

By: [REDACTED]

**My Lived Experience:** I am a victim of sexual assault and physical assault at the same time which occurred in [REDACTED]. I reported it to police after a PTSD episode in [REDACTED]. My case went to a Contested Hearing [REDACTED] and the accused was acquitted. I was shocked and appalled at the facade of a legal system purporting to protect women from abuse.

**My suggestions to improve the legal system in regard to sexual violence cases:**

**Refer to the below 10 listed issues and solutions:**

**Issue 1: Statute of Limitations on physical assault is 1 to 2 years compared to no time limit on sexual assault.**

Issue:

- My case: The police wanted to charge the accused with 3 counts of sexual assault and 2 counts of aggravated physical assault. However, because it was reported more than 2 years since time of incident, they were barred from prosecuting the accused for the physical assault. I reported it to police 2 years and 5 months after the incident, which is normal behaviour for victims of sexual assault.
- If a victim reports a sexual assault many years later, it can be investigated and charges laid as there is no time limit on sexual assault. However, the physical assault which occurred at the same time can not be investigated and charged due to the statute of limitations. Hence the accused gets away with the physical assault and the focus is only on the sexual assault which is extremely hard to prove in Criminal Law.

Resolution: Where physical assault occurs in-conjunction with sexual assault the statute of limitations should not apply.

Rationale: There is no limitation on sexual assault charges as victims can take many years before they are able to report the crime. However, that means many perpetrators will never be charged with the physical assault committed during the sexual assault due to the statute of limitations period having expired.

## **Issue 2: Imbalance of power in the court system in the perpetrators favour.**

Issue:

- The accused can employ highly experienced and educated Barristers. However, the victim in a Magistrates court must rely on a Prosecutor who has significantly less training and skill.
- The accused can communicate with their representatives at length before the trial and sit with them through the trial and communicate with them and provide information as the case proceeds. However, the victim barely sees the Prosecutor for a Magistrate's Hearing and is not allowed to sit with or communicate with them throughout the trial, despite the Victim being the prime witness.
- When a victim personally applies for a Personal Safety Intervention order (because the police done), a victim has to self-fund it and it may cost \$20,000 hence drops the application and the accused gets away with it ready to abuse again. Or the Victim is forced to self-represent against the defence's legal professionals.

Resolution: Several contributing factors to the imbalance of power need to be discussed and reviewed and recommendations put forward.

Rationale: Both parties should have equal rights in court. Without this there is a lower probability of a fair trial and holding the perpetrator accountable.

### **Issue 3: Education for women**

Issue: When I was attacked, I didn't know what to do after and was in shock, terrified, embarrassed etc, so did I not report it. I think that if we educate women on two things it will equip them to hopefully stop an attack and if that doesn't work than be equipped with a plan on what to do after the attack. This will result in more cases being reported with more evidence and hence more accused being found guilty.

The two main focuses for women should be:

1. How to prevent/stop an attack (effective self-defence)
2. What to do after an attack – call police and get DNA and all witnesses interviewed before they get a chance to collude and lie. Then get referred to get help as they will need it. This may help prevent women suppressing it and not reporting it and not getting help.
3. Teach women some of the legal need to know e.g. that they have 2 years only to report physical assault that occurred at same time as the sexual assault, how important it is to get evidence and what evidence is needed.

Resolution: We need to equip women in society to be informed to be able to act appropriately and informed. Society needs to be educated on preventing and responding to sexual assault. Self-defence should be strongly promoted and enabled and there should be education on what constitutes sexual assault. Educate to report the assault right away and to obtain DNA and witnesses statements before collusion and lies occur.

Rationale: Sexual assault is often reported many years later which makes it hard to achieve a conviction due to lack of evidence. If it is reported straight away, then DNA samples can be taken, and witness accounts are more memorable and reliable, and it reduces opportunity for collusion of fictitious stories and lies.

#### **Issue 4: Lack of easily accessible and reasonable oversight over the Magistrate**

Issue:

- I was horrified at what I describe as either incompetence of the Magistrate to not pay attention to details put forward by the witness and the inability to draw reasonable conclusions from them, or the details were ignored due to a bias (conscious or unconscious bias).
- The conclusion drawn by the Magistrate was in conflict with the evidence provided.
- The Magistrate cherry picked a few details in his conclusion and omitted facts that didn't support his narrative. E.g. he used 2 witnesses (who lied) as his key support for his conclusion and quoted them. But he failed to state that one of the witnesses was caught being coached by the accused whilst the witness was under oath to change her answer from yes to no to make me look less credible. Also the other witnesses, if the magistrate considered the facts put in front of him, would have seen that the witness lied for a few reasons, mainly because what they said was in direct conflict with photographic evidence so it couldn't have happened the way that witness said it did. But the magistrate ignored that.
- One of the witnesses was caught being coached by the accused whilst the witness was under oath to change her answer from yes to no to make me look less credible. However, although the magistrate called it out, the witness proceeded, and the magistrate did not hold the witness accountable for perjury.
- I put in a complaint twice to the judicial commission once in 2022 (I listed 6 complaints) and once in 2023 (I listed 10 complaints) about the appalling Magistrate approaches and behavior but every time the Judicial commission came back to me and said they were found to have done nothing wrong. The Judicial Commission clearly protects its own.

Resolution:

There needs to be a truly independent oversight of Judicial officers. All complaints need to be taken seriously and investigated properly.

Rationale:

Without that they are never held to account and are free to mismanage cases based on bias or corruption or whatever other reason they have.

## **Issue 5: Magistrates that minimise trauma**

Issue:

- I was told by the magistrate in the conclusion that I was considered less credible and prone to exaggeration because (one of the main reasons) he said he didn't believe me when I said, "I was fighting for my life". He said he didn't believe it.
- I say that just because I didn't get killed it doesn't mean that I didn't think I was about to die.
- I was pinned down, unable to get away, being molested and choked. Of course the mere act of surviving to me was me fighting for my life.
- The police put forward evidence which was a photo of me pinned on the ground and in a headlock, but the magistrate said, 'That's not a headlock'. I was clearly struggling to breath, and I'm trying to pull the accused's arm away from my throat and my face is contorted. How incompetent or biased is a magistrate to not see that.

Resolution:

- Only employ trauma informed judicial officers and increase the number of women judges and magistrates.
- Provide more effective trauma informed training so it 'hits home' and they can develop some empathy and understanding of how trauma impacts a person and their reactions and behavior. Not just learn words on a page but really understand the concept.

## **Issue 6: Magistrate allowed inappropriate and irrelevant questioning by defence - due to lack of understanding of the trauma response**

### **Issue:**

- Defense was allowed to spend half a day questioning me about communications I'd had with the accused 2 years after the incident (and a few months before I reported the incident) and they couldn't understand why I continued to associate with the accused (albeit to a significantly lesser extent) and based their argument on that. i.e. they couldn't understand why a victim would continue to be around that person. They clearly don't understand suppression and victims having to live with that person in their life or world. It doesn't mean it didn't happen, it means the victim is trying to continue in life and suppress it because they have to, because that person is in their life and nobody will believe them, and they haven't processed the trauma etc.
- The magistrate then included that fact in their conclusion to say that the assault that occurred a few years earlier didn't happen, because it's not believable that I'd be communicating with the accused as I did years later if they had assaulted me the way I said they did.

### **Resolution:**

- Only employ trauma informed judicial officers and increase the number of women judges and magistrates.
- Provide more effective trauma informed training so it 'hits home' and they can develop some empathy and understanding of how trauma impacts a person and their reactions and behavior. Not just learn words on a page but really understand the concept.

## **Issue 7: No recourse for victim if the accused is acquitted**

Issue:

- I was not given any input as to whether the Prosecutor should appeal the decision. And they didn't appeal it.
- However, I as the primary victim knew exactly how the Prosecutor could win the appeal case as I'd listened to it all and knew exactly where the accused and their lying witnesses could be caught out lying and inconsistent with all the facts not just a few cherry picked facts.

Resolution:

- Victims should be able to decide if they want to appeal the decision, just as it was their decision to charge the accused or not charge them or drop the charges. If the case made it to a decision stage, then there is clearly some evidence.
- Victims should be consulted by the Prosecutor to go over evidence and arguments with the victim's input before an appeal.

## **Issue 8: Underfunded prosecutorial resources**

Issue:

- The police should have subpoenaed the camera that had photos on it from the night of the assault including the one of me in the headlock.
- That could have been used as evidence to show they had the device and hence all the videos and photos on it. Instead, they were open to accusations by the defense that I'd omitted any photos that didn't suit my story. I had nothing to prove otherwise, as I only had the photos the owner of the camera had sent me.

Resolution:

- More funding for the Prosecution evidence gathering.



### **Issue 9: Long period of time from reporting incident to police and Contested Hearing**

Issue:

- I reported incident to police in Jan 2021, the accused was arrested in July 2021.
- There were two Hearings and then the final Contested Hearing was only in Feb 2023.
- This period of 2 years is too long. Issue is that witness's memories fade and they are considered less reliable and credible in court for the victim.

Resolution:

- Create a law and resources so that all sexual assault cases reach the final Contested Hearing within one year of the charges being laid.

### **Issue 10: No intervention order despite being arrested for 3 counts of sexual assault**

Issue:

- The accused was arrested in July 2021. However, no intervention order was put on the accused because it did not fit within the criteria the police needed, in that it was not an immediate risk to me as the assault occurred in Aug 2018.
- When I applied for a PSO it was not granted.
- I was then subject to escalating bullying, harassment, verbal abuse and eventually another act of physical assault. This was in response to me reporting the accused for the sexual assault in Jan 2021.

Resolution:

- When charged with sexual assault, the police should have to apply for an intervention order (to hold until the Final Hearing) even if it is a historical case. This is because it is highly likely they will abuse the victim in retaliation – this conclusion is evidence based.

Please accept this as my submission as I don't have access to upload files.

This is part 2 of my submission as I submitted part 1 yesterday as a file upload.

Part 2.

my name is [REDACTED]

and I've experienced sexual violence as a victim and the court hearings.

[REDACTED]

The trial

Humiliating and made me feel like a liar. Defence even had a go at me about my views on covid lockdowns despite it having nothing to do with my sexual assault case.

Another witness opened up in court that she too had been molested at the same party by same person and the magistrate and defence referred to it as "the white elephant in the room".

One witness was coached by the accused and even though caught changing her answer in response, was allowed to continue and her evidence was used in the magistrates decision conclusion.

Police responses

Police should have obtained a forensic opinion of photo of me in a headlock pinned down. But they didn't so defence gave another view of it that we were laughing and goofing around and magistrate fell for it.

Personal information and Compensation Schemes

To make a vocat claim they got access to ALL my medical records from 2016 to date despite the sexual assault being in Aug 2018. That was unnecessary and unrelated. They even subpoenaed my files from 2 past employers who had nothing to do with the case at all. I had no say.

I still haven't heard back about my vocat claim that was lodged in 2021.

I still haven't got any vocat so must self fund sexual assault counselling which was essential for my survival and functioning. I have to self fund security measures and self Defence. I have to self fund physio for an injury sustained in the sexual assault. And I may never get any comp because the accused was acquitted.

Civil litigation

Too expensive

I didn't know there was a rule that you had to apply within a few years.

Must prove 11% mental health injury to get anything in Vic which is hard to prove.

hence no compo obtainable by civil litigation.

I'm sexually abused and left to rot by sicuety whilst my abuser roams free to do it again.

Delay

Arrest of the accused was made July 2021 but contested final hearing not heard until Feb 2023 which is too long for witnesses memories to remain clear.

Reporting sexual violence

I learned that everyone turns on you and doesn't believe you in your life and doesn't believe you and or victim shames and blames you and you lose many friends along with your reputation.

It's a horrific process and you don't get any justice it just destroys my soul as the victim Wish I'd never reported it.

Victims charters

i never got to read my victim impact statement as the accused was acquitted

