

Justice Response to Sexual Violence Submission

I am a victim survivor of sexual violence. I first reported the crime to the Department of Child Welfare in 1989 when the offences occurred, I was 16 years old and the perpetrator was my adoptive father. I was removed from my home and placed into emergency foster care at the request of my adoptive mother who did not believe me and no further action was taken until I made an official report to police when I was 44 years old.

Criminal justice response to sexual violence

I had never told anyone the full extent of the abuse that had taken place until I told a very close friend what had happened this was in 2007. She encouraged me to find some sort of support, which I did. It wasn't easy accessing support but I eventually found and attended the Gold Coast Centre Against Sexual Violence for numerous years, this centre was amazingly helpful, supportive and informative.

The centre helped me to realise that I needed to report what had happened to me but as the offence had occurred in Adelaide they could only give me limited support when it came to reporting to police and dealing with any court action. This was due to Australian States having different reporting structures and legal requirements.

Seeking information and help and reporting could be made better by:

- Access to victim survivors on how to report to other states where the offences occurred.
- Needs to be more centres like the Gold Coast Centre Against Sexual Violence implemented Australia wide.
- Government funding needs to be provided for these centres/organisations to continue their support of victim survivors.

Police responses to reports of sexual violence

In October 2017, I went to my local Police Station on the Gold Coast with a close friend, to report the abuse that had occurred in 1989. I live in Queensland but the offences that occurred had taken place in Adelaide, South Australia. The initial report was made and then a statement was taken from me at a Queensland CIB and then sent to the South Australia CIB Child Abuse Investigations Unit.

In making a report to the police I found it difficult and unresponsive. I wasn't offered a female officer to report the incidents to, I would have preferred that option if it had been given. I was taken to a room that looked like it was the filing room and where police officers were walking in and out at any given time. There was no sensitivity given to the matter at hand, this was in fact the first time I had disclosed everything that had happened to me in detail and I felt extremely anxious and uncomfortable.

There was also a lack of information on how the process would take place. After the initial report was taken a couple of months later a full statement was then taken.

The CIB Detective that took my full statement in Qld suggested I seek professional support, along the lines of a Psychologist, but did not give me any contact numbers or any information to seek that support, I had to find my own professional support, which I did. I was told I would have to wait to hear from someone when my case was picked up in South Australia, which was in April 2018.

Improving Police responses to reports of sexual violence

- Police Officers being extensively trained in dealing with complainants when they come forward to report.
- Learning to show empathy and making sure a complainant is made to feel safe and comfortable as possible.
- Have access to a private room with no foot traffic.
- Given paper information or email on who and where to go to get professional support.
- Paper information or email about the processes of what happens next after you report (most complainants won't remember what has been told to them after they have just reported their traumatic incident).
- Make a follow up call to victim survivors to check that they are ok and they have sought some sort of support.

Prosecution responses

As a victim survivor I had contact with the ODPP. I met with the ODPP when I had my first proofing meeting, I also met for the first time the Witness Assistance Service person. It was very confronting and daunting to be in a very small room with people I had never met before, except for the Detective that was handling the case. I was given a hand book of what happens leading up to trial and the court process. The ODPP were very responsive and helpful, however I felt inundated with information and lots of questions. We went into great detail about my written statement.

Ideas for improving ODPP responses to the prosecution of sexual violence

- Being trauma informed should be a prerequisite.
- More than one proofing meeting before a case is to go to trial, I found one meeting wasn't enough as a victim survivor.
- Witness Assistance Services need to keep the one witness support person on a case. I had a total of 3 witness support workers as their contracts ended before my case/trial was finalised. This was somewhat unsettling.
- Keeping the complainant up to date on the progression of the case.

The trial process

'Special measures': procedural changes

The accused pleaded not guilty and the matter was committed to trial in the District court of South Australia. The trial was with a jury and it was a closed court due to the fact that the case was classed as child sexual abuse, as I was under 17 years of age when the offenses occurred, I wanted to have someone that I knew come into the courtroom with me so I could focus on them while I was giving evidence but that wasn't allowed. I gave my evidence in the courtroom and chose to use the one-way screen so I didn't have to see the accused. I also had a court appointed support person sit nearby for a little extra reassurance.

My views are that I don't think any measures reduce the trauma of giving evidence, it does however ease the anxiety of knowing that you don't have to see the accused when giving your evidence with the use of one-way screens. I was offered to give my evidence via CCTV but I wanted to be in the courtroom.

Improving court processes for complainants

- Having one family member or friend inside the courtroom for reassurance.
- The one way screen to be made totally blurred out so the accused can't see the complainant giving evidence (although I couldn't see the accused it was unsettling to know that they could see me).

'Special measures': evidence in the form of audio-visual recordings

The numerous interviews that I gave with the police were never recorded and my evidence was not recorded for any pre-trial hearings in court.

The advantages of using recordings of complainants evidence at trial

- Less distressing on the complainant even if they are not a child or a vulnerable adult. Someone who suffers with severe anxiety may find this easier to give evidence than having to sit in a courtroom.

The disadvantages of using recordings of complainants evidence at trial

- Loss of recorded evidence (which would cause more trauma having to recall the incident again).
- Tampering of recorded evidence (accidentally or intentionally).

'Special measures': intermediaries and ground rules hearings

There were no intermediaries involved to assist with communication during my case. I don't feel it would have been helpful in my trial as I was able to articulate and clearly communicate the events well.

Although I have very little knowledge of the use of intermediaries in the criminal justice system as this was never discussed with me at any meetings held with the ODPP or the police, I think this scheme would be very helpful and needs to be implemented nationwide.

Assessment of the credibility and reliability of complainants

I have some knowledge of the research into memory and responsive behaviour in the context of sexual violence trauma. My views about the research is that it is incredibly informative. For the research to understand that there is a need for victim survivors to be heard and believed by all aspects of the justice system from police to judges.

I think prosecutors should call expert evidence regarding the research as I believe that juries and judges would have a better understanding of how a victim survivor presents themselves in the courtroom when giving evidence. For victim survivors to recall traumatic events in front of strangers is extremely stressful, triggering and re-traumatising and sometimes the ability to take in everything that is asked of you on the stand can be challenging.

The usefulness in countering myths and misconceptions to the jury I believe is a must. The jury needs some understanding that a complainant may have a lapse of memory after the incident occurred and during the court proceedings due to re-traumatisation. I in fact had a memory recall during the trial and had to do another addendum statement.

Judge-alone trials

A trial by judge alone in my view is sometimes needed but the risks of a trial being drawn out longer while a judge makes a decision could be detrimental to the complainants mental health, especially if the trial has already been long or delayed. A judge alone trial also relies on how their decision was made and the hope that their own beliefs didn't take part in the decision making process.

Cross-examination and the law of evidence

As a victim survivor my experience when being cross-examined was very triggering and re-traumatising. My memory was called into question numerous times. The defence was annoying, harassing and repetitive. I was feeling overwhelmed and started to worry that I was saying the wrong thing. I have an extremely good memory of events that had occurred but I was made to have self doubt regarding my own memory when the defence kept repeating the same question to me over and over again. The prosecutor did object eventually and the judge said she felt I had answered the questions adequately and asked the defence to move on.

Legislative provisions are adequate enough to protect the complainant, however there is always room for improvement. One way to improve protection for complainants is to ensure judges, prosecutors and defence are trauma informed as this can help them to better understand the impact of trauma on a complainant's ability to participate in the trial. I believe they should be harmonised.

Cross-examination that reflects myths and misconception about sexual violence, such as the belief that a 'rape victim' would be expected to complain at the first reasonable opportunity, should be restricted on the grounds that it is not only irrelevant but also harmful to the complainant. These myths can create harmful

stereotypes and can also further traumatise a victim survivor. It is important to ensure that trials are conducted in a fair and respectful manner and that complainants are not subjected to harmful and misleading questions based on myths and misconceptions.

Personal information

As a victim survivor my personal information records from my psychologist, psychiatrist and counsellor were never sought prior to or during the trial as far as I'm aware of.

Protecting the confidentiality of personal information obtained during counselling is very important and crucial for maintaining trust. That's why there are laws and ethical guidelines in place to protect the privacy of complainants during counselling sessions. It is important for legislative provisions to be tough and consistent across different areas to ensure that victim survivors can feel confident in seeking counselling without fear that their personal information be misused or disclosed without their consent. I don't think they should be harmonised.

I don't believe there is a need for complainants to be separately legally represented in court when submissions are made about the disclosure of the material and the application of the legislative provisions.

Specialisation and training of judges and counsel

My views on the creation of specialist courts, sections, or lists are that they can be beneficial in our legal system as they allow for a more focused approach for victim survivors of sexual violence. These specialised courts can provide judges and counsel with the expertise needed to handle these sensitive cases effectively, they can also help streamline the legal process and ensure that cases are handled in a timely manner.

I support specialised training for judges who conduct sexual offence cases.

The training should address various important issues such as:

- Being educated on the complexities of sexual offences, including the impact of trauma on the victim survivor.
- Emphasise the importance of treating victim survivors with sensitivity, empathy and respect throughout the trial.
- Being educated on myths and misconceptions surrounding sexual violence to prevent biases from influencing their decisions.
- To be trauma informed to ensure that victims are not re-traumatised during the trial.
- Addressing issues related to cultural diversity and how it may impact perceptions of sexual violence and the legal process.

By providing judges with extensive training on these issues, we can work towards a more just and supportive legal system for survivors of sexual violence.

I support some form of special accreditation for lawyers who appear in sexual offence cases but this may limit the number of lawyers available to appear in these

cases and potentially contribute to delays in cases, which will cause more distress for a complainant. Instead of accreditation, maybe ongoing professional development and training in the area of sexual offence cases can help lawyers to enhance their skills and knowledge. This can ensure that complainants have competent legal representation while also addressing the complexities of cases.

Delays

The delays I experienced in my case were significant. From the very beginning of reporting to the police, to the sentencing and to the final appeals process being finalised it took 5 years, from 2017 to 2022. There were very little delays with the police other than having to do statements and then a further 3 Addendum statements that all took time. The trial was delayed a total of 2 times reason being were:

- Covid delayed all trials. My first trial was to be held in August 2020. A new date was set for July 2021, almost 11 months later (it was also set on my birthday and no one had realised). We found out that my trial had been placed at the bottom of the court list and was not prioritised as it should have been.
- Covid and social distancing delayed the trial for a second time in July 2021. It was then prioritised to be held as soon as possible.
- Trial was held in October 2021.
- Offender appealed the verdict in November 2021.
- I read my Victim impact statement in March 2022.
- First Sentencing attempt was in April 2022, was then delayed due to the offender being unable to attend court.
- Second and final attendance for sentencing in June 2022.
- Offender lost his appeal in September 2022.

The impact of those delays to myself, my family and friends was substantial. I suffered from numerous severe anxiety attacks. I had to be assessed by a psychiatrist, as my mental health was deteriorating. I was triggered and traumatised. I needed to see 2 clinical psychologists as well as an appointed counsellor from Victims of Crime. For my family to witness my deteriorating mental health was hard for them to watch and not know how to help me through it. Friends were very supportive and helpful to myself and family.

Reducing delays in courts can be a complex issue but some ideas that could help improve and reduce backlog are:

- Implementing effective case management strategies such as setting up realistic timelines for each stage of a case and monitoring the progress may help prevent delays.
- Establishing specialised courts for sexual violence cases, this would help to increase the completion of cases.
- Providing courts with adequate funding and resources, such as judges, court staff, facilities, this can help them operate more efficiently and reduce delays.

As for a national approach to reducing delays, a partnership between federal, state and territory governments could be beneficial. Developing consistent guidelines and practices across jurisdictions, sharing resources and information and implementing them nationwide could help address delays in a more effective manner.

Guilty pleas

The offender did not plead guilty to 4 offences that he was charged with. I was not informed if any negotiations were made to the offender by the ODPP to change their plea. I feel if they had pleaded guilty the process would have significantly reduced the timeline of the case.

Sentencing indication hearings (or their equivalent) can be effective in encouraging guilty pleas as they provide offenders with an idea of the likely sentence they would receive if they were to plead guilty. This could help offenders make a more informed decision about whether to plead guilty or not.

Sentencing

There are aspects of sentencing practices and outcomes that may be harmonised across jurisdictions. Establishing consistent guidelines and principles for sentencing. Jurisdictions can work towards a greater unity in how offenders are sentenced, this could help promote fairness, transparency and consistency in the criminal justice system.

My experience of the sentencing process was daunting and drawn out. I feel that the timeline between verdict and sentencing was vexing. Waiting 8 months for the offender to be sentenced was something I had never expected. There was little information offered to me, which I felt was an important aspect of the sentencing process as well as the lack of communication that was given prior, during and after the sentencing occurred. I did however like the aspect of being given the option to write a Victim Impact Statement as well as read it out in court.

I chose to write a Victim Impact Statement and the process helped me to express my feelings, thoughts and experiences in my own words. I felt that I was able to say more than what was allowed during the trial. I hoped I was heard and understood by the judge and how the full extent of the offence and the offender had impacted my life. I hoped my Victim Impact Statement would have some reflection on how the offender should be sentenced. I appreciated the judge addressing me after she handed the sentence down to the offender.

There is a need for some improvements to the sentencing process such as

- Sentencing needs to be applied closer to when the verdict is made, again this helps victim survivors to move forward.
- Provide clearer explanations for the reasons behind the sentencing decisions.
- Consider implementing mandatory minimum sentences in jail for offences to ensure consistency and to send a strong message (the offender was sentenced to home detention).

Appellate proceedings

The offender appealed the conviction a month after he was found guilty of all 4 charges. I was contacted by the Witness Assistance services, who informed me of the appeal. They discussed with me what the process would be with the appeal. I was given an information/fact sheet on understanding appeals in a criminal court. I found this information to be somewhat helpful but I wasn't given a timeline of how long the process could take.

When the decision was made, I received a phone call from the Witness Assistance Service. The appeals process took 10 months and the offender lost and he did not take the appeal any further. During the 10 months of the appeals process I had very little contact with the Witness Assistance Service, other than when I contacted them to enquire about how the process was going. I was very frustrated and annoyed that I was having to do this as this is what had happened during the reporting and court process. Communication with police, ODPP and Witness Support Services throughout the 5 years was lax.

The appeals process had an impact on me. I wanted it all to be finalised so I could move forward. I was still struggling with my mental health and the appeals process wasn't helping. I had considerable concern that there would be a re-trial and that the offender would be found innocent.

My ideas for improving the appeals process are

- Consistent communication with victim survivors, regarding the process and progression of the case.
- Provide more in depth and clear information about victim survivors rights.

Civil proceedings and other justice responses

Restorative Justice

As a victim survivor, my feelings about restorative justice is that it is something that I would not have wanted to do. I wouldn't be comfortable sitting across the table from the offender and talking to him about how the offences committed had affected me and my life. I also wouldn't want to hear his response to why he committed those offences, but an apology would be good to receive. For some victim survivors restorative justice could possibly be beneficial, it may help towards their healing process so it is an important option to have implemented.

Ideas for implementing restorative justice as a way of responding to sexual violence are:

- Focusing the needs and wishes of the victim survivor throughout the process, ensuring they have control over their own healing journey.
- Provide a dialogue between the victim survivor and offender, if the survivor is willing, this can enable an opportunity for the victim survivor to express their feelings, ask questions and seek understanding.

- Involve supportive help from friends and family or other community members who can help create a supportive environment for the victim survivor.
- Continuously evaluate the effectiveness of the restorative justice approach and obtain feedback from victim survivors, offenders and other participants.

Civil Litigation

The measures that are likely to most improve civil justice response to sexual violence are the need for government funding for some applicants as well as government enforcement of orders to pay damages.

Compensation Scheme

As a victim survivor I applied for the Victims of crime compensation after the offender was convicted. My experience with applying for compensation was extremely frustrating, tiring and yet again re-traumatising. I had to undertake a Psychiatric assessment which was required to assess the impacts of the crime, this was gruelling and invasive. I found it hard to understand why I had to go through that process when the offender had been found guilty of the crime. I feel the compensation payout I received did not reflect the long lasting impacts the crime would have on my well being and my career. It took some time for me to receive my compensation, in fact it took over a year after the offender was sentenced.

To promote just outcomes for victim survivors of sexual violence regarding compensation schemes are:

- Increased financial support to help cover medical expenses such as therapy costs, loss of wages and other related expenses that can help alleviate the burden that they may face.
- Simplifying the application process for compensation, this can make it easier for victim survivors to access support without facing additional barriers.
- Ensuring that compensation schemes are trauma informed and sensitive to the needs of victim survivors, this can help create a more supportive and understanding environment for survivors seeking assistance.
- Provide ongoing long term support to victim survivors, such as counselling and other mental health resources, this could help survivors in the healing and recovering process from the trauma they have experienced.

Victims' charters

As a victim survivor I believe the victims' charter is very important. I think what needs to be included in the charter is:

- Information and communication regarding the progress of the case, including court dates, outcomes and support services.
- Provide more clear and timely communication regarding rights and entitlements.

- Victim survivors should have access to support services such as counselling and victim advocacy to help navigate the criminal justice system and cope with the emotional impact of their experience.

Ideas for ensuring victim survivors rights are identified and respected by the criminal justice system are:

- Providing more and ongoing training to police officers, prosecutors, defence, judges and other professionals in the criminal justice system on victim survivors rights and needs.
- Implementing clear policies and procedures within the criminal justice system that outline victim survivors rights and how they should be respected this can help ensure consistency and accountability.
- Taking a more trauma informed approach in the criminal justice system can help professionals better understand and respond to the needs of victim survivors in a more sensitive and supportive manner.

By implementing these strategies and prioritising the rights and needs of victim survivors, this can help towards a more just and compassionate criminal justice system.