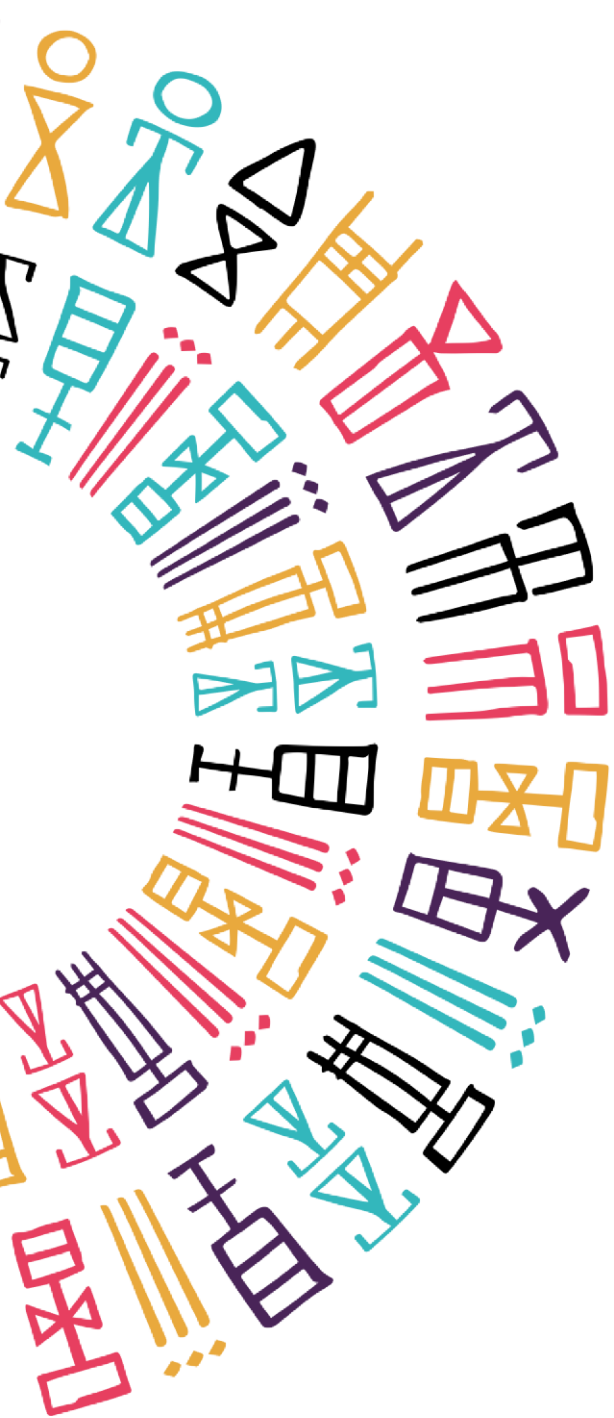




Working with testimony in sexual misconduct cases

Dr Nina Burrowes
The Consent Collective



Context

The reporting party

- The impact of trauma on evidence
- Memory
- Inconsistencies
- Skills for professionals working on these cases

The responding party

- The impact of myths and misconceptions
- Skills for professionals working on these cases

Context

- The reliance on testimony in these cases
- The impact of myths and misconceptions
 - The need to navigate the evidence in a way that supports justice
- Science-based in how we treat evidence
- Precedent for this in other justice systems

The reporting party

- Impact
 - Of the incident and of subsequent justice processes
- Trauma
 - Overwhelm
 - Lacking internal or external resources to cope

Understanding trauma means understanding survival

Attention

- Extreme focus on anything considered central to survival
- Anything considered peripheral gets less attention
- Sensory information can be enhanced

Understanding trauma means understanding survival

Attention

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 - Anything considered peripheral gets less attention
 - Sensory information can be enhanced
-
- You can only remember things you attended to. Some aspects will be very well remembered, others will be considered peripheral and therefore not well remembered.
 - Attention will be survival based, not rational, reflective, or thinking about later consequences.

Understanding trauma means understanding survival

Memory

- Time-bound relationship to encoding of things attended to. Information immediately leading up to the incident and roughly 5 – 20 minutes later can be super-encoded.
- Subsequent events, even central ones, may not be well encoded at all.

Kearney, B.E. & Lanius, R.A. (2024). Why reliving is not remembering and the unique neurobiological representation of traumatic memory. *Nature Mental Health*, 2, 1142–1151

Cadle, C.E. & Zoladz, P.R. (2015). Stress time-dependently influences the acquisition and retrieval of unrelated information by producing a memory of its own. *Frontiers in Psychology*, 6:910.

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Memory

- Time-bound relationship to encoding of things attended to. Information immediately leading up to the incident and roughly 5 – 20 minutes later can be super-encoded.
 - Subsequent events, even central ones, may not be well encoded at all.
- We should not be surprised if there are time-related gaps in memory. A vivid memory of early events and loss of memory for later events for some people fits with the science.
- Memories may retain a sensory basis when they are encoded and reconstructed. There may be particular sights, sounds, or smells that people vividly remember.

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Understanding trauma means understanding survival

Behaviour

- Defence or survival circuitry is prioritised
- Modern aspects of the brain such as the pre-frontal cortex do not operate as normal
- Behaviour will be based on reflex/ instinct and habits
- Instinct includes hyper-arousal (flight/ fight) and hypo-arousal (flop/ freeze/ dissociate). Habits can include submission.

LeDoux, J. E., & Pine, D.S. (2016). Using neuroscience to help understand fear and anxiety: A two-system framework. *American Journal of Psychiatry*, 173, 1083-1093.

Schwabe L. (2017). Memory under stress: from single systems to network changes. *European Journal of Neuroscience*, 45(4):478-489.

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 - Instinct includes hyper-arousal (flight/fight) and hypo-arousal (flop/freeze/dissociate). Habits can include submission.
- We should not expect people to be thinking logically, anticipating later outcomes (other than survival) or considering 'how this will look to others'
- Behaviours that are used are not a choice. They are instinctive and survival driven

LeDoux, J. E., & Pine, D.S. (2016). Using neuroscience to help understand fear and anxiety: A two-system framework. *American Journal of Psychiatry*, 173, 1083-1093.

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Are these memories accurate?

- Remembering under all circumstances involves the reconstruction of events and will be incomplete and hold inaccuracies.
- With trauma we are more likely to have well encoded, earlier-on, aspects of events.

Are these memories accurate?

- Remembering under all circumstances involves the reconstruction of events and will be incomplete and hold inaccuracies.
- With trauma we are more likely to have well encoded, earlier-on, aspects of events.
- But we can also have
 - Gaps in memory
 - A complainant who is not used to giving an account with gaps in their memory
 - Unskilled questioning that can lead to people filling gaps inaccurately and creating inconsistencies.

- We should not be looking for 'logic' in behaviour
- We cannot expect people to remember everything
- We need to be satisfied with the 'gist' of the memory and not expect more than is possible
- We need skilled professionals for interviewing/ questioning
 - Trauma-informed space and process
 - Limit the amount of 're-interviewing'
 - Skilled questioning – get a very clear picture of the accurate memories
 - Address other myths and misconceptions in interview too

Supporting reporting parties through a process

- To not feel they made a mistake by reporting
- Recognition of the public service in reporting
- Professionalism and good customer service
- A quality investigation and subsequent process
 - Strength-based interviewing
 - A process that pays adequate attention to the responding party's behaviour

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- Do we place so much emphasis on the reporting party's testimony because we don't know how to focus investigations on respondents?

Responding parties

- The impact of myths and misconceptions
 - Stranger danger
 - Sexual misconduct is a behaviour, not a 'type of person'
 - When we investigate or prosecute a 'type of person' we create injustice in all directions
 - We need to become more aware of, and interested in, behaviour, motives, denial, minimisation and manipulation.

The worst case scenario in any profession

- A smart, determined sexual harasser who is able to abuse their position of power to cause harm and get away with it.

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- A smart, determined sexual harasser who is able to abuse their position of power to cause harm and get away with it.
 - Victim selection
 - Victim isolation
 - Location
 - Nature of the incident
 - Behaviour afterwards to deter reporting
 - Protecting themselves if a report is made

What skills do professionals working on these cases need?

- Better questioning around consent
- Awareness of motive and tactics that can prompt questioning
- Awareness of denial and how to work with it
- A better narrative to help decision makers understand the evidence

TRAINING: Essential psychology when investigating sexual misconduct cases

- Myths and misconceptions
- The psychology of sexual harassers
 - Motivation, denial, tactics used before, during and after an incident
- Interviewing and cross-examining respondents
- The psychology of reporting parties
 - Impact, responses, trauma-informed questioning, memory, strength-based interviewing
- False reporting
- Staff wellbeing when working on these cases

June 24th, 9.30 – 15.30, online

TRAINING: Working with respondents. Understanding risk and supporting behaviour change

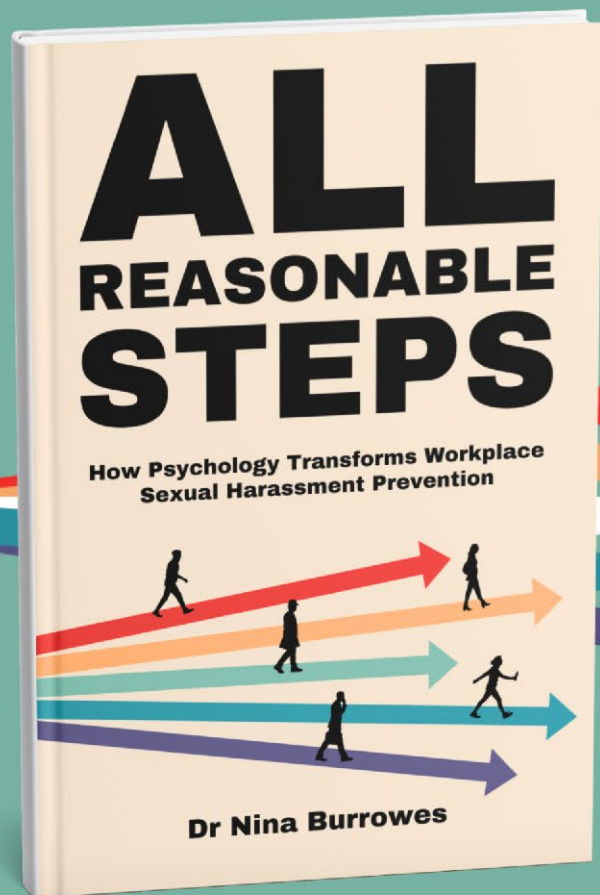
- The evidence base on risk
- The impact of misconduct processes and punishment on future behaviour
- Engaging respondents in rehabilitative processes
- Skills, education and support that can lead to positive behaviour change
- Staff wellbeing when working on these cases

July 2nd, 9.30 – 15.30, online

consentcollective.com/regulators

Strengthening regulatory leadership
and practice in the prevention of
sexual harassment





All Reasonable Steps

How Psychology Transforms Workplace Sexual Harassment Prevention

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