

AUSTRALIAN LAW REFORM COMMISSION: JUSTICE RESPONSES TO SEXUAL VIOLENCE

Victim-Survivor Submission

Question 1

If you are a victim survivor, did you decide to tell someone about your experience?

If you did tell someone, did you contact:

a particular support service;

the police;

a health professional, a teacher, an employer; or

a family member, friend, or some other person?

Was there sufficient information available to you to help you decide who to tell and what to do? Where did you find that information? Was the response you received adequate?

What supports did you need at that time? Were the supports adequate? How could they be improved?

If you decided not to tell someone about your experience, you may wish to share with us the reason(s) why.

I was raped in the early part of [REDACTED] by a male who was a close friend at the time. This was when we were both university students in our final year of medical school, and it happened following a university-related event.

I told some very close friends of mine the morning after it had happened. One of my friends told me that I could go to the police about this if I wanted to. I initially did not contact the police as I was reluctant to involve police at that stage given I was still processing and coming to terms with what had been done to me by someone I had trusted. I also believed that the perpetrator and I would be able to come to a resolution without needing to involve the police and the criminal justice system.

The prospect of going to the police and possible criminal justice proceedings scared me profoundly at that time, and even back then I was acutely aware that the criminal justice system frequently fails to provide justice for sexual offences. I was also unsure about what the process would be like, having heard time and time again that going through the criminal justice system is often traumatising and degrading for victims. I also experienced an element of being unable to accept what had happened – there was a fear that going to the police would make what had happened to me very real and I wasn't ready to accept that immediately.

Therefore, I did not approach the police immediately and I waited eight months before going to the police. In the meantime I tried to reach some kind of resolution with the perpetrator by discussing what had happened over the phone initially, then in person, and then via a letter which I delivered to him. When none of these attempts resulted in an adequate recognition, apology or level of accountability on the perpetrator's part, I decided it was time to go to the police.

The reason I made this choice in the end was because I realised that the perpetrator was incapable of taking responsibility for his actions, and therefore I believed he was at risk of doing the same thing to another person, which I could not bear the thought of.

Prior to going to the police I told my psychologist about what had happened. I did not tell other health professionals at the time. I wanted to tell the medical school, however I was scared about what the consequences might be for the perpetrator and for myself if it was to become known amongst university staff, so I did not disclose what had happened to the university.

I went to the police over 6 months after the rape occurred. I spoke to a police officer who took my statement. I was very uncertain about what this report would be like, however I talked about what had happened while she wrote notes. I found the police officer to be unempathetic about the disclosure, however she was not rude and did not provide additional commentary during the report. I was advised that a detective would be in contact with me in a couple of weeks, however, I was not contacted by a detective for three months after making the report, so I had actually assumed my report had been lost or forgotten and I didn't have the energy to follow it up.

After making the report there was very little guidance for support services available to me. I was already aware of a service called the Sexual Assault [REDACTED] however I had not contacted them as I had my own psychologist and honestly did not have it in me to make yet another disclosure to a service over the phone in such an impersonal way. I was also not sure if they would truly be able to help me as I was largely struggling with very poor mental health at the time and felt that nothing could help me at the time. I was not put in contact with the Victim Support Service until after my statement to the detective, and again I found that there was very little that these services could offer to help me, given the state I was in at the time – struggling with severe depression, anxiety, and post-traumatic symptoms.

Overall, I relied on the support of my close friends, siblings and psychologist during the months after the rape, as the other community supports and justice system support services were daunting to access and I felt they would be unable to meet my needs.

Question 3

How can accessing the justice system and reporting be made easier for victim survivors? What would make the process of seeking information and help, and reporting, better?

You might consider the kind of information given to victim survivors, the confidentiality of the process, and the requirements of particular groups in the community.

Accessing the system could be made easier by having more readily available information out there. It is very difficult when one is dealing with such a life-altering traumatic experience to then have to dig through so many documents and websites in order to find some basic information. It also is difficult when a lot of available information is expressed in legal terms using jargon that can be difficult to understand.

It would be extremely helpful if there were services that could contact victims to check in intermittently and provide updates rather than the victim having to take the burden upon themselves of seeking support and help at all times – often the people who need the most support are those who least able to seek it themselves. Depressive and post-traumatic symptoms lead to an overwhelming sense of hopelessness, low self-worth and avolition, which combine to make seeking help for oneself an almost impossible task.

Reporting could be made better by having more empathetic officers taking statements and having more rapid follow-up from detectives to ensure victims do not feel so forgotten and unimportant within the system. Overall, police adopting a trauma-informed approach to both taking statements and the short-term aftermath of making a report would be extremely helpful.

Question 4

Do you have other ideas for what needs to be done to ensure that victim survivors have a safe opportunity to tell someone about their experience and get appropriate support and information?

As stated above – a trauma-informed approach is needed by police, detectives and lawyers regarding reports of sexual assaults, and the justice system needs to invest more into its victim support services to facilitate more regular contact and check-ins with victims and referrals to other services.

Educational institutions need to have more transparency about their systems and processes for reports of sexual assaults within student cohorts. Universities and schools should provide more information to the whole student body about how to recognise and report sexual assaults (and should also provide better education on consent to prevent this happening in the first place).

Question 5

If you are a victim survivor, did you contact the police? If so, how? What was your experience of the police response?

Please see response to Question 1.

When I gave my formal statement to the detective assigned to my case, I had a better experience than the initial police officer. The detective was extremely empathetic, validating, and supportive during my formal statement, even though I was required to give the statement via telephone as I was interstate at the time. I felt heard, believed and I felt like he genuinely cared.

I was, however, unsure about how much detail to give regarding the events that happened after the rape, as by the time I gave my formal statement almost one year had passed. Whilst I outlined to the detective the complete recount of events over the phone, including some interactions that the perpetrator and I had had in the months after the rape, these were not all included in the final formal statement document that I signed. Given my naivety about the criminal justice system at the time, I assumed that some of these details were not included because they would not be relevant in a trial, so I didn't ask for them to be included. This then ultimately came back to diminish my credibility as a witness during the trial, as the defence talked about these interactions during the cross-examination in a way that implied that I had intentionally withheld these conversations/interactions from the police, when I had not.

Additionally, whilst I had discussed the letter I had written to the perpetrator during that first call with the detective and sent him a copy of the letter, it was not included in the initial formal statement document. I was then required to email the detective after a few months to ask about whether this needed to be added to my statement. I feel that this should not have been my role as the victim, and I felt uncomfortable making these requests. When I went in to addend the statement, it did not occur to me to also ask to add more information about the following months after the trial, as again, I had assumed that the detective would inform me if this would be important to include.

The system is very disempowering for victims as there are many facets and processes of the justice system that victims are unfamiliar with, and therefore do not know how to navigate. I assumed that the professionals in the justice system would guide me and provide adequate education throughout the processes, however this was not my experience.

The detective for my case was later changed as the initial detective had moved overseas. I discussed some concerns I had about my statement with this detective, however again I was told that these details “shouldn’t matter” during the trial, when, in fact, they were used by the defence to again attempt to destroy my credibility as a witness due to “inconsistencies”.

The key piece of evidence which resulted in the perpetrator being charged was a pre-text phone call that I made to the perpetrator in which he confessed four times to raping me. The process of making this phone call was highly distressing and I was required to make this call from a police station in a different state [REDACTED] where I was working at the time. I felt that I was prepared appropriately for this phone call by the detective – as much as I could be without compromising the evidence, and without knowing how the accused would respond prior. The detectives at the interstate station were professional, however my interaction with them was limited to the essential requirements.

Question 7

What are your ideas for improving police responses to reports of sexual violence? What can be done?

Please see response to Question 4.

Ultimately, a trauma-informed response is required. One in which the police are empathetic, help victims to feel believed, and also treat victims with dignity by taking their reports seriously and acting on reports in a timely fashion. Being pro-active in linking victims with available support services would also be incredibly helpful. It would be fantastic if victims had a case worker that would remain well-known to them and stay in contact from just after the initial reporting through to after the trial or whenever the justice system journey may end (given that most cases do not make it to trial).

Additionally I feel that police and detectives should be educated or have a greater awareness of the way evidence is used in trials – this may help to ensure that all relevant details are included in every statement, and that requests for changes and addendums to statements are taken seriously as these can have major impacts on the perceived credibility of victims (and other witnesses) during the trial. It could potentially also make cross-examination less distressing if all details are included appropriately as it is very clear to a victim on the stand when one’s credibility is being undermined due to small “inconsistencies” that would not have been raised if the statement was complete.

Question 8

If you are a victim survivor, did you have contact with the ODPP? What was your experience of the ODPP response? What support, if any, was provided to you?

I was connected with the ODPP after the perpetrator was charged. I was assigned a lawyer, who I originally thought would be the prosecutor, however later found out was my file manager.

Again, this misunderstanding was due to my lack of knowledge about the system and a lack of explanation by the ODPP and detective.

My interactions with the ODPP were marked by slow responses (often over one week to obtain a response) and a lack of communication in general. I requested to be provided regular updates of the with dates and outcomes of pre-trial hearings, however often found that these would occur without me being made aware, and then there would be a delay in communication of the outcomes to me.

Often when I sent emails with questions regarding hearings, the trial, or the state's evidence, I was met with responses saying, "I understand you are anxious". This response made me question whether I was being overly anxious, or too demanding or a generally "bad victim/witness". It made me feel that I should stop asking questions and made me feel even further disempowered by the system.

I was advised on multiple occasions that trials of this nature often don't return a result that is favourable to the victim, which served to further disempower me as I was very aware of this fact, and it felt like the people who were supposed to be on my side had little hope or motivation due to this fact.

I feel that a large part of the problem in my communications with the ODPP was due to the high caseloads they were likely working with. As a result, however, I felt like just another case/number in the system and felt that I often was not treated with a great deal of humanity.

I was put in touch with a Victim Support Services case worker through the ODPP who I found to be very compassionate, kind and helpful throughout – including in the lead up to the trial and during the trial.

The prosecutor assigned by the ODPP to my case was overall very good, however it seemed that she was assigned to the case quite late, and therefore we had little time available to discuss the case. I had asked whether an expert witness would be beneficial to the case in order to educate the jury on "freeze responses" as this is what I experienced during the rape. However, this request was not acknowledged, which again, disadvantaged the State's case as most juries are not familiar with the psychological intricacies of these responses, and therefore likely question why victims may not fight off their perpetrators during a rape.

Question 10

Do you have ideas for improving ODPP responses to the prosecution of sexual violence?

Again, this comes down to adopting a more trauma-informed approach. I think adopting these approaches would make ODPP staff more compassionate and considerate of the individual needs and requests of victims.

Additionally, the ODPP and its prosecutors are aware that juries struggle with reaching guilty verdicts for these crimes, yet it seems they do not do enough to ensure juries are adequately educated in order to make informed verdicts. I think it would be beneficial if there was open communication from earlier on in the process and if victims were asked about what was important to them or what concerned them. This might allow for better relationships between the ODPP and victims, and it would also provide victims more opportunities to ask questions and feel heard.

The ODPP works within a system that is fundamentally skewed towards the protection of defendants rather than the protection of victims, therefore I understand that there are significant legal constraints in which they operate. I recognise that their most important task is to ensure the integrity of the state's case, even if at the expense of transparency with the victim. Hopefully in time there will be broader systemic changes so that this can change.

Question 11

If you are a victim survivor, did you experience any of the measures described above? If so, what was your experience?

Measures described:

*a closed court during the complainant's evidence;
the use of a one-way screen to shield the complainant from a view of the accused during the complainant's evidence, if the complainant chooses to give evidence in the courtroom;
the use of closed-circuit television ('CCTV') to enable complainants to give their evidence outside the courtroom from a dedicated room within the court precinct;
the use of facilities outside the court precinct from which complainants may give their evidence. Some jurisdictions have specially designed facilities for children and young people which may be visited by the child before giving their evidence;
complainants may be accompanied during their evidence by a support person, have a canine companion present, or both; and
changes to the design of courts to limit the complainant's interactions with the accused as far as possible.*

I was offered the opportunity of giving my evidence via CCTV, however while I initially accepted this, I later declined as I was concerned that I may be disadvantaged by the relative anonymity of appearing on a screen rather than in person in front of the jury. I was afraid that in some way, giving my evidence via CCTV would diminish my humanity in that context.

I was not offered the option of being accompanied by a support person while I was giving evidence on the stand in the courtroom, and unfortunately, the defendant was within my line of sight. I would have appreciated it if the defendant could have been the one sitting outside of the courtroom, or out of sight (e.g. behind a screen), while I gave my evidence in person.

The courtroom design meant that there was lot of close proximity to the accused's supporters (consisting of his family and friends) in the breaks between sessions. This was incredibly challenging for me, and I would have appreciated if I could have been afforded my own entrance into the courtroom in a similar way that a defendant has their own entrance into the courtroom. Again, this just highlights to me the additional protections that defendants have throughout these processes that witnesses and victims do not.

Question 12

Do you have views about the measures listed above? Have the measures reduced the trauma of giving evidence? Could they be improved? Have things changed? What is working well? What is not working well?

Are there other measures which have been implemented and are not listed above?

See previous answer. I think the above measures can be very helpful in reducing trauma for some victims, however as outlined above I think there needs to be additional options (e.g. defendant hidden behind screen/out of courtroom) if the victim chooses to give their evidence in person like I did. Unfortunately, no victim can completely escape the trauma of giving evidence in a courtroom, particularly when defence lawyers use disgusting and degrading tactics to undermine the re-telling of highly traumatic experiences, and when judges do not behave appropriately, as what occurred in my case.

Question 13

Do you have other ideas for improving court processes for complainants when they are giving their evidence?

The courtroom is the most hostile environment I have ever encountered. I think my experience was particularly awful because of the behaviour of the judge presiding over the case. I have attached a de-identified complaint letter (see Appendix) that I wrote and submitted to the relevant parties which highlights the unacceptable treatment I faced at the hands of the judge, and which negatively impacted my experience of giving evidence. A key way of improving courtroom processes is to have trauma-informed training for all legal professionals taking part in sexual offence trials, including judges and defence lawyers.

I also felt that the defence lawyers were particularly misogynistic in their approach to the defence – they used the tactics of victim blaming and degradation in order to destroy my reputation and therefore credibility in front of the jury. I feel there needs to be stricter rules on what is permitted in court from a defence point of view in order to improve the process for victims giving evidence.

Question 14

*If you are a victim survivor, was your interview (or interviews if more than one) with the police recorded? Was your evidence recorded in court at a pre-trial hearing?
What was your experience of the recording process?
Did you see the recording(s) before they were presented by the prosecution at trial?
How did you feel about not giving evidence in person at the trial?*

My interview was not recorded as far as I am aware, and therefore I do not believe it was used in court.

Question 16

*If you are a victim survivor, was an intermediary involved to assist with communication? If so, we would like to hear your feedback.
If an intermediary was not involved, do you think an intermediary would have been helpful? If so, in what way?*

No intermediary was used in my case.

Question 18

Are you aware of the research about memory and responsive behaviour in the context of sexual violence trauma? Do you have views about that research?

Do you have views about whether prosecutors should call expert evidence about that research (that is, about how people recall traumatic events and/or about how victim survivors of sexual violence typically respond)?

Is that expert evidence being called in your jurisdiction? If so, how is it working? If it is not being called, do you know why not?

As previously mentioned, I had been very concerned in the lead up to the trial about a lack of general knowledge in the community regarding responses to trauma. The overarching responses that people are generally aware of in the community are “fight or flight”, and very few people are aware of the other responses of “freeze or fawn” – which happen to be much more common in women, who are also the most likely to be victims of sexual offences and therefore exhibit these responses in these traumatic contexts.

The reason I was so concerned about the jury not understanding my freeze response was because I didn't fully understand it until I shared my experience with my psychologist who then explained it to me. I am a well-educated, progressive person, and the fact that my understanding of this response was so poor that I was not able to accurately identify it in myself until my psychologist explained it to me, made me realise that it would be even more difficult for the general public (i.e. the jury) to identify and understand it in someone else (i.e. a victim). This was why I asked my prosecutor if we could include an expert witness in my case who might have been able to educate the jury on this response, in the hope it would help them to understand why I was unable to scream or fight off the perpetrator (in the way that rape victims are classically believed to respond if it is a “real rape”).

I am also aware of the research regarding memory in sexual violence trauma – namely that while some details may remain painfully vivid in memories, other specific details surrounding the assault may become blurry or confused. I experienced this myself, and it was very intimidating going up onto the stand knowing that if I did not have a good memory of a particular section of the assault, then I would be made out by the defence to be lying or inconsistent and therefore a “bad” or untrustworthy witness. This did happen to me, and it would have been very helpful if there had been an expert witness who could have advocated for me by educating the jury that memory gaps are common and if anything, a stronger sign of true trauma rather than a perfect second-by-second account of events.

Unfortunately, in my case there was no expert witness called forward, despite me requesting it. Therefore I would not be surprised if it is common practice to *not* include expert witnesses even though all of the lawyers on the ODPP team agreed that victim responses are complex and not well-understood by the broader community.

Question 19

What is your view about the usefulness of jury directions in countering myths and misconceptions described by the research discussed above?

Do you have a view on whether the jury directions in your jurisdiction are sufficient? Could they be more extensive?

Jury directions could be very helpful with the above, however the judge in my case refused to give more than the bare minimum direction which was that “sometimes people may freeze in response to traumatic events”. In my opinion, this direction was not nuanced enough to adequately educate the jury. The defence argued that anything more would have needed to come from an expert witness, which the prosecution did not have, therefore there was no opportunity for either my prosecutor or the judge to go into any more depth. The impact of trauma on memory was not explained to the jury at all.

So yes, I strongly feel that there needs to be much more extensive directions to juries which properly educate them on both memory and responsive behaviour in trauma and to comprehensively debunk the myths and misconceptions that are unfortunately widespread in the community about how rape victims should behave both during and immediately after their assault, and in the courtroom.

Unfortunately, directions to juries can also be used to further reinforce misconceptions, as what occurred in my case (see Appendix).

Question 20

Do you have a view about the other recommendations that have been made (educative videos, mixed juries, judge-alone trials, and education and training)?

Do you have other ideas for reform based on research which suggests the evidence of complainants is assessed according to myths and misconceptions about memory and responsive behaviour?

I feel that any intervention which provides education to jury members or legal professionals (including judges) would be helpful. I also think mixed juries would be beneficial.

Question 21

What is your view about a trial by judge alone in relation to sexual offending?

The benefit of a trial by judge alone is that it removes some of the widespread biases that are held in the community about sexual assault victims and perpetrators, and then allows the trial to focus directly on the legal merits of the case.

The risk of judge-alone trials is that if a judge is themselves biased in favour of defendants, as the judge was who presided over my case, then there is a greater risk of the outcome not being fair. Furthermore if the judge does not understand basic principles of consent, again as the judge who presided over my case, then this puts the trial into further murky waters. Please see Appendix for further details.

I would hope that most judges are not like the one I experienced however, so it is possible that overall a judge-alone trial could be a positive option for sexual offence trials, as I think most people in the community are ill-equipped to function as effective jury members on these complex cases due to lack of education and understanding about the law as it pertains to sexual offences, complex trauma responses in victims, and basic principles of consent.

Question 22

If you are a victim survivor, what was your experience of cross-examination? Did the prosecution object to questions asked by defence counsel? Did the judge intervene to stop defence counsel asking questions?

Cross-examination was a truly appalling experience for me. I was expecting it to be the most difficult part of the trial, however I did not expect that the tactics they used would have been permissible [REDACTED]

The defence team consisted of a Kings Counsel Silk who was flown in from interstate, a local Queens Counsel Silk, and another lawyer who sat in the public seating area taking notes throughout the proceedings. Evidently the defendant's family was able to afford the best defence lawyers that money could buy. Unsurprisingly, all of the lawyers were middle-aged white men, and even more unsurprisingly, they used the most misogynistic tactics available to them.

It was clear from the outset that they did not care about seeking the truth about what happened on the night of the counts on the indictment. They spent relatively little time talking about this, however when they did, they implemented disgusting victim-blaming tactics that went against what is stated in the law, and against everything that is known in the research about trauma responses. They repeatedly stated that even though I had clearly indicated prior to the actual rape that I was not consenting, the fact that I did not say "no" or "stop" or physically resist while it was happening, meant that I was consenting. They did not once acknowledge the existence of a 'freeze response' or the fact that it should have been unreasonable for the defendant to believe I was consenting if I was laying absolutely still, silent and unable to look at him while he raped me.

They implied that if I felt that I could not say "no" more clearly (i.e. if I felt coerced), that was my own problem and not the defendant's responsibility to determine whether I felt able to freely consent. Ultimately their entire argument was based on the idea that I did not do enough to indicate I was not consenting, and that the defendant could therefore assume a blanket rule that consent was there without enough evidence to the contrary. This was not the case as I had verbalised "I'm stressed, I don't think we should do this" prior to the rape, and then was left with no time to say or do anything else before he was on top of me and I was in a state of absolute confusion, powerlessness and mental and physical paralysis – i.e. I was experiencing a freeze response. I believe that WA's lack of affirmative consent laws provided a context which enabled this defence, as no onus on the perpetrator exists in WA's current law to make any attempt to find out whether a person is consenting. The defendant stated during the trial that he did not cast any thought to whether I was consenting on the night, yet he was still found not guilty. This exemplifies the need for WA specifically to adopt affirmative consent laws, in line with NSW, Victoria and ACT.

The defence lawyers then had the audacity to tell me that I was on my hands and knees in the "doggy-style" position during the second part of the rape where the defendant had actually flipped me over and I was face down, flat on my stomach while he penetrated me from behind. The use of this terminology during cross-examination in a rape trial was disgusting and I was absolutely appalled that no-one intervened (including the prosecutor and the judge) to stop the use of this language in the courtroom. As explained in the Appendix, the judge was so busy trying to be 'buddies' with the defence lawyers, that [REDACTED] essentially allowed them to do and say whatever they wanted to, only rarely intervening on small technical legal points. My

prosecutor was also 'holding back' her objections as the judge was known to be very harsh on prosecutors, so she must have decided that objecting to this language was not worth the potential harsh and demeaning reaction by the judge, which could damage the jury's trust in the prosecution case.

I feel that my prosecutor's reluctance to raise objections due to her fear of the possible detrimental impacts to the state's case in the likely event that the judge would respond negatively, meant that many lines of questioning during cross-examination went unchecked. The defence spared no effort in destroying my reputation during the trial. The judge had permitted them to discuss my previous consensual encounters with the defendant despite the fact that, as far as I'm aware, past sexual history of victims should usually not be permissible in rape trials. They took the liberty of questioning me in graphic detail about the three occasions myself and the defendant had been sexually involved on occasions prior to the rape. Of course, the information they had about these previous encounters was obtained from the accused, so his version of all events dominated the courtroom. I was left in a position where I felt trapped into discussing these encounters in front of a jury who I knew would be judging me for not being a 'perfect virgin victim'.

The defence lawyers also spent a long time asking me about one occasion where I had taken a drug (LSD) – this was in no way relevant to the night I was actually raped as I had not taken any substance apart from alcohol on this occasion, however their tactic of discrediting me by bringing up past behaviours was very evident. Again, my prosecutor took a long time to work up the courage to object to this line of questioning, so I was forced to endure this reputation-destroying tactic for longer than I believe I should have.

Most of the details they included in cross-examination were completely irrelevant to the actual charges. The defence lawyers went through every single message that the defendant and I had shared on/around the dates of our previous encounters. This equated to pages and pages of messages. Most of the occasions had been in university party scenarios so of course the messages often had a joking tone or had poor spelling or use of emojis. I hadn't read these messages in years so was very caught off guard and then asked to recall specific dates and meanings behind things I had said years ago when I was up on the stand. Again, this was clearly another tactic to discredit me as I probably seemed confused and unsure about these details – none of which were actually relevant to the counts of rape for which the accused was charged.

Unfortunately, while defendants have months to years to prepare for every single detail of the trial as they have all the information available to them from the outset, the victims in these cases, like myself, are completely caught off guard by whatever the defence choose to introduce, which makes us seem like the inconsistent and unreliable person in the courtroom. Being a victim in the courtroom was a truly horrific experience with both re-traumatisation and experiencing new traumatic experiences on the stand.

Again, the overarching tactic of the defence was to destroy my reputation and credibility, and to emphasise to the jury that it was 'fair' for the defendant to assume that my previous consent was still valid and could not be easily withdrawn, even months down the track and after a conversation in which I had told the defendant in no uncertain terms that "we can never have sex again".

Of course there are many more details that I could discuss as this was a somewhat complex case given the fact that the defendant had been a close friend prior to the rape and there had

been months which passed before the charges were pressed, however I won't go into further details now. There are a few more details about my experience of cross-examination included in the Appendix. Ultimately, I strongly feel that I was afforded very little protection from the judge, and as a result of the judge's reputation, also little protection from my prosecutor during the cross-examination, which relied on appalling tactics that should not have been permissible.

Question 23

Are the legislative provisions adequate to protect complainants during cross-examination? If not, how could they be improved? Should they be harmonised?

Current legislative provisions are absolutely not adequate to protect victims during cross-examination. I was shocked with my experience as a victim during a cross-examination which was so focussed on destroying my reputation that almost no time was spent dissecting the events of what actually occurred during the rape. I feel that much more needs to be done in this space.

I recently took part in a survey conducted by the Deakin Network against Gendered Violence regarding the protection of private information for sexual offence victims. I feel this is important research as I experienced the sharing of my private information in the courtroom, and I believe more should be done to prevent this for the protection of victims.

As a victim, the biggest fears I had about disclosure and reporting the rape were that 1) no one would believe me, and 2) people would think it was my fault (as this was a belief I personally could not shake for many months after the rape). Unfortunately, going through a trial means that both these fears become reality as the defence lawyers make it their mission to ensure that the jury will not believe victims, and they use victim-blaming tactics to achieve this. This is a big part of the reason why approaching the criminal justice system is so daunting for victim-survivors and such a traumatising experience to go through. This is why I believe so few victims come forward. I don't know exactly how to fix this in our current criminal justice system, however clearly something needs to change so that perpetrators can be held accountable for their crimes and victims can be better protected in the process, particularly given the bravery that is required to approach the criminal justice system in the first place.

Any measures to further protect victims during the whole process, and particularly cross-examination should be welcomed by legislators. I feel these should also be harmonised across Australia to that no victim is disadvantaged based on the state in which the crime happened.

Question 24

Should cross-examination that reflects myths and misconceptions about sexual violence, such as the belief that a 'rape victim' would be expected to complain at the first reasonable opportunity be restricted on the ground that it is irrelevant or on any other ground?

In short – yes, I do believe that cross-examination that reflects myths and misconceptions should be restricted. In my experience, the defence kept coming back to my lack of physical resistance as a strong argument for their case even though the law clearly states that lack of physical resistance does not constitute consent. They also brought up past consensual sexual experiences I had with the perpetrator with the clear strategy of implying that it was reasonable

for the perpetrator to assume that because I had previously consented, he could assume that I was consenting on this occasion (even though I clearly was not) i.e. that if a person has consented previously, it means that a perpetrator doesn't have to bother determining whether they are consenting on the next occasion. I feel it is ridiculous that defence lawyers can spread these myths to juries un-checked. Jury members often have very limited understanding of the law, and therefore they will believe whatever they are told by lawyers. It is dangerous and unacceptable that lawyers can spread mistruths to juries for personal gain (i.e. winning their case).

Question 25

If you are a victim survivor, did you need an interpreter in the court room? Was one made available? We would like to hear your feedback.

I did not require an interpreter.

Question 27

If you are a victim survivor, were the records of your counselling or other therapeutic interventions sought prior to or during trial?

Records of my counselling sessions were not sought. Interestingly, I had actually requested for the records of my first psychology session following my rape to be accessed as it was one of my earliest disclosures, and I had asked for my psychologist to record the name of the perpetrator in case I chose to go to the police at some stage. When I then discussed this with the ODPP they informed me that they were not allowed to access this information in the trial for my own protection. I found this interesting, as I had requested for it to be accessed to improve my evidence (i.e. gave permission), however it seems that WA has strict laws regarding the use of this type of evidence.

Question 29

Have legislative reforms to the admissibility and use of complaint evidence been effective? Are there problems associated with that evidence? Is this an area in which the laws should be harmonised? If so, how should they be harmonised?

Should evidence of more than one complaint be admissible? Should complaint evidence be admissible as evidence of what is asserted by the complainant and/or to assess credibility?

Should complaint evidence be admissible at all? Does it perpetuate myths about responsive behaviour to sexual violence trauma (by expecting complainants of sexual violence to complain at some stage and placing weight on what was said)?

The State did utilise first complaint evidence in my case. I initially thought it would be helpful in highlighting to the Jury that what had happened to me was traumatic enough that I told close friends as soon as I felt I could the next day, and that it would corroborate my story. What I didn't rely on was the fact that the large delay of over a year (up to two years) between my first disclosures and when these friends were asked to give statements, would mean that their memories of exactly what I said would be slightly inaccurate and would then be used to imply to the jury that I was inconsistent, as it was argued I had told these people different stories.

Even though the crux of what I disclosed was the same between all three first complaint witnesses, the slight differences in details were ultimately used against me.

My experience with complaint evidence was not very positive, however I still think it should be admissible as often there is so little evidence available, and the fact that I had these witnesses made me feel more confident going into the trial. I think it would be helpful to have broader complaint evidence available, and again I think this should be harmonised so that victims Australia-wide are on an equal playing-field. However, I think more research is required in this area because if complaint evidence is more frequently undermining rather than increasing the credibility of victims, then perhaps its admissibility should be reconsidered.

Question 33

Do you have views about the creation of specialist courts, sections, or lists?

Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address?

Do you support some form of special accreditation for lawyers who appear in sexual offence cases? Would this reduce the number of lawyers available to appear in such cases and contribute to delays in hearing such cases?

I support all of the above-listed specialisations. Many lawyers and people familiar with the justice system that I have encountered are acutely aware that the current system is woefully ill-equipped to handle sexual offence cases. Therefore anything that could be done to improve this should be welcomed and rapidly adopted. I have already outlined in my complaint letter about the Judge in my case (see Appendix) that one of the most important outcomes I would like as a result of the complaint would be for the judge to stop presiding over sexual assault cases and/or to receive education on specific trauma-informed approaches to these types of cases. I cannot emphasise enough how strongly I feel about the importance of judges receiving specialised training for conducting sexual offence trials, which includes a better understanding of the law pertaining to these cases, empowerment to disallow defence tactics which rely on misinformation, and how to treat victims and other witnesses with trauma-informed care and respect.

I feel it would also be helpful for all lawyers to have special accreditation to be involved in sexual offence cases as this may reduce the re-traumatisation of victims and improve their understanding and expression of the laws relevant to these cases. It is possible that this additional training, and the introduction of specialised courts would contribute to delays in the criminal justice system, but I would prefer a delayed *fair* trial, than a quick trial with the experience that I had, which felt extremely hostile and very poorly equipped to bring justice to this perpetrator of sexual assault.

Question 34

If you are a victim survivor, what were the delays you experienced? What was the impact of those delays upon you and/or your family and friends?

I experienced the following delays after reporting the rape:

1. A delay of 3 months between me report to the police and being contacted by a detective – this made me feel insignificant and forgotten in the system.

2. Delay of months to >1 year between my statement being obtained and my witnesses' statements being taken – the more time passes, the more likely it is for there to be important details forgotten by witnesses.
3. Delays in receiving communication from the ODPP about updates in the case – this again made me feel insignificant and contributed to my anxiety about the case and the trial. These communication delays included updates on the multiple hearings the accused had prior to the trial date being set. There was also a 1 year delay between trial listing hearing and the actual trial.
4. A delay of over 2 years from my initial report to the police to the trial – this significantly impacted my life, and particularly my mental health. I saw a psychologist throughout this time, however delayed engaging in trauma-focussed therapies until after the trial as I was worried that these may interfere with my memory of the events and may therefore impact my ability to give evidence as a victim on the stand. It placed a significant strain on all of my relationships as I was struggling so much during this time. My work was impacted as I was carrying the weight and anxiety of the impending trial on my shoulders constantly whilst also trying to maintain full-time work as a doctor. I became severely burnt out and struggled on a daily basis to function at work. This resulted in me needing to take 3 months off at the end [REDACTED] around the time of the trial, and I am now taking time off again due to the ongoing effects of burnout that I still struggle with.

All of the above impacted those around me as they needed to provide extra support to me during these times and had to witness how much I was struggling without being able to do much about it as it was due to the system which was out of their control.

Question 36

If you are a victim survivor, did the offender plead guilty? Did the offender plead guilty as charged, or was there negotiation with the ODPP? We would like to hear about your experience of that process.

The offender in my case did not plead guilty.

Question 45 & Question 47

If you are a victim survivor, how do you feel about restorative justice? Is it an important option to have? If so, what do you think should be the approach to restorative justice in responding to sexual violence?

What are your ideas for implementing restorative justice as a way of responding to sexual violence?

I, like many other victims, really wanted to avoid the criminal justice system because it is well-known that going through a sexual offence trial is extremely difficult and re-traumatising, and it is also statistically extremely unlikely to result in a conviction. Going into it felt like so much personal sacrifice and loss for such a vanishingly small chance of justice being served. As research has shown, the vast majority of victims do not go to police or persevere through the criminal justice system pathway with the aim of seeking punishment or revenge. For myself this certainly was not the case, and given that the perpetrator had previously been a close friend, the thought of him potentially serving time in jail for what he had done to me brought

me no joy. I went into the process with the firm belief that there was no “good” outcome as both a not guilty and a guilty verdict would be difficult to bear.

Unfortunately, I felt that I had no choice but to involve the criminal justice system as he had failed on multiple occasions to take adequate accountability for what he had done. I really felt that the perpetrator posed an unacceptable risk to other women as he had not taken responsibility for his actions despite me giving him multiple opportunities and many months to do so. Clearly my experience of the justice system was worse than I could have possibly imagined, and it left me feeling broken and powerless yet again. I had hoped I would go through the difficult, traumatising process to come out the other side feeling empowered and strong, however I have felt little, if any, of those positive emotions since the trial. The justice system ended up failing not just myself, but women and the community more broadly as the perpetrator was found not guilty and so effectively absolved of his wrongdoing.

I would have very much preferred to seek a sense of justice without involving the criminal justice system as it truly is a ‘blunt instrument’ which seems largely ineffective in often highly nuanced sexual assault cases. Something like restorative justice would have been infinitely more preferable to me. Being given the opportunity to formally discuss the issues and come to a resolution with the perpetrator within the safety of the restorative justice process would be incredibly helpful in bringing healing to the victim and positive change for the perpetrator. An outcome of the perpetrator acknowledging their wrong-doing and identifying how their behaviour/beliefs need to change would be extremely beneficial. It would work best if there could be a choice for victims not to press charges even if the perpetrator admits to the alleged offences. Having the option for non-punitive and rehabilitative outcomes such as mandated psychology sessions, consent education, and other rehabilitative workshops would be ideal, as it would hopefully result in a change of behaviour and reduce the risk of the person re-committing similar offences in the future.

Question 48

Which of the measures listed above are likely to most improve civil justice responses to sexual violence?

I am not very familiar with civil litigation processes, however I feel there could be a big financial burden and barrier to victims if there is no government funding available for these proceedings. The outcome being based on the ‘balance of probabilities’ is interesting, however, as a major barrier to convictions in sexual assault cases seems to be the difficult burden of proof required for these crimes which most often happen in private areas with no witnesses present during the offending and most often no footage (e.g. CCTV) available of the assault. I feel it is very difficult for juries to be able to determine ‘beyond reasonable doubt’ what has occurred when so little objective evidence is available in these cases. What ultimately follows is a ‘he said, she said’ scenario in courtrooms, and unfortunately in our society female voices are too frequently disregarded or not believed.

In my case, there was a pretext phone call in which the perpetrator admitted to the rape on several occasions and yet still, the jury seemed to believe his excuse during the trial that he was just making up those admissions and elaborate lies on the phone in order to appease me. Clearly, even a man who admits to being an accomplished liar is more readily believed by a jury than a woman who has only ever told the truth, even when unflattering.

Civil proceedings could be helpful in these cases where little objective evidence is available and where 'he said, she said' or 'perpetrator said, victim said' scenarios can be assessed on the balance of probabilities. The finer details and logistics of civil proceedings seem complicated, however, and would require a lot of thought as to how to make them accessible and fair for victims. In some ways, perhaps a judge-alone criminal trial may be better than a civil trial as it could potentially achieve similar outcomes with fewer additional challenges for victims.

Question 52

If you are a victim survivor, did you apply for compensation? If not, why not? If so, how did you find the experience of applying for compensation?

I did not apply for compensation. As far as I am aware, compensation would have only been available to me if the defendant was found guilty and he was not, so I did not look into it further.

Question 53

What changes to compensation schemes would best promote just outcomes for victim survivors of sexual violence?

It would be helpful if there was some compensation available to victims even if the defendant was found not guilty. As is widely known, a not guilty verdict does not equate to innocence, and the impacts on victims are still immeasurable. I recognise that it would be difficult to justify compensation after a not guilty verdict, however consideration of other measures such as financial assistance to attend psychology sessions while awaiting trial, or assistance if extended unpaid leave from work is required would be very helpful.

Question 54

If you are a victim survivor, how do you feel about Victims' Charters? Are they important to you? If so, what do you think should be included in the Charter?

Victim's Charters/Guidelines are extremely important. Please see the Appendix for how I used the WA Victims of Crime Guidelines to support my letter of complaint about the conduct of the judge presiding over the trial.

I think more in-depth details about unacceptable behaviours by legal professionals should be included, as well as guidelines for what should be restricted in cross-examination (including details such as language used) would be useful to add into charters.

Question 56

What are your ideas for ensuring victim survivors' rights are identified and respected by the criminal justice system? What can be done?

Firstly, victim's rights need to be cared about by all in the justice system – not just prosecuting teams, but also judges, defence lawyers and all people who interact with victim-survivors.

There should be penalties or consequences for not identifying and respecting victim survivors' rights. These should be transparent so that it is clear to everyone involved what the outcomes should be for people not adhering to the charters/guidelines.

In terms of the complaints process, my experience has shown that there is little understanding about where complaints should be directed. I was first advised by the ODPP to submit my complaint about the [REDACTED] judge to the Commissioner for Victims of Crime. After submitting the complaint I was advised weeks later by the Commissioner that the complaint actually needed to be submitted to the [REDACTED]. I submitted the new complaint letter as advised, and after 6 weeks, received a response from the [REDACTED] stating that the complaint needed to be forwarded to the [REDACTED]. After submitting my first complaint on [REDACTED] and it having been re-directed 3 times, I am still awaiting on an outcome of the complaint [REDACTED]. Evidently there needs to be a more streamlined, efficient system for complaints submissions and responses.

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