# VMIAC Policy Position Paper #5: Sexual Safety in Psychiatric Inpatient Units

**Purpose**

To ensure the sexual safety of all people on acute mental health inpatient wards.

**A note on language:** VMIAC supports every person's right to determine how their gender is described. For the purposes of this paper, references to 'women' refer to any person who identifies as such, and references to 'men' refer to anyone who identifies as being a man. The term 'gender diverse' will be used to refer to trans individuals who do not identify as being a man or a woman, as well as gender fluid and non-binary individuals.

'Sexual Safety' refers to both *feeling* and *being* safe from sexual harassment, assault and gendered violence while in acute inpatient units.[1]

**The Issue**

Mental health inpatient units have high numbers of sexual safety breaches.[2] These predominantly affect women, but also impact men and gender diverse individuals.[3] Specific sexual safety issues include:

- **Alarming rates of sexual violence in inpatient units –** mental health inpatient units have alarmingly high rates of sexual violence as compared with other health services.[4] While most sexual safety breaches are perpetrated by men, women are also reported to be involved in a smaller percentage of breaches.[5] This issue does not affect women exclusively, however women form the majority of consumers who report experiences of gendered violence on inpatient units, with a smaller number of consumers who are men or gender diverse reporting this type of abuse.
- **Compulsory treatment forces us to risk our sexual safety –** mental health is the only health setting where people are forced to risk their sexual safety in order to receive treatment. We are often involuntarily placed in vulnerable situations within mental health services, compulsorily given medication that restricts and invades our bodily autonomy,[6] and forced to comply with restrictive catchment systems that give us no choice over where we will be treated. The catchment system in Victoria is also unique to mental health services, again demonstrating the way in which the system discriminates against us by presuming we are not competent to make decisions about our own health and wellbeing.
- **The design and management of inpatient units facilitates sexual safety breaches –** Single gender-units are not funded in Victoria despite overwhelming agreement that they would help to protect women.[7] Within existing mental health units, management of single-gender corridors is poor and demand for beds is usually prioritised when allocating rooms. Women are often placed in unsafe environments with men, such as High Dependency Units (HDUs) where rooms are unsecured, and consumers are required to share unisex bathrooms.[8]
- **Experiences of gender inequality place women at greater risk –** as well as the inequalities that women experience more generally within society, women also experience an increased risk of mental health issues, higher exposure to family and domestic violence and a high prevalence of trauma histories.[9] Women who have experienced trauma are more vulnerable to gendered violence, and the impact of such violence is likely to be greater for these women because it will compound the trauma that they have already experienced.[10] Women have the right to freedom from abuse on an equal basis with men; and in a system where more than half of patients are admitted involuntarily, the failure to provide a sexually safe environment is in breach of Australia's obligations under international law.[11]

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[1] The Mental Health Complaints Commissioner, 'The Right to Be Safe – Ensuring Sexual Safety in Acute Mental Health Inpatient Units: Sexual Safety Project Report' (State of Victoria, March 2018), 5.
[2] Ibid, 17.
[3] It must be noted that due to difficulties with respect to reporting, the true prevalence of sexual violence for any group is difficult to determine. It has been acknowledged that many men may not feel able to report experiences of sexual violence due to stigma and it is therefore possible that the rates of sexual violence for men and gender diverse consumers are greater than has been identified in the literature.
[4] The Mental Health Complaints Commissioner, above n 1, 17; Australia's National Research Organisation for Women's Safety ('ANROWS'), 'Preventing Gender based violence in Mental Health Units' (ANROWs, July 2020) 13 & 30.
[5] The Mental Health Complaints Commissioner, above n 1, 4.
[6] Victoria Legal Aid, 'Your Story, Your Say' (VLA, 2020) 14.
[7] Fiona Judd, 'Improving Safety for Women in Psychiatric Wards' (2016) 51(2) *Australian and New Zealand Journal of Psychiatry* 194, 194; The Mental Health Complaints Commissioner, above n 1, 61. However, we note that this may not address risks faced by men and gender diverse people.
[8] The Mental Health Complaints Commissioner, above n 1, 63.
[9] Jill Astbury, 'Gender disparities in mental health' (WHO, 2001) 3; Women's Mental Health Network Victoria, Submission to the Royal Commission into Victoria's Mental Health System, *Royal Commission into Victoria's Mental Health* System, July 2019, 20.
[10] The Mental Health Complaints Commissioner, above n 1, 18.
[11] ANROWS, above n 4, 15 – 26; *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 16.

- **Services fail to adequately address to sexual safety concerns –** disclosing experiences of trauma or feelings of unsafety places us in an extremely vulnerable position and yet, for many of us, reporting an assault or telling staff that we are feeling unsafe is met with dismissive and harmful responses.[12] Insensitive and uncaring responses from staff lead to a lack of trust and often cause avoidance of reporting sexual safety breaches.[13] Additionally, consumers who have experienced domestic or family violence report that staff have contacted their current or former abusive partners in order to obtain or provide information about their condition – which in some cases has led to further violence.[14]
- **Inconsistent reporting obligations and lack of oversight –** there is a lack of consistency in reporting obligations and scarce oversight of services in the context of ensuring sexual safety.[15] While new reporting guidelines for sexual activity have been released by the Office of the Chief Psychiatrist (OCP), VMIAC continues to see a lack of enforced oversight, resulting in varied reporting practices by mental health services.

**Our Position**

- **We have the right to be safe in mental health inpatient units –** we should not need to risk our sexual safety in order to receive treatment for our mental health. In spite of this, the system currently forces us to choose between our safety and receiving treatment, or, in many cases, detains us compulsorily and fails to protect us from sexual harassment and assault. This practice demonstrates the way in which the mental health system both accepts and permits the occurrence of abuse and violence.
- **Sexual safety requires recognition of the role that gender inequality plays in sexual violence –** gender inequality, rigid gender roles, and power imbalances drive violence against women.[16] By failing to appropriately address or respond to disclosures of sexual violence, staff are effectively condoning gendered violence and perpetuating the inequalities that are already experienced by women.[17] We need an urgent culture change within mental health services that addresses gender inequality and ensures that sexual violence is taken seriously.
- **Mandatory reporting obligations in relation to allegations of sexual violence are harmful –** mandatory reporting guidelines assume that we lack capacity to choose whether or not to report an allegation. Consumers who have experienced sexual violence in hospital should be supported to make their own decision based on what they feel is best for them. Utilising a supported decision-making approach attempts to remedy the loss of power and control that is caused by sexual violence.

**Our recommendations**

VMIAC calls upon the Victorian government to take immediate steps to guarantee the sexual safety of consumers when accessing inpatient mental health treatment. Specifically, VMIAC recommends:

1. **That the Victorian Government immediately fund the establishment of single gender inpatient units.** These should include gender appropriate staff and allow for flexibility depending on what consumers need in order to feel safe. These units must allow for flexibility in order to accommodate the needs of gender diverse individuals.
2. **That the Victorian Government immediately fund co-produced, trauma informed and gender sensitive training for all mental health service staff.** This training should be co-produced with consumers who have lived experience of sexual safety breaches in mental health services, with a focus on women and gender diverse consumers.
3. **That the Victorian government address issues in the current 'catchment' system** – we should have the right to choose where we receive treatment. Priority must be given to consumers who have previously experienced sexual safety issues within mental health services to ensure they are not forced to return to the same hospital where the trauma occurred.
4. **That the Office of the Chief Psychiatrist immediately eliminate mandatory reporting obligations for sexual safety breaches –** these obligations should be replaced by a supported decision-making model of care, which should be implemented by services across the board and should include access to peer workers and sexual assault services for any consumer who makes an allegation of sexual

[12] Victorian Women and Mental Health Network, 'No-where to be Safe: Women's Experiences of Mixed-sex Psychiatric Wards' (Victorian Women and Mental Health Network, April 2008) 17; The Victorian Mental Illness Awareness Council, 'Zero Tolerance for Sexual Assault: A Safe Admission for Women' (VMIAC, 2013) 14- 25.
[13] Victorian Women and Mental Health Network, above n 12, 9.
[14] ANROWS, above n 4, 34 – 35.
[15] The Mental Health Complaints Commissioner, above n 1, 34.
[16] ANROWS, above n 4, 11.
[17] The Mental Health Complaints Commissioner, above n 1, 26 – 27.

assault. We must be supported to make our own decision about whether or not we wish to report allegations. This could include provision of support in deciding whether we want evidence and records of the allegation to be kept, even if we do not want to report the incident at that time.

5. **That the Office of the Chief Psychiatrist establish mandatory minimum standards for services to ensure sexual safety** – such standards should be specific and aim to reduce administrative burden on staff, which takes away from time they are able to spend with patients. Oversight mechanisms to ensure that services comply with minimum standards should allow for random inspections and audits and should hold the service accountable for any breaches of sexual safety standards.

**Background**

- Mixed gender units became common practice in the 1960s based on the belief that inpatient units should better reflect 'real world' dynamics and that the presence of women would have a calming effect on men. This practice prioritises the needs of men over the safety of women and has caused women to be subjected to a greater risk of gendered violence when receiving treatment for mental health.[18]
- Historically, children were often placed in adult psychiatric institutions for a variety of reasons including "mental illness or intellectual disability," behavioural issues and, for girls, "exposure to moral danger."[19] The Royal Commission into Institutional Responses to Child Sex Abuse found that many children in these institutions experienced sexual abuse under the pretence of 'medical examinations.' Antipsychotics were often administered to children, impairing their consciousness and ability to protect themselves. [20] Women continue to report these issues with respect to antipsychotics today.[21]
- Over the past few decades, women have consistently identified experiences of feeling unsafe and threatened, sexual harassment and sexual assault in spite of the significant investments in infrastructure and training that have occurred during this period.[22]
- In 2013, VMIAC released a research report which identified that most women did not feel safe in mental health units, that more than two thirds had experienced sexual harassment whilst an inpatient and almost half had experienced sexual assault.[23] Participants overwhelmingly identified that staff monitoring of the unit was essential in helping to keep them safe, as well as practical measures such as single-gender areas, lockable doors, and increased support from nursing staff.[24]
- In 2018, the Mental Health Complaints Commissioner released a detailed report on sexual safety in acute inpatient units. Key recommendations such as single gender wards remain unaddressed by the Victorian government.
- These issues were reaffirmed in July 2019 in the Royal Commission into Victoria's Mental Health System's Interim Report.[25]
- In July 2020, Australia's National Research Organisation for Women's Safety (ANROWS) released a research report finding that women are not safe in mixed gender units.[26] The report echoed previous research in its recommendations, with clear directions to both health services and policy makers to establish single gender units and to implement trauma informed and gender sensitive training.[27]

[18] ANROWS, above n 4, 12.
[19] Commonwealth, Royal Commission into Institutional Responses to Child Sex Abuse, *Final Report* (2017) volume 11, 50.
[20] Ibid, 71 – 73.
[21] Victoria Legal Aid, above n 6,14.
[22] The Mental Health Complaints Commissioner, above n 1, 17.
[23] VMIAC, above n 12, 14 – 24.
[24] Ibid.
[25] Victoria, Royal Commission into Victoria's Mental Health System, *Interim Report* (2019) 212 – 213.
[26] ANROWS, above n4, 14- 15.
[27] Ibid, 69 – 71.