

Issues Paper 49 – Justice Responses to Sexual Violence

Submission by [REDACTED]

Summary: I reported and went to court for three charges of sexual assault: two charges of sexual touching without consent and one charge of sexual intercourse without consent. A fourth charge of inciting a third person to perform a sexual act, was withdrawn by the DPP. The matter went to court and the defendant was found not guilty on all charges. The trial lasted 3 weeks and I was cross examined for 3-4 days. There were 1-2 weeks of pre trial.

Follow up: I am happy to be contacted via email [REDACTED] or mobile [REDACTED] to expand further on the below. As you can see, I have a lot to say. It is triggering and difficult to say it all, and hopefully the below is helpful.

Question 1

The day after the incident, I told my family: [REDACTED] From there I reported to a police station in [REDACTED] and made a brief statement. They then referred me to a hospital, where I disclosed the details of the incident. The staff at the hospital told me they couldn't assist given that the incident occurred in a different state. I went to a second hospital (in [REDACTED] where the assault occurred), to report the details again, and do a rape kit. The QLD police then referred me to a detective in [REDACTED]

I have evidence of telling my fiancé that I wanted “to make a report anonymously”, as I was so afraid of the backlash of reporting the sexual assault. However, as soon as I went to the police station, they immediately took my statement, and the process got started from there. I was never sure what other methods there were to report, including whether there was a way I could report anonymously.

I also wasn't aware of restorative justice – I didn't know what other avenues were possible aside from simply reporting the crime to the police.

My [REDACTED] is an ex police woman, and she told me she would take me to the police station if I wanted to. I agreed. This issue arose in cross examination during the trial, as the defence argued that my [REDACTED] was an ex police woman, so was “assisting me” in “setting up” the defendant, to make him look guilty, and coached me through the reporting process. This is incorrect.

Once I had started the process of telling the police what happened, and once their investigation started, I felt a bit of a sunken cost fallacy, as they were very supportive and putting a lot of effort into investigating the incident. I was determined to see it through, with their help.

In my view, there wasn't a lot of information available to me at the time. Including – what bits of evidence are important, how my evidence might be used against me in court, and what other factors could be used against me in court. For example, when I reported to the police, I drew pictures for my own personal reference and memory. These were later used against me in court. All of my phone calls and text messages around the period of the SA were used against me in court. I had my [REDACTED] party around the time that my perpetrator was arrested, this was used against me in court, I quote the defence barrister: “you didn't want him to get arrested on the [REDACTED] because it was too close to your [REDACTED] party, and you wanted to get drunk and have a good time first”.

I feel that at the time that I reported, I needed legal advice. As much as the defendant immediately got legal advice as soon as he learnt of the matter, why wasn't I entitled to legal advice? I considered hiring my own lawyer, but couldn't afford this.

I don't feel like I received enough information from the beginning, particularly during the stage that the case was with the DPP. I would be told when and where I had to be, and my witness assistant officer was amazing, but I had no idea how I could prepare for what to say in court. However, I do understand that they have to "maintain the integrity of the evidence", but I feel as if I was completely left in the dark. I had no idea what the defence's angle was, or what they were going to question me on. The defence had all the evidence, and the perpetrator didn't get questioned or investigated at all.

I didn't know who I could speak with confidentially, without this being used against me in court. For example, even when I was speaking to my therapist, I was worried that the notes from my therapist sessions would get subpoenaed to court.

Question 2

The only reform I am aware of is that sexual assault victims can testify from a remote room. I chose not to do this, and testify on the stand, as I didn't want to give the defence the satisfaction of thinking that I was scared. I was also nervous that by testifying remotely, I wasn't able to provide the jury with the same human presence that the perpetrator was given. I understand that this is a "myth" that my WAS was trying to talk me out of, but I really felt that if I was a juror, I would empathise more with someone if they were in front of me, vs on a screen.

Question 3

Please provide victims with the options they have. Once my case was with the DPP, they reminded me numerous times that "I didn't have to go ahead if I didn't want to", however, given how far we'd gotten (only x% of cases make it to the DPP!) I felt as if it would be letting people down if I didn't proceed.

Victims, especially those whose trials proceed before court, should be given free and confidential legal advice before proceeding to trial. I have a lot of friends who work as lawyers, however, I was hesitant to ask them for advice, as I wasn't allowed to discuss the case with anyone else.

Another example is when I made my pretext call to the perpetrator. I didn't really know how to approach the call, and I was so scared. I googled what other people had done for their pretext calls, and what their aims were. This research was used against me in court, and was used to frame me as "setting up the defendant".

I don't really know how else it could be made easier, but it wasn't easy. It was extremely isolating. I don't know what I don't know, if that makes sense.

Question 4

I really think that victim/survivors should be entitled to a limited amount of sessions with a legal expert, prior to testifying. You cannot receive legal advice from the DPP, as they are responsible for maintaining the integrity of the case and evidence. You cannot discuss anything with them. To have had the ability to discuss the matter with an objective, third party legal expert, would've helped me hugely. For example – a reminder that it is absolutely imperative not to discuss the case with anyone, how to navigate discussing the case with your employer (I had to take a significant time off work), what information I am legally entitled to, what questions I legally don't have to answer, etc.

Question 5

I went to report the incident to the police the next day in [REDACTED] I was then referred to a detective in [REDACTED] as the assault occurred in [REDACTED] My [REDACTED] drove me to the police station. When we got

there, we said I had to report a sexual assault. They took it seriously and immediately brought me in to take a statement. The statement was brief (2 pages). When they referred me to the detective in charge in [REDACTED] I had to go back to the police station in [REDACTED] a few weeks later. There I made my second statement, which took 6 hours.

Question 6

The detective that helped me seemed to be very well trained in trauma and responses in sexual assault cases. She believed me from the start, and even after the not guilty verdict, still believes me, which is very reassuring. I never felt as if the police weren't taking me seriously. I was scared as I'd heard a few horror stories of victims reporting to police and not being taken seriously. I didn't experience this. The detective was also very accommodating and understanding when approaching and interviewing my family members. I don't know how many audits or reviews were made of the detectives inquiries, I think a lot of this is done behind the scenes without the knowledge of the victim.

The detective in charge always gave me the option to do or not do things. I never felt forced.

Question 7

I know that when I was giving my statement, it says that "anything you say can be used against you in court", however, I wish I knew that everything, down to the word, would be scrutinised by the defence.

I think before a victim makes a statement, it is made known to them what the worst case scenario could be. i.e: everything you say in this statement can and will be used against you in court, when and if the matter goes to court, everything you say will be reviewed by the defence lawyers, and presented to the jury.

Question 8

I had contact with the ODPP. The witness assistant support officer was the loveliest person and most helpful person there. Whenever I had a conference with the lawyers (I think there were 2 before the trial went ahead), it was very serious and I was limited in what I could ask and what information I could be given by the lawyers. I was told that it wasn't really about me, and that I was a "passenger in the plane that they were flying", so to just sit back and try and relax.

Question 9

I believe that my prosecutors were well trained in trauma. I don't feel as if I received enough communication about the details of the matter, however, I understand that I was not meant to do so. I find it bizarre that the defence can "build" a case with the defendant and form a relationship with them, where as I couldn't really communicate with my prosecutor.

Question 10

Explain to victims again, that ANYTHING they say to the prosecutor/DPP team, can, and will, be used against them in court.

Question 11

- Closed court: yes, but I had to walk past the defendants family, [REDACTED] and supporters, while entering the court room. I also knew, that the media was watching me the whole time via video link.

- I did not have the luxury of a one-way screen to block my view from the accused. The accused was given special permission to sit in the general public seats, right behind his barrister, so that I had to see him the whole time. He glared at me the whole time I testified.
- I was offered to give my evidence in a dedicated room. I decided not to, as explained above.
- I had one support person, but this was a volunteer that I had never met before. My family and friends were told to stay away from the court room during the trial, as this could've been used by the defence. This was used against me, as my [REDACTED] is a sexual assault survivor. When [REDACTED] accompanied me to court, the defence stated that my [REDACTED] was "coaching and encouraging me to testify to make it look worse for [REDACTED] client"
- The accused walked past me numerous times (eg- going to the bathrooms in breaks).

There should also be more clarity around the length of the trial. For example, it is not good enough to give estimates on how long the trial could go for. My trial was set down for one week, and it took 3 weeks to complete. I had to take this time off work and tell them in advance how long it would take. I had to explain when there were delays. There were 2 weeks of pre-trial before my trial. I didn't even know that there was such a thing as a pre trial. I had to wait around during the pre trial, to wait and see if and when I would get called to give evidence. My friends and family took time out to come and support me, but after a few weeks it became too much and a lot of them had to go back to work.

Question 12

The most traumatic of the measures above, was that the accused in my case was able to sit right behind his barrister whilst I was testifying. The second one, was not being able to have any of my family or friends present (as most of them were witnesses).

Question 13

Please give victims a chance to speak to the jury without any interruptions. When I testified, I was limited to what I could say, as I was told I was only allowed to "answer the question". I wish I had 7 to 10 minutes to just speak to the jury about my experience, without it being framed by someone else.

Question 14

I don't believe that my interviews with police were recorded, not to my knowledge anyway. My evidence wasn't pre-recorded.

I didn't know this was an option.

Question 16/17

Not applicable.

Question 18

I am aware there has been a lot of research in this space. I felt that the police and DPP were informed on this matter. However, the defence barrister used small elements of my evidence against me, saying that my memory was poor, based on a few seconds of incorrect memory.

I accurately remembered the majority of the night. The majority of my evidence was shown on CCTV. There was only a few seconds discrepancy, which the defence honed in on.

I do not know if the judge gave directions to the jury about the myths and misconceptions of memory from trauma. It didn't seem to matter, as the defence's argument was focused on my memory of the events, and not correctly remembering one detail of the event.

I do not know if my trial judges gave the jury directions about 'delayed' complaints, consent, and other myths and misconceptions

There was no expert evidence about memory and responsive behaviour called in my trial. I would've loved to have discussed this, as I feel strongly about it, however I didn't have the chance. I think it should be compulsory, that an expert in this field be brought into sexual assault trials.

Question 19

My view is that it is important to remind the jury about myths and misconceptions, however, there is only so much you can say and do to affect their understanding. Whether they choose to listen or not is up to them.

I don't believe the judge in my case provided enough information to the jury about the myths and misconceptions of sexual assault victims. I think these would be extremely useful, and jury members should become acquainted with basic consent laws before sitting on a jury for a sexual assault trial.

Question 20

I would've loved a mixed jury with a few people in there who had expertise in this field. However, I have no idea how my jury was selected, I believe it is selected by the defence?

I have no idea if an educative video was played to the jury. I doubt it.

Question 21

It's difficult to say. As mentioned, it is human nature to have your own beliefs and misconceptions. It was said to me that you just had to get "lucky", with who you received as a judge or juror.

Question 22

Horrible. I was on the stand for 3 days. The prosecution objected a few times. However, the most distressing part was when the judge would get impatient with me when I would get upset or not answer the question correctly. The defence barrister would purposefully ask questions in an abrupt manner, in order to upset me and throw me off. It was extremely difficult to keep my cool, and ensure that I answered the question without letting my emotions get the best of me. It went on for way too long, and I still don't understand why the defendant wasn't cross examined. I couldn't speak to the lawyers, or anyone, during cross examination (3 days). I went back to my hotel room, by myself. It was embarrassing. I had to get up and demonstrate to the jury how this man had sexually assaulted me.

The judge did intervene a couple of times to the defence on a few questions. He also suggested I take breaks when I started crying. But I'd already been there for 2 weeks, so I wanted to get through my evidence and go back to work.

Question 23

Judges need to be stricter on the defence cross examination, particularly with harassment and intimidation. I definitely experienced this, and there was no objection. It was extremely repetitive. I

was cross examined for 3 days. The incident took place over a couple of hours. Why was I there for so long?

Very belittling tone and manner (eg- laughing at my responses, asking me questions like “you can’t be serious”?)

I was also cross examined and asked questions about:

- My relationship with my [REDACTED] (not the accused)
- What I was wearing the night I was assaulted
- My personality. I quote: “you’re quite a fiery person [REDACTED], why didn’t you tell my client to stop”?)
- My job: “you’re a smart person [REDACTED], surely you are smart enough to tell them to stop?”
- What gender I identify as. The assault took place in a male bathroom. The defence asked me what gender I identified with. I don’t really care for gender.

In their closing arguments, the defence painted me as manipulative and [REDACTED]. Which was posted in the media.

Question 24

Yes, it is irrelevant. It should also not matter what the victim is doing on the day that they report their sexual assault. For example, the day I reported my sexual assault, [REDACTED]

Question 25/26

NA

Question 27

None of the records from my therapists’ sessions were brought into trial. However, I was questioned about some elements of what I’d discussed with my therapist(s).

Question 28

NA

Question 29-32

I am a bit confused about this section, and would be happy to discuss in more detail.

Question 33

Please, please create a specialist court for sexual assault. There should be specialised, trained judges and prosecutors for these matters. There should be reviews of the defence barristers who cross examine sexual assault victims. The effects of the re-traumatisation is extremely damaging and costly. The trauma I endured from the cross examination I sat through, almost outweighs the sexual assault I went through.

Question 34

My case was meant to go to trial, but there were 2 weeks of pre-trial which pushed back my trial and delayed it. These delays had extreme impact on me, my work, my family and friends. Over the course of my trial, I lost 7 kilos, as I couldn't eat or sleep. I couldn't speak to my friends or family. I was in a hotel room by myself, I wasn't even allowed to have my [REDACTED] stay with me, as he was a witness. I had to take 3 weeks off work. I had to pay upfront for the cost of the hotel, because you get reimbursed by the DPP but this can take months to get the money back. It was extremely distressing for me, my family and my colleagues.

Question 35

Pre-trial. This should've taken place before witnesses were asked to be present. They took 2 weeks. I had to be present and on call the whole time.

Question 36-44

Not applicable.

Question 45

I wish I knew about restorative justice at the time I reported. I didn't. It is important to have options, and be aware of them.

Question 48-51

NA

Question 52

Yes I did, I applied for compensation through the government recognition scheme. However, I felt bad, and was worried this would be used against me. This is because there is a myth, [REDACTED] that the complainant is "looking for money" or a "payout". This was never my intention. However, given I had lost so much time and energy, I thought the recognition payment would provide me with some comfort that it was recognised that I had been assaulted. It helped, but it didn't take away the pain. The experience of applying was ok, it was a little annoying having to explain myself again.

Question 53

Counsellors or lawyers should apply for victims on their behalf. It is embarrassing to have to do it yourself.

Questions 54 – 56

I wasn't made aware of a victims' charter. This should be made very aware to all victim survivors.