Bar Association* (Web article, undated) <<https://www.ibanet.org/article/e2f3ae51-c72c-456c-bfd2-1e33abc73675>>.

¹³⁰ Eileen Pittaway and Linda Bartolomei, '[Enhancing the Protection of Women and Girls through the Global Compact on Refugees](#)' (2018) 57 *Forced Migration Review* 77.

¹³¹ NSW Refugee Health Service, [Refugee Women](#) (February 2018, Fact Sheet No 5).

Resilience, prevention and accountability

The experiences of migrants, refugees and asylum seekers living in *Lutruwita*/Tasmania reflect not only the challenges of displacement but also remarkable resilience. While participants highlighted the urgent need to address the structural, social, legal and economic drivers of gendered harm, they also emphasised the importance of recognising the strength and agency of displaced individuals. Despite facing significant barriers, including discrimination, trauma and restricted access to resources, many migrants, refugees and asylum seekers demonstrate extraordinary perseverance in rebuilding their lives.

They call me a 'refugee', but that label doesn't capture my strength, my dreams, or my humanity.

Participants called for a comprehensive, rights-based approach to address gender-based violence and inequality, noting that policies and services must promote not just protection but also empowerment. Key themes included:

- **timely and accessible support:** removing restrictions on accessing healthcare, legal aid, housing and mental health services;
- **comprehensive legal protections:** immigration policies that protect those fleeing abuse and prevent visa-related coercion;
- **culturally sensitive approaches:** services and policies tailored to meet the needs of diverse communities, respecting their cultural values while promoting gender equality;
- **empowerment through education and employment:** women, LGBTQIA+ individuals, and other marginalised groups being supported to achieve financial independence and social inclusion; and
- **safe spaces and trust in institutions:** migrants and refugees being supported to feel safe reporting violence and accessing services, knowing they will not face discrimination or deportation.

Conclusion

The experiences of migrants, refugees and asylum seekers in *Lutruwita*/Tasmania reveal the persistent and interconnected nature of gender persecution throughout the migration journey. From pre-departure violence and harm during transit to post-arrival challenges in Australia, individuals face a continuum of risks that are influenced by their legal status, migration pathways and intersecting identities.

Structural and interpersonal forms of harm, such as visa dependency, immigration detention, economic precarity and limited access to services, amplify exposure to these risks. Moreover, the systemic challenges within migration and asylum processes often exacerbate the trauma and hinder the ability to achieve safety and stability.

Addressing these issues requires a rights-based, inclusive approach that recognises and responds to the unique experiences of diverse migrant populations. By fostering accessible support, comprehensive protections and culturally sensitive interventions, the resilience of migrants, refugees and asylum seekers can be met with meaningful pathways to empowerment, safety and integration.

Part 4: LGBTIQ+ and people with disability

Dr Wynne Russell
with the support of Dr Robin Banks

Part 4: LGBTIQ+ and people with disability

Dr Wynne Russell with the support of Dr Robin Banks

Introduction

This is an introduction to the two remaining cohorts—members of the LGBTIQ+ communities and people with disability—in part because they had the same research lead and key researcher. It discusses some key shared themes from these two cohorts, and notes significant overlaps in terms of both experiences, but also cohort membership.

In the course of this project, 17 participants were interviewed, several of whom came from organisations and a number of whom were members of both cohorts.

A backdrop of gendered structured inequalities

Gender persecution occurs against the backdrop of gendered structural inequalities at every level. Some participants argued that gender persecution—defined as maltreatment or discrimination on the basis of sex, gender, and/or the social constructs and criteria used to define gender—occurs against the backdrop of systems of political, social and economic relations and institutions structured around and shaped by pervasive gendered inequalities that, at the level of the sexual binary (a fundamental component of patriarchal thought), subordinate and marginalise the voices of women and girls, as well as of many men and boys.

Structural inequalities at every level of the system: that is the big cloud in the sky that holds that power.

As a consequence, some participants argued, gender persecution is not just something that is perpetrated against individuals by individuals; it is a manifestation of an entire system of power imbalances, including those resulting from sexism, misogyny, racism, xenophobia, heterosexism, transphobia, and ableism. Participants also argued that the commodification of women evident in most manifestations of pornography, prostitution and sexualisation in the media directly drive gender persecution of women and girls.

The experiences described by some trans-masculine and non-binary people interviewed for this project, notably, drive this point home. One transmasculine-presenting person, for instance, reported that after they

began to present in a masculine fashion, long-standing non-gendered medical issues—coeliac disease, for instance—were suddenly successfully diagnosed, after having been dismissed as ‘anxiety’ for a decade while presenting as female. Another non-binary person said that after beginning to present in a more feminine fashion, they noted a change in attitude at their workplace, where women were said to be not as ‘confident’ and ‘articulate’. And one interviewee noted that they know transmasculine people who, out of sense of needing to be ‘manly’, have leaned into that mentality and perpetrated sexual assault on women.

Shared identities and experiences of persecution

Identities and the persecution surrounding them cannot always be easily compartmentalised. The following two sections of this report are primarily focused on addressing gender persecution as directed at two cohorts in *Lutruwita/Tasmania*: people with disability and LGBTIQ+ people, both of whose experiences of marginalisation, discrimination and violence often intersect with gendered persecution.¹³² Participants noted, however, that many people straddle these ‘cohorts’, and that neither their identities nor the persecution directed towards those identities can be neatly siloed into, or even within, these categories. This may be particularly the case with the LGBTIQ+ community and the community of people with disability, which have an unusually high rate of overlap; for example, rates of people identifying as LGBTIQ+ are particularly high among autistic people, with a higher proportion of autistic people compared non-autistic people identifying as LGBTIQ+, and particularly as transgender or gender-diverse.¹³³

Types of identity-based persecution cannot be neatly siloed either. Some interviewees noted that violence and abuse itself rarely starts and finishes in distinct episodes or falls neatly into distinct types (physical, psychological, etc), and frequently involves overlaps between multiple perpetrators.

¹³² ‘Queer’ can also embrace individuals and groups who are othered or discriminated against on the basis of practices such as non-monogamy or erotic preferences, which may be connected with but not specific to a sexual orientation or gender identity; this report does not address these experiences. See, Aneta Peretko, [‘Protection of LGBTIQ+ rights in armed conflict: How \(and whether\) to ‘queer’ the crime against humanity of persecution in international criminal law’](#) (2024) 37 *Leiden Journal of International Law* 251.

¹³³ See, for example, Amaze Autism Connect, [Submission No 114](#) to Legislative Council, Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria’s Criminal Justice System* (16 September 2021).

Intersecting identities, interlocking abuse

One participant recounted the case of an intersex, transfeminine-presenting person with intellectual disability who was experiencing recurrent abuse from neighbours in social housing. As any application for a transfer within social housing on the basis of behaviour by neighbours had to be accompanied by evidence of police involvement, this person frequently contacted the police to report instances of abuse—some of which may have been flashbacks brought on by post-traumatic stress disorder ('PTSD') from persistent lifelong abuse. The police claimed to be looking into the situation, but a chance disclosure revealed that, in fact, the police had not been recording the incidents on the assumption that all were invented; meanwhile, no referral was made to mental health or trauma services, even though the person should have been recognised as high risk and in need of support.

Life-long and changing forms of persecution

Gendered persecution, including of LGBTIQ+ people and people with disabilities, is a life-course experience, taking different forms at different times. Participants noted that, in many instances, the question for LGBTIQ+ people and people with disabilities is not whether they will be experiencing discrimination and maltreatment at any point in their lives, but rather what form they will be experiencing at any given time. In some cases, this fact can be partly attributed to the trauma impacts of persecution: experiencing or even witnessing violence at a young age increases the chances of an individual experiencing violence at later stages of life.¹³⁴ In other instances, however, this situation simply reflects the pervasiveness of discrimination across institutions and society, and the failure of siloed prevention efforts or support to effectively address it.

Persecution colonises the personhood of the person abused.

The sources of gender persecution

Maltreatment and discrimination do not always come from individuals or institutions holding structural power. Participants noted that lateral or displaced violence—anger, abuse and even physical violence directed towards other members of a marginalised or oppressed community as a consequence of internalised rage, fear, shame and dissatisfaction

¹³⁴ Michael Salter, Elizabeth Conroy, Molly Dragiewicz, Jackie Burke, Jane Ussher, Warwick Middleton, Sheryle Vilenica, Beatriz Martin Monzon and Kyja Noack-Lundberg, ' ["A deep wound under my heart": Constructions of complex trauma and implications for women's wellbeing and safety from violence](#) ' (12/2020; Sydney: ANROWS).

stemming from oppression¹³⁵—can and does occur, and can be experienced as particularly painful, as well as particularly difficult to report. Issues that emerged in the course of this research—competition between disability advocates and services, divisions in the LGBTIQ+ community over trans rights, and, and a broader level, tensions between advocates for trans safety and advocates for women’s safety—have the potential to be viewed through this lens. All noted, however, that the underlying issues are ones of marginalisation and the continued impacts of the experience of settler-colonialism, exacerbated by scarcity of resources and policy failures, for instance cuts to disability funding and failures to deliver real safety for women.

Understandings of underlying crimes and gender persecution informing this research

In proceeding with interviews and analysis, this project has been informed by UN Women’s toolkit *Identifying gender persecution in conflicts and atrocities*¹³⁶ and the ICC’s *Policy on the Crime of Gender Persecution*.¹³⁷ The first notes that in order to meet the standard for gender persecution under the Rome Statute, the conduct (act or acts) committed must be among the enumerated crimes that may amount to ‘crimes against humanity’. Of these, the most relevant to this project appear to be:

- ‘persecution against any identifiable group or collectivity’ on the grounds of, among others: gender;
- inhumane acts ‘intentionally causing great suffering, or serious injury to the body or to mental or physical health’: physical and psychological impacts of violence and discrimination, non-consensual medical procedures;
- sexual violence: sexual violence against people with disability and LGBTIQ+ people, enforced sterilisation of women with disability and people with innate variations of sex characteristics; and

¹³⁵ Australian Human Rights Commission, [Social Justice Report 2011](#) (web page, December 2012) 2.2 Understanding lateral violence. See also, Substance Abuse and Mental Health Services Administration, ‘[Bullying in Indian Country](#)’ (web-based PDF, undated).

¹³⁶ Human Rights & Gender Justice Clinic and Madre, [Identifying gender persecution in conflict and atrocities: A toolkit for documenters, investigators, prosecutors and adjudicators of crimes against humanity](#) (December 2021, UN Women).

¹³⁷ International Criminal Court (‘ICC’) and Office of the Prosecutor (‘OTP’), [Policy on the Crime of Gender Persecution](#) (7 December 2022).

- ‘imprisonment or other severe deprivation of physical liberty’: restrictive practices against people with disability.¹³⁸

The second states:

Gender persecution may also be committed because of an omission (eg, a failure to order subordinates to protect civilians, or failure to punish similar crimes committed in prior operations based on discriminatory motives). These crimes may also be caused by a combination of other relevant discriminatory factors at all levels of an organisation.¹³⁹

This provision appears to cover common themes in the findings, including:

- barriers to reporting discrimination and maltreatment;
- failure by individuals and institutions to believe reports of discrimination and maltreatment; and
- failure of organisations to respond to allegations or substantiations of discrimination and maltreatment.

Both documents note that gender persecution can affect men and boys as well as women, girls, and LGBTIQ+ people; where possible, we have tried to at least allude to the full range of experience.

Common themes

The following sections consider themes that were common to these two cohorts.

The bulk of gender persecution is in principle unauthorised by the Tasmanian or Australian governments

The impacts of discrimination legislation mean that, at the moment, much—although not all—gender-based maltreatment of and discrimination against LGBTIQ+ people and people with disability in *Lutruwita/Tasmania* appears to be largely unsanctioned, including:

- gendered violence and maltreatment in institutions, including child protective services, criminal justice systems, disability services, and aged care services;

¹³⁸ Human Rights & Gender Justice Clinic and Madre (n 136) 8, 21.

¹³⁹ ICC and OTP (n 137) 24 [87].

- discrimination and maltreatment by the general public, including ostracism and bullying, verbal and physical harassment, and threatened and actual violence;
- domestic and family violence; and
- medical discrimination, for instance denial of gender-affirming care—particularly, but not exclusively, for people with intellectual disability—and appropriate care for gay men and lesbians.

Non-consensual medical procedures or psychological interventions, however, remain a notable permitted exception

Examples identified by participants include non-consensual sterilisation of people with disability and people with innate variations of sex characteristics; non-consensual surgeries against children with innate variations of sex characteristics; and conversion practices against LGBTIQ+ people, all of which remain lawful in *Lutruwita*/Tasmania and largely in Australia more generally. Denial of gender-affirming care for trans people with intellectual disability, although discriminatory, also is often explicitly state-authorised via legal guardianship systems.

Failure by governments to adequately prevent and respond

Participants identified the failure of government to adequately prevent and respond to non-sanctioned forms of violence, including in government-funded non-government organisations, can itself be so pervasive as to appear to be a form of discrimination and maltreatment.

In particular, government and government-funded non-government organisations were identified by participants as responsible for the following inadequacies.

Inadequate policing/oversight

Participants noted that Tasmania Police does not have a mechanism for effectively recording reports of hate crimes or police responses to these. This means that people experiencing maltreatment by the general public cannot establish a paper trail to record their own experience, perpetrators of hate crimes are not prosecuted as such and have no 'record' in this regard, and police practices go unexamined.

Participants also noted that no independent complaints mechanism exists for Tasmania Police, leaving it to the police to investigate complaints against themselves.

Inadequately trained services

Participants noted that disability sector organisations often do not have a family violence lens, meaning that violence against women with

disability is normalised or dismissed by workers and organisations. Others observed that healthcare professionals are not trained with the tools to feel confident and competent to provide care for the LGBTIQ+ population. Meanwhile, a general lack of trauma-informed, disability-informed—including neurodivergency-informed—and LGBTIQ+-informed—including trans- and non-binary informed—care and support across a wide range of areas leaves marginalised people feeling less rather than more safe and supported.

What we would see as family violence, they see as 'she's a difficult person', 'she gives as good as she gets'. What we would see as coercive control, they see as 'lucky that someone's paying you attention'.

Inadequate protection

Participants noted, for example, that the Tasmanian Child and Youth Safe Standards,¹⁴⁰ despite a nominal commitment to equity, do not specifically address the needs of LGBTIQ+ young people, despite the over-representation of this group in child safety statistics.

Child Safety Services say that young trans people are safe at home with transphobic parents, and then they can't understand why queer young people are overrepresented in homelessness statistics.

Inadequate provision of essential supports such as housing

Within the overall context of housing scarcity, participants noted the dearth of public housing meeting the particular housing needs of people with disability and LGBTIQ+ people, including Aboriginal people who are members of these groups. Without such housing availability, people are unable to safely remove themselves from situations where they are experiencing persecution.¹⁴¹

¹⁴⁰ 'Child and Youth Safe Standards', [Office of the Independent Regulator](https://oir.tas.gov.au/about/child-and-youth-safe-standards) (Web Page, undated) < <https://oir.tas.gov.au/about/child-and-youth-safe-standards>>.

¹⁴¹ Noah Riseman, [New South Wales Trans History](#) (2022).

Persistence in the general community of gender persecution points to the precarity even of legislated gains

Participants noted worrying trends in Australia and overseas to roll back protections for LGBTIQ+ people, including efforts to:

- *Roll back existing discrimination protections in the name of religious freedom.* Participants noted that the Commonwealth Religious Discrimination Bill 2022, had it passed, would have clashed with sections 17–20 of the *Anti-Discrimination Act 1998* (Tas), which prohibit discrimination or promotion of discrimination against as well as incitement of hatred towards, serious contempt for, and severe ridicule of, a person or a group of persons on the ground of sexual orientation, lawful sexual activity, gender identity, sex characteristics, and disability.
- *Roll back inclusion measures in schools in the name of parental rights.* Participants noted that, although the Tasmanian government has maintained its support for programs designed to build inclusion for LGBTIQ+ students in schools, such programs have come under attack elsewhere in Australia. Meanwhile, there often appear to be no consequences for failure by schools to comply with discrimination laws, meaning that anti-LGBTIQ+ behaviour or speech can go unchallenged until complaints are escalated. By way of example, the website of Tasmania's Anti-Discrimination Commissioner offers as a case study a case of a student reporting his concern about stickers that had been produced and were being circulated at his educational institution that were disparaging of LGBTIQ+ people.¹⁴²

During the research for this report, we also heard a range of opinions on Tasmania's gender identity recognition legislation of 2019 and its impacts. These amendments to the *Births Deaths and Marriages Registration Act 1999* (Tas) have the effect, among other provisions, of removing the requirement for a person who wants to officially register their change of gender to have surgery; instead, they simply need to sign a statutory declaration confirming their gender.¹⁴³ This change makes trans people who cannot or do not wish to submit to surgery safer in a wide range of circumstances, for instance while travelling. However, interviewees for this project disagreed sharply as to whether it does so at

¹⁴² 'Complaints: Report it! case studies', Office of the Anti-Discrimination Commissioner (undated) <<https://www.antidiscrimination.tas.gov.au/complaints>>.

¹⁴³ Brendan Gogarty, 'All colours of the rainbow: Why Tasmania's new gender identity laws are warranted', *The Conversation* (online, 22 June 2020).

the expense of women's safety, on the grounds that male offenders will change their legally documented sex to access women's spaces and/or that women will be less able to challenge men who access women's spaces.

*Gender identity-based protections must not be allowed to compromise women's sex-based protections in law. Women need to be assured of access to safe female-only spaces and services.*¹⁴⁴

Women need safety, but their historical oppression was not due to trans people. The safety of these two groups is intimately linked: both are not cis-gendered men.

Meanwhile, recent changes to the National Disability Insurance Scheme, in particular around the definition of eligible supports, have led to uncertainty around potential impacts for women and girls with disability. Women and girls with disability have been found to face gendered barriers to accessing the right supports for their disability (lack of confidence, negotiation and self-advocacy skills; gendered discrimination in the medical system, including diagnosis; lack of support for and recognition of caring roles).¹⁴⁵ Globally, the UN Secretary General has further warned that progress towards the rights of people with disability is in danger of being reversed due to the lingering effects of the COVID-19 pandemic, the worsening climate emergency, global conflicts, soaring humanitarian needs, and the global cost-of-living crisis, all of which have, or have the potential to, hit people with disabilities—particularly women and girls—'first and worst'.¹⁴⁶

¹⁴⁴ Women Speak Tasmania, '[Opposition grows against transgender rights campaign](#)' (Media release, 13 August 2018).

¹⁴⁵ Sophie Yates, Gemma Carey, Jen Hargrave, Eleanor Malbon and Celia Green, '[Women's experiences of accessing individualized disability supports: gender inequality and Australia's National Disability Insurance Scheme](#)' (2021) 20:243 *International Journal for Equity in Health* 1.

¹⁴⁶ '[Progress on disability rights risks going in reverse: Guterres](#)', *United Nations: UN News* (13 June 2023) <<https://news.un.org/en/story/2023/06/1137627>>.

Part 4A: People with disability

Dr Wynne Russell
with the support of Dr Robin Banks

Part 4A: People with disability

Introduction

In this chapter, we first discuss key themes before turning to the particular experiences of women and girls with disability, men and boys with disability and members of the LGBTIQ+ community with disability.

Key themes

Gender persecution is only one component of the picture of harms experienced by people with disability in Lurruwita/Tasmania and Australia as a whole. People with disability often experience multiple forms of discrimination, marginalisation and hardship, including low education attainment, unemployment, social isolation, psycho-social disability, and negatives experiences of the justice system.¹⁴⁷

Acknowledgement and diagnosis of disability can be gendered. Women and girls are, for example, far less likely to receive a diagnosis of autism. This is partly due to gendered understandings of how autism presents and partly to 'masking' behaviour by women and girls in their attempts to conform with conventional gender roles.

When women reveal an autism diagnosis, people say 'We're all a little bit autistic, don't you think?' 'Time to get along in this world without excuses'. If it were a man, people would be bringing casseroles around—'You poor thing, thank goodness you're talking about it now'.

Violence, abuse and discrimination—including bullying, stigmatisation, isolation and being ostracised, as well as domestic and family violence—against people with disability in Australia is staggeringly widespread. Such violence predominantly occurs out of public view, perpetrated by intimate partners, family members, friends, and personal assistance providers: over 80% of disabled victims of violence know the perpetrator.

¹⁴⁷

Amaze Autism Connect (n 133).

The final report of the recently completed Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability¹⁴⁸ ('the Disability Royal Commission') lays out in detail the extent and range of such human rights abuses.

- Across all age groups, a greater proportion of people with disability experience violence as adults than people without disability (55%, compared to 38% of people without disability). People with disability also experience violence more frequently.
- People with intellectual or psychological disability experience even higher rates of violence compared both to the general population and people with physical or sensory disability: 73% for people with head injury, stroke and brain damage; 67% for people with intellectual disability; and 66% for people with psychological disability.
- Rates of violence are much higher for younger adults with disability than for older adults with disability.
- Rates of violence are also particularly high for women with psychological or intellectual disability (72%), First Nations women with disability, and young women with disability.

The types of violence people with disability experience vary from disability to disability, but with gendered variations within those experiences as well. Advocates and academics have urged researchers to open up the concept of intersectionality to accommodate a range of differences in bodily, cognitive, intellectual and behavioural types (impairments) in their interaction with various gender identities and to show more explicitly how context and life phase contribute to this dynamism.¹⁴⁹

Women and men with disability are subjected to similarly high rates of violence overall but experience different types of violence from different people. Men with disability are more likely than women with disability to experience physical assault or threat and to report disability service providers as their abuser, while women are more likely to experience sexual assault, violence and emotional abuse perpetrated by a domestic partner, or stalking.¹⁵⁰

¹⁴⁸ [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](https://disability.royalcommission.gov.au/) ('Disability Royal Commission') (website) <<https://disability.royalcommission.gov.au/>>.

¹⁴⁹ Russell Shuttleworth, Nikki Wedgwood and Nathan J Wilson, 'The dilemma of disabled masculinity' (2012) 15(2) *Men and Masculinities* 174.

¹⁵⁰ Disability Royal Commission (n 148); Fredinah Namatovu, Raman Preet, Isabel Goicolea, 'Gender-based violence among people with disabilities is a neglected public health topic' (2019) 11(Suppl 3) *Global Health Action* 1694758.

Violence against both women and men with disability is rationalised and perpetuated by patronising assumptions and inadequate services.

Participants noted the prevalence at every level of society, from bureaucratic structures to the general public to families, of unconscious or overt assumptions about people with disability, for example, that no-one with disability would be capable of or want a sex life, a love life, a child, an education, a job, a say in their appearance. These assumptions devalue people with disability and deprive them of the opportunity to even learn about the concept of consent, let alone to exercise it. Meanwhile, even where opportunities to learn about consent are available, people with disabilities cannot always access them: for example, the Disability Royal Commission heard evidence of a young person with hearing impairment missing out on a sex education class because the Auslan interpreter lacked the appropriate vocabulary.¹⁵¹

A lot of parents teach their children about protective behaviours, but parents of children with autism sometimes don't do this, because they believe that their child won't be able to understand and that they [parents] will be able to keep them safe. But because many people with autism don't read non-verbal behaviours well, they will let predators get really close, and they won't have people to check in with to ask, 'Is this kind of behaviour (unwanted sexual advances, coercive control) okay?'

People with disability who have experienced violence are less likely to be believed if they report it. The ability of people with disability—particularly women—to stop violence is severely compromised by the fact they are less likely to be believed if they try to report. People with disability reportedly are least likely to have their cases heard in court and are twice as likely to have their stories seen by investigators as false reports. Participants in this project and the Disability Royal Commission spoke of people with vision impairment being disbelieved by police because they were not able to give a visual description of a perpetrator or events; people with intellectual disability having their reports discounted out of hand; and women with autism being treated as

¹⁵¹ Disability Royal Commission, [Public hearings: Public Hearing 17, Hobart, Day 2](https://disability.royalcommission.gov.au/public-hearings/public-hearing-17) (28 March to 1 April 2022) <<https://disability.royalcommission.gov.au/public-hearings/public-hearing-17>>.

perpetrators rather than victims of domestic violence because of limited ability to regulate emotions.¹⁵²

Lack of education and understanding around issues of sexuality, gender-based violence and consent also leave people with disability at greater risk of committing gender persecution. For example, people with autism may commit stalking offences if they are socially naïve, misread social cues, or focus obsessively on others. They may also commit offences relating to child exploitation material if they do not appreciate the fact that such material is illegal or its impact on victims. And, while studies have found that individuals with autism-spectrum disorders ('ASD') commit sexual offences less often than the general population, they may do so if they fail to recognise others' lack of consent and distress, have limited sexual knowledge, and/or are socially isolated and immature.¹⁵³

Given the crushing range of harms revealed by the Disability Royal Commission, this report has had to focus tightly on gender persecution with particularly blatant links to sex or gender identity or expression. These include sexual violence, domestic and family violence, and reproductive violence, as well as sexual orientation and gender identity and expression in the case of LGBTIQ+ people with disability. Women, girls and LGBTIQ+ people are at higher risk of all of these than men and boys, but all affect men and boys as well: child sexual abuse against boys, for instance, is increasingly recognised as a gender-based violence linked to dominant discourses around gender norms and hierarchies, rather than simply stemming from the multiple vulnerabilities—physical, economic, social—associated with childhood.¹⁵⁴

It is important to note the particular risk that faces both girls and boys with disability of experiencing gender persecution in the form of sexual violence, in particular for those in residential care settings. In general, children with disability are about three times more likely to experience sexual abuse than children who do not have disability.¹⁵⁵

Placement in residential care is an identified risk factor for child sexual abuse: children in residential care are more likely to experience child

¹⁵² Ibid.

¹⁵³ Gabrielle Wolf, '[Growing enlightenment: Sentencing offenders with Autism Spectrum Disorder](#)' (2021) 44(4) *UNSW Law Journal* 1701.

¹⁵⁴ Jack Dalby, Rachel Hart and Wynne Russell, '[Childhood sexual abuse of boys as gender-based violence](#)' (2021) August *Academia Letters* (article 3092).

¹⁵⁵ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings ('Commission of Inquiry'), [Who was looking after me? Prioritising the safety of Tasmanian children](#) (Volume 4: Children in out of home care; August 2023).

sexual abuse, peer sexual victimisation and sexual exploitation than their peers in kinship and foster care, who in turn are at greater risk than those not in residential care.¹⁵⁶

Children with disability are at especially high risk of being subjected to child sexual abuse in out-of-home care situations if they have an intellectual disability, behavioural disorder or communication disorder, or where their disability means they need help with intimate care activities.¹⁵⁷

Meanwhile, children with disability are at greater risk of placement in residential care due to a lack of available foster or kinship carers who can meet their needs.

Women and girls with disability

Gender persecution of women and girls with disability is rationalised and promulgated through a vicious intersection of patriarchal and ableist attitudes. Some participants and scholars argue that women and girls with disability are doubly feminised: since women are traditionally stereotyped as weaker, more passive, and less intellectual than men, and these traits are also ascribed to people with disability, so women with disability are treated as ‘twice as female’. Others, however, argue that disability is conceived of in opposition to dominant gender stereotypes, leading to women and girls with disability being characterised as anti-female: asexual, unmarriedable, unable to be mothers, and a burden to carers and partners.¹⁵⁸ These attitudes often combine exponentially to reduce women and girls with disabilities to sexual and domestic commodities to be exploited, or valueless entities able to be neglected.

Women with disability are seen not to have any sexuality—how could a person with disability be sexual? It veers between the extremes of ‘No one would want you’ and ‘It’s inevitable that you’ll be raped’.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Xanthe Hunt, Stine Hellum Braathen and Poul Rohleder, ‘[Physical disability and femininity: An intersection of identities](#)’ in Xanthe Hunt, Stine Hellum Braathen, Mussa Chiwaula, Mark T Carew, Poul Rohleder and Leslie Swartz (eds), *Physical disability and sexuality: Stories from South Africa* (2021).

Women and girls with disability experience all the forms of family, domestic and sexual violence that women without disability experience, but in a broader range of contexts and relationships and in contexts of even greater disempowerment. For people with disability, perpetrators of domestic and sexual violence, abuse, neglect and exploitation include disability support workers, co-residents in residential settings, and peers in disability services. Some researchers prefer to use the term ‘interpersonal violence’ rather than ‘domestic and family violence’ or ‘intimate partner violence’ to capture this range of perpetrators.¹⁵⁹ Women with disability can also have their disability and needs exploited to isolate and coercively control them.

Women and girls with disability face a range of forms of reproductive violence, including menstrual suppression, non-consensual contraception, non-consensual sterilisation, and non-consensual abortion. Participants noted non-consensual medical interventions—called ‘lawful medical violence’ by some scholars¹⁶⁰—and that these practices are frequently accompanied by rationalisations and even lies about the nature of the procedure (‘You’ll never be able to have children anyway’. ‘You’re just having your appendix out’). These attitudes and practices often draw on gendered and medicalised social norms of ability and motherhood (‘You’ll never be able to cope with raising a baby’. ‘You wouldn’t be a good mother’) and operate to de-politicise non-consensual medical interventions by reconstituting them as therapeutic and benevolent.¹⁶¹ It is also relevant to note that the related detention or physical restraint in places in which non-consensual medical interventions occur can increase the risk of women experiencing further violence including ‘unlawful’ violence such as sexual assault and physical assault.¹⁶²

Healthcare offerings and practices during pregnancy, childbirth and the post-natal period often do not provide supportive environments for women with disabilities. Participants said women with vision impairments can feel surveilled and unsafe in shared rooms, and can struggle to even find babies who have been removed to another ward due to prematurity or illness, or the breast milk that they have expressed.

¹⁵⁹ Michelle S Ballan, Molly Burke Freyer and Lauren Powledge, ‘[Intimate partner violence among men with disabilities: The role of health care providers](#)’ (2015) 11(5) *American Journal of Men’s Health* 1436.

¹⁶⁰ Linda Steele and Leanne Dowse, ‘[Gender, disability rights and violence against medical bodies](#)’ (2016) 31(88) *Australian Feminist Studies* 187.

¹⁶¹ Ibid.

¹⁶² Ibid.

Men and boys with disability

Gender persecution of men and boys with disability is rationalised and perpetuated through a less complicated, but still harmful intersection of patriarchal and ableist attitudes. Disabled men face a ‘lived and embodied’ dilemma: dominant attitudes associate disability with being dependent and helpless—attributes, as noted above, traditionally ascribed to femininity—while masculinity is associated with being powerful and autonomous.¹⁶³ Participants noted that some men can respond to negative assumptions about what they are or are not capable of by veering to extremes: some attempt to be ultra-independent, while others experience a learned helplessness, creating even more risk of experiencing gender persecution than the circumstances of their disability might create. Notably, some participants said being bullied on the basis of disability may make some men and boys more likely to bully women and girls, including but not limited to women and girls with disability.

Rates of sexual violence against men and boys with disability, although lower than for women and girls with disability, are unacceptably high. For example, one US study found the prevalence of lifetime sexual violence victimisation was 13.9% among men with disability, compared to 26.6% among women with disabilities, and 12.4% of women without disability.¹⁶⁴ Boys with disability at a high risk of sexual abuse, particularly but not exclusively in institutional settings. Participants also noted that carers in group settings can be less vigilant than they would be for women and girls in ensuring that men and boys with disability do not experience unwanted sexual advances or sexual touching, including by women and girls with disability.

Interpersonal violence against men and boys with disability is an opaque area badly needing further study and support. Men and boys appear to be reluctant to report interpersonal violence, particularly when an intimate partner or family member is involved. This reluctance is due to:

- the stigma of seeking help as a male;
- a lack of understanding of male-directed domestic and family violence among health care providers and disability support organisations, which could act as points of referral;

¹⁶³ Shuttleworth et al (n 149).

¹⁶⁴ Monika Mitra, Vera E Mouradian and Marci Diamond, ‘[Sexual violence victimization against men with disabilities](#)’ (2011) 41(5) *American Journal of Preventive Medicine* 494.

- limited support services for men and boys experiencing domestic and family violence;
- a general lack of awareness regarding disability-related abuse, including confusion around inappropriate behaviour and consent; and
- fears of losing assistance with self-care or other integral personal needs.¹⁶⁵

Men and boys with intellectual disability or autism are at particular risk of having their sexuality controlled by medical means. While forced sterilisation still occurs in parts of the world, in Australia the more common practice is to use non-consensual anti-androgenic treatment to control sex drive and functioning of men and boys with disability.¹⁶⁶ Participants noted that, in an experience similar to asexual/aromantic people (see the next chapter), boys can become isolated from their peers due to their lack of sexual desire.

I know of parents who have gone to the doctor to see if the dosage [of the anti-androgenic medication] can be reduced, and the doctors have refused because 'it will be easier if your son isn't interested in sex'.

LGBTIQ+ people with disability

For LGBTIQ+ people, the distinctions between gender and disability persecution can be very hard to draw. LGBTIQ+ people with disability gave evidence to the Disability Royal Commission about repeated experiences of violence across their lives, as well as intergenerational cycles of violence. This is consistent with what we have heard about domestic, family and sexual violence generally. For LGBTIQ+ people with disability, however, violence and abuse toward them may be based on being LGBTIQ+, their disability, or both.

Gender persecution against LGBTIQ+ people with disability is pervasive. LGBTIQ+ people experience violence, abuse and discrimination on the basis of their sexual orientation and gender identity at levels than both the general population of people with disability and the general LGBTIQ+ population. Among LGBTIQ+ people with disability, trans and non-binary people experienced the highest rates of verbal abuse, harassment and sexual assault: 66% of trans-women, for instance,

¹⁶⁵ Ballan et al (n 159).

¹⁶⁶ [Factsheet: Forced sterilisation of people with disability and people with intersex variations](#), *Disabled People's Organisations Australia* (9 March 2018).

experienced verbal abuse (including hateful or obscene phone calls), and 21% of non-binary people experienced sexual assault.¹⁶⁷ Other types of abuse include:

- social exclusion;
- harassment—for instance, being spat at and subjected to offensive gestures;
- intimidation—for instance, being followed and physically blocked;
- threats of physical violence, physical attack or assault; and
- non-consensual filming.

Witnesses told the Disability Royal Commission that these forms of persecution occur in a wide variety of situations, including:

- in public places, particularly where alcohol is consumed;
- on public transport; and
- in public and private online spaces such as forums, dating sites, and social media.

These are also experienced behind closed doors in private spaces, with gender persecution of LGBTIQ+ people with disability being particularly pervasive in the family home: one study found that 85% of non-binary people with disability experienced violence inflicted by a family member in their lifetime.¹⁶⁸

LGBTIQ+ people with disability often struggle to receive gender-affirming care. Participants told us healthcare professionals often assume a person with intellectual disability or autism is not capable of having gender dysphoria or of being stable enough to seek gender transition, even when they are accompanied by highly supportive family members or when in extreme distress. When such people persist in pursuing gender-affirming care they can end up being subjected to guardianship orders, thereby losing their right to make decisions about their body.

The rights of LGBTIQ+ people with disability to a sexual life and reproduction are also often severely curtailed. Witnesses at the Disability Royal Commission said their existing or potential romantic and sexual lives were disregarded by others, and that ‘the very idea of people with disability having a relationship, let alone having a queer relationship or

¹⁶⁷ Adam Hill, Natalie Amos, Adam Bourne, Christine Bigby, Marina Carman, Matthew Parsons and Anthony Lyons, [Violence, abuse, neglect and exploitation of LGBTIQ+ people with disability: A secondary analysis of data from two national surveys](#) (Research report prepared for the Disability Royal Commission, November 2022) 187–88.

¹⁶⁸ Ibid 189–90.

being gender diverse, was often discredited or not accepted'.¹⁶⁹ This is a situation that the Disability Royal Commission concluded can heighten victims' risk of experiencing sexual abuse and self-harm.

¹⁶⁹ Disability Royal Commission, [Final Report – Volume 3: Nature and extent of violence, abuse, neglect and exploitation](#) (29 September 2023) 152.

Part 4B: LGBTQIA+

Dr Wynne Russell
with the support of Dr Robin Banks

Part 4B: LGBTIQ+

Introduction

In this chapter, we first discuss key themes before turning to the particular experiences of lesbian, gay and bisexual members of the community; trans people; non-binary people; asexual, aromantic and agender people, and people with innate variations of sex characteristics.

Key themes

Legislated prosecution of and discrimination against LGBTIQ+ people has only recently ended in *Lutruwita*/Tasmania and Australia as a whole. ‘Homosexual offences’ were only decriminalised in the *Lutruwita*/Tasmania in 1997; ‘Cross-dressing’—a crime unique to Tasmania in the Australian context—was only decriminalised in 2001; and the ‘gay panic’ defence, which downgraded murder charges to manslaughter, was not abolished until 2003.¹⁷⁰ The *Anti-Discrimination Act 1998* (Tas) was the first state or territory discrimination law to provide protection on the basis of ‘sex characteristics’ (firstly as ‘intersex’), in 2014, and separated out ‘gender identity’ as a protected attribute and amended the definition of sexual orientation to remove ‘transsexuality’ at the same time.¹⁷¹ Federal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status was only enacted in 2013. More recently, the Commonwealth *Marriage Amendment (Definition and Religious Freedoms) Act 2017* extended marriage equality to LGBTIQ+ people. This progress was accompanied by extended permissions for discrimination by marriage celebrants, and faith organisations.

The gradual spread of tolerance, acceptance and indeed embracing of LGBTIQ+ people in many institutions and communities in *Lutruwita*/Tasmania often feels real, but fragile. Participants observed that many institutions and communities show signs of division where LGBTIQ+ people are concerned, with some staff and community members embracing diversity while others remain anywhere from non-committal to hostile. As a consequence, community and institutional

¹⁷⁰ [Special Commission of Inquiry into LGBTIQ hate crimes \(NSW\), Volume 1](#) (18 December 2023) (‘NSW LGBTIQ hate crimes’) 128–29.

¹⁷¹ [Anti-Discrimination Act 1998](#) (Tas) ss 3, 16(ea), (eb) <<https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1998-046>>.

cultures feel highly dependent on particular people, particularly in leadership positions: as long as like-minded individuals hold positions of responsibility, diversity is welcome, but advances can be quickly rolled back by staffing changes or key community members moving on.

One high school had a principal who was leading the state in inclusion; this year there's a different principal, and things have changed 180 degrees.

Lesbian, gay and bisexual ('LGB') people

Persecution against LGB people remains all too common in

Lutruwita/Tasmania. Several participants spoke of having experienced or witnessed face-to-face or written threats of violence (beating up, running over); online trolling and abuse; damage to property; and efforts to damage or end careers and reputations.

One participant, for example, witnessed persistent harassment of an LGB person over a period of 6 months. This took the form of unsigned letters, dead animals left in the person's letterbox, their fence set on fire, and a pram full of animal faeces left in their driveway, accompanied by verbal abuse directed at the person's gender and sexuality.

The first finding of the NSW inquiry into LGBTI hate crimes was that 'victims of gay and transgender hate crime often carry enduring physical, mental and emotional trauma as a result of their experiences'.¹⁷²

Lateral violence in the LGB community can take the form of older gay men engaging in misogynistic behaviour against younger men as well as intimate partner violence. One participant said the pervasive impact of patriarchal misogyny can be seen in language on gay dating apps, and noted that closeted gay people are at particular risk of abusive or coercive intimate partner behaviour.

Discrimination against and maltreatment of lesbians, and the situations in which these occur, often reflect violence against women generally.

Verbal abuse and threats against lesbians from men often reflect men exercising their perceived right to sexually proposition women who are not in male company. However, as one commentator has noted, visibly

¹⁷² NSW LGBTIQ hate crimes (n 170) Finding 1, 4.

'out' lesbians who definitively demonstrate sexual autonomy sometimes are met with reactions of greater hostility and physical violence.¹⁷³

Trans people

Trans and gender-diverse people are often 'invisible' in official data, including in recording and reporting on violence, due both to binary-only ('male' or 'female') options on official forms and to discrimination. For example, the Australian Institute of Criminology's National Homicide Monitoring Program does not record whether victims are trans or gender-diverse, and Coroner's Courts do not have standard mechanisms for documenting gender diversity. Trans and gender-diverse people who die can be buried under their pre-transition names and are misgendered in Coroners' reports, and their identities 'corrected' or redacted at the request of their families. This invisibility is not only hurtful but harmful, as the lack of reliable data on trans and gender-diverse populations means that services and funding cannot be appropriately targeted to them.¹⁷⁴

Transgender and gender diverse people cannot participate in modern Australian society without the reality and legitimacy of our existence being constantly challenged.

Gender-diverse people, including trans and non-binary people, face widespread suspicion, discrimination, bullying, exclusion and isolation, as well as threats—and sometimes instances—of violence. Participants noted that, while homophobia appears to be waning or is at least less obviously expressed, transphobia has emerged as the most overt manifestation of hostility around issues of sexual and gender diversity. Participants described a pervasive unsafety, particularly in public spaces such as car parks and on public transport, that can leave trans and non-binary people reluctant to leave their homes to go anywhere other than known safe spaces.

One participant, for example, had experienced regular verbal abuse, letters to their employer accusing them of being a paedophile, and inappropriate touching and flirtatious behaviour by healthcare professionals.

Another example is of a memorial to Marjorie Harwood. Marjorie was a transwoman who died in 2017 as a consequence of physical and

¹⁷³ Ibid 196 [4.350].

¹⁷⁴ Ibid, see for example, 176 [4.268].

psychological injuries sustained when she was raped by five men after being placed in the men's section of Rison Prison (Tasmania's adult prison). Her memorial has been vandalised with anti-trans slogans, including 'YWNBAW', for 'You Will Never Be A Woman'.¹⁷⁵

Participants reported that trans-feminine people—as well as gay men and non-binary people who present in a feminine way—can face hostility and mockery around any kind of feminine presentation traits, particularly from men and boys, and distaste and suspicion from women and girls. Trans-masculine people, meanwhile, can face pressure from cis-males to be complicit in denying that sexist or abusive behaviour towards women and girls has occurred. Research has found that both trans-feminine and trans-masculine people, however, express similar sentiments about cis-men—both gay and straight—'feeling a sense of entitlement or ownership over their bodies', with both groups subject to sexual assaults in private or in settings such as bars and clubs.¹⁷⁶

Encounters with the criminal justice system are particularly demeaning and potentially dangerous for trans and gender-diverse people.

Participants and research indicate that trans and gender-diverse people routinely face derogatory and discriminatory behaviour from police, in particular misgendering and deadnaming (referring to a trans or gender-diverse person by their previous name), verbal abuse, derogatory questioning, responding dismissively to trans and gender-diverse people, and treating trans and gender-diverse people as perpetrators of crime. All of these forms of behaviour both perpetuate maltreatment of trans and gender-diverse people (including by permitting members of the community to think that such behaviour is acceptable) and discourage them from reporting crimes.¹⁷⁷

Two examples were given of experiences within the criminal justice system:

- Although Tasmania prison policy is for detainees to be placed in the section of prison that matches their gender identity or their choice, this is at the presiding magistrate's discretion, a situation that produces unequal outcomes.¹⁷⁸

¹⁷⁵ Jordan Hirst, '[Calls for prison reform after death of transgender woman](#)', *Q News* (online, 15 January 2021).

¹⁷⁶ Noah Riseman, '[Speaking out against Anti-Trans Violence: A call for justice: Submission to the Special Commission of Inquiry into LGTIQ hate crimes](#)' (2023, The Gender Centre and Sex Workers Outreach Project) 22.

¹⁷⁷ Ibid 23.

¹⁷⁸ Charlie Winter, 'Correctional policies for the management of trans people in Australian prisons' (2024) 25(2) *International Journal of Transgender Health* 130.

- Tasmania's prison policies relating to transgender people appear to meet only 10 of the 18 benchmarks recommended by a range of authorities.¹⁷⁹

The medical system, especially hospitals and mental health care, is often also an unsafe environment for trans and gender-diverse people.

Participants said that:

- trans and gender-diverse people are often aggressively misgendered in hospital, including through not respecting people's names and pronouns and through assignment to inappropriate gendered wards;
- hospitals and medical specialists often insist on discontinuing hormone therapy before issuing diagnoses, starting treatment, or conducting medication reviews, whether or not this is clinically justified;
- health facilities can treat trans and gender-diverse people's distress at being misgendered or having hormone therapy withheld as expressions of aggression, sometimes triggering sedation or removal to (sometimes misgendered) high-risk wards;
- mental health facilities often assume alcohol or other drug abuse or personality disorders in trans-presenting patients;
- trans people seeking out gender-affirming care often receive inappropriate diagnoses of personality disorders, which are then treated as a rationale to deny them gender-affirming care, rather than something that a psychiatrist should investigate during the transition process; and
- people with intellectual disability or apparent autism experience acute difficulty in accessing gender-affirming care, even when they have the full support of their families or are suicidal, because they are deemed not to have the capacity to understand the consequences or not stable enough to transition.

The domestic and family violence system is not equipped to adequately support trans and gender-diverse people. Interviewees said that while the policies and training of domestic and family violence services are often inclusive, practice is inconsistent, with transwomen turned away from shelters at the discretion of support staff due to fears that their presence would be upsetting to others.

The inadequacy and sometimes hostility of the police, justice, health and domestic and family violence support systems contribute to under-reporting of persecution of trans and gender-diverse people. While over half of the respondents to the 2011 Gender Centre Transgender Anti

179

Ibid.

Violence Project (TAVP) survey reported they had experienced a transphobic incident, only 22% said they had ever reported such an incident to police, a lawyer, a hospital or any other organisation. The most common reasons given were 'I thought it would not be taken seriously', 'I would be laughed at', 'I was afraid of provoking a reprisal or aggravating the situation', and 'I was concerned about what the police response would be'.¹⁸⁰

Sexual orientation and gender identity conversion practices, which are associated with profound psychological harm to LGBTIQ+ people, remain legal in Lutruwita/Tasmania. The Anti-Discrimination Commissioner has argued that these practices undermine the principles of the *Anti-Discrimination Act 1998* (Tas), citing evidence that these practices are generally harmful and ineffective.¹⁸¹ The proposed Tasmanian Bill to make conversion practices unlawful includes a provision that would allow such practices where the person gave their consent.¹⁸² This is a particularly problematic defence in the circumstances of imbalances of power and pressure to conform, particularly within communities of faith.

Non-binary people

Non-binary people face particularly pervasive denial of the very possibility of their existence. Participants noted the concept of a non-binary identity is deeply challenging to many people whose concept of self is deeply bound up in their own cis-gendered identity, with a declaration of non-binary status being felt as an existential threat. As a consequence, non-binary people face pervasive misgendering, sometimes even among other members of the LGBTIQ+ community. Such behaviour can lead to dismissive attitudes as well as more threatening behaviour such as abuse and assault.

One non-binary participant, for example, experienced indecent assault at a tertiary educational institution by another student. Neither the institution nor the police were prepared to accept the unlawful nature of the conduct because the breast area, where the perpetrator of the assault had touched the participant, was not considered to be a place

¹⁸⁰ NSW LGBTIQ hate crimes (n 170) 190 [4.325].

¹⁸¹ Sarah Bolt (Anti-Discrimination Commissioner, Tasmania), [Submission to the Tasmanian Law Reform Institute, Issues Paper 1 'Sexual orientation and gender identity \(SOGI\) conversion practices'](#) (2 February 2021).

¹⁸² Justice Miscellaneous (Conversion Practices) Bill 2024 (Tas) cl 29(4) <<https://www.justice.tas.gov.au/community-consultation/closed-community-consultations2/Justice-Miscellaneous-Conversion-Practices-Bill-2024-Consultation-Draft>>.

where a man (as administrators and police insisted on identifying the participant) can be indecently assaulted.

It's 100% safer to say to a total stranger 'I'm queer' than 'I'm non-binary'. Being non-binary is perceived as much more confrontational.

Asexual/aromantic/agender people

Asexual/aromantic/agender people face a range of discriminatory behaviour. *Lutruwita/Tasmania* was the first state to recognise asexual/aromantic/agender people in government policy settings, adding the A to LGBTIQ+ in 2023 in the work of a range of government agencies.¹⁸³ Asexual/aromantic/agender people have described themselves as facing:

- unwanted sexual approaches and sexual harassment;
- pressure and sometimes coercion into sexualised behaviours;
- pressure and sometimes coercion into marriage;
- unwanted pathologisation by healthcare practitioners who see asexual identities as something that needs to be 'fixed'; and
- discrimination on the basis of assumed homosexuality.¹⁸⁴

People with innate variations of sex characteristics ('intersex')

There is a lack of understanding that 'intersex' does not refer to sexual orientation or gender identity; rather, intersex people have sex characteristics that do not fit medical norms for female or male bodies.¹⁸⁵

Participants said that, as a consequence, people with innate variations of sex characteristics (intersex people) sit slightly awkwardly under the LGBTIQ+ label, and are easy to erase from discussion of sex- and gender-based human rights. However, undue emphasis on how to classify intersex people, rather than how intersex people are treated, points to broader structural violence behind sex and gender binaries.

People with innate variations of sex characteristics in Australia are subjected to a range of harms. These include harmful practices in

¹⁸³ Adam Holmes, '[Tasmania the first state to officially recognise those who identify as asexual, adding the A to LGBTIQ+](#)', *ABC News* (online, 17 July 2023).

¹⁸⁴ Ibid.

¹⁸⁵ *Intersex Human Rights Australia* ('IHRA') (website) <<https://ihra.org.au/>>.

medical settings, discrimination, obstructions to medical care based on binary assumptions and lack of support.¹⁸⁶

Harmful practices in medical settings

People with intersex characteristics face:

- non-consensual, non-therapeutic medical interventions, including surgical and hormonal interventions;
- limited access, including due to inappropriate psychiatric eligibility assessment;
- requirements, in relation to necessary and appropriate health, medical and allied services and treatment, including surgeries and hormone treatment, psychosocial, psychosexual and psychological support, and reparative treatments;
- requirements of conformity to stereotypical and clinical norms for female and male bodies; and
- lack of full access to lifetime medical records.

Participants observed that parents and medical professionals rarely avail themselves of the 120 days given under Tasmanian law to register a child's sex—enough time to engage in observation and do genetic testing—and that efforts to establish legislation to stop non-consensual surgical interventions and to strengthen medical oversight of surgical interventions have not been successful. People with innate variations of sex characteristics can face flow-on impacts such as the high cost of sex hormones required as a consequence of unwanted medical interventions.

Community members are often horrified when they realise that involuntary surgeries are going on. It's because intersex people are erased from the curriculum; if people have knowledge that they can grasp, then they are less likely to engage in discrimination.

Discrimination

People with innate variations of sex characteristics face:

- stigmatisation and pathologising terminology: difficulties in correcting sex/gender classifications assigned to them at their own request;
- genetic discrimination in insurance and employment: difficulty in travelling due to bodily diversity, as well as through the requirement for

¹⁸⁶ [‘Darlington Statement’](#), IHRA (web page, 1 November 2019).

gendered documents, gendered screening, and restrictions on travel with pharmaceutical prescription documents;

- barriers to access to sport at all levels of competition; and
- unnecessary costs and challenges in accessing appropriate treatments, including hormone treatment.

Children with innate variations can be subjected to medical photography and display.

Meanwhile, inadequate community education and awareness feeds stigmatisation and pathologisation.

Obstructions to medical care based on binary assumptions.

People with innate variations of sex characteristics face difficulties in accessing testosterone and estrogen at the same time or changing from one sex hormone to another as well as difficulties in accessing national screening programs (for instance in relation to prostate, cervical and breast cancers). Participants reported that some people have to change their gender several times to get different types of health care.

A lack of support

Peer support and advocacy for people with innate variations of sex characteristics remain largely underfunded, and people face limited access to healthcare and support in rural, regional and remote settings.

Appendix

Appendix: Participant information sheet

What is the 'Understanding the Crime of Gender Persecution' project?

Gender persecution is a crime that we know too little about. It can take the form of very serious crimes associated with wars and conflicts, like attacking girls' schools in Afghanistan, assaulting men in Afghanistan who do not have a beard, torturing women in Mali because their skirts are considered too short, or subjecting people in Colombia to sexual violence because they're seen to be gay or trans. But it can also be less obvious: sterilisation of women with disability, abuse-driven homelessness of young men, situations that make women more economically vulnerable than men, higher incarceration rates for Aboriginal men, or discriminatory experiences related to gender in contact with services.

The Office of the Prosecutor, International Criminal Court (ICC) wants to better understand the crime of gender persecution around the world. They have asked MADRE, a global women's rights organisation based in New York, to gather local experiences and understandings of gender persecution.

Why the ICC is doing this work

Across the globe, gender-based crimes and other harms amounting to persecution are far too common. Often these acts are not understood as crimes, or as being gendered. In international criminal law, the crime of gender-based persecution is the main legal charge available to hold perpetrators of gender-based crimes accountable when they commit such atrocities.

Documenting or pursuing justice for those who experience gender persecution can help expose longstanding historical discrimination and fundamental rights deprivations against groups such as women and girls, LGBTQIA+ people, as well as members of these groups who have other marginalised identities, such as indigenous or minority race, and disability.

How our team is doing its work

Our team, contracted by MADRE, is consulting with people in four communities—Aboriginal people, people with disability, refugees and

migrants, and the LGBTIQ+ people—to gather local experiences and understandings of gender persecution. We will be reporting what we learn to an international year-long consultation process for the ICC Office of the Prosecutor.

The work will help the ICC to develop Principles on the Crime Against Humanity of Gender Persecution

The Principles will create a shared understanding of gender persecution for support the work of international justice institutions like the International Criminal Court and United Nations peace and security experts. The Principles will also be important for human rights bodies, humanitarian actors, and human rights defenders. The Principles will make it easier to recognise gender-based crimes and discrimination and for people to work together to end cycles of violence and to help survivors access meaningful justice. The Principles will be drafted between November 2024, and October 2025.

The Principles will be formally launched in October 2025 during the 25th anniversary of the UN Security Council's Resolution 1325 on Women, Peace, and Security.