

My name is Kaye Maher, and I have lived my entire six decades in Bendigo. The city of horror in some respects for myself and other young girls and women in the 1970s and 1980s due to crimes of sexual violence perpetrated against us. What, may you say, is the relevancy of this to a 2024 submission to justice responses to sexual violence? I trust this submission addresses this question.

This submission will provide a snapshot, if you will, of the transgressions or anomalies by various agencies which I will collectively name “the system” in their response to the disclosures of sexual violence perpetrated by (then Dr) David Frederick MILLER (predominately 1970s onwards). This is certainly not going to reflect each victim/survivor’s experience as I am aware that we all have our own stories to tell, but at the same time we have common threads woven within our stories as well. For the most part, I will refer to my experience of the above, especially prior to 2020 and more generally related to Miller and “the system”

There have been many systemic failures and transgressions in my quest for justice following the 1977 sexual assault by Miller against me (convicted 2007). These became known publicly, with journalist and survivor/advocate Nina Funnell documenting my experience in great detail (Dec. 13th 2023).

<https://www.news.com.au/lifestyle/real-life/news-life/final-insult-for-14yearold-sexually-abused-by-doctor/news-story/38e0dc20f8d5365eceb1f955a3abd6c>

What has become clear, is that many of these failings and transgressions were not just of awful consequence to me, but of devastating consequence to many, if not all his victims, and of course, our community.

Whilst some may say it is too late and perhaps pointless to examine in depth the transgressions that occurred in responding to Miller and the crimes he perpetrated, we do need to understand how and why his victims were let down time and time again in the most extraordinary sets of circumstances, some of which almost defy belief. I can assure you these transgressions and anomalies were very real and caused so much harm to many. They still do. I am aware of women continuing to come forward for the first time with accounts of Miller’s assault/s against them, often as young girls, in the 1970s and 80s, under the guise of his providing ‘medical treatment’.

That being said, it is paramount we continue to listen and learn from the experiences of victim survivors who have experience within “the system”. Without doubt, there is a considerable lack of awareness by the community as to how slowly the wheels can turn within the justice system. Not just a year or two, but in my case and others, many, many years, decades even. One step forward. One step back and again, one step back. One step

forward. Feet stuck in concrete. Jackhammer the concrete away (new evidence, other victim survivors). One step forward and so on and so on.

As we are all becoming acutely aware, it has been the case for many victim survivors of sexual violence to not “disclose” what has happened to them for a long period of time. The question with this, though, is what constitutes “disclosure”, because there may well have been a disclosing of trauma, just not as overtly as others expect or require. Disclosure and survivorship of sexual violence is not, as I have said before, a one size fits all. The one common theme for a survivor, I suppose, is we are not robots with programmed and standardised responses.

Bringing focus back to Miller, as a community, Bendigo has only just begun to understand the enormity of the pain, loss and outright atrocities that were committed by him upon many, many young girls and women. Right here, in my, in our, beautiful city here in Central Victoria and who knows where else.

These crimes have continued to be prosecuted right up until late last year (2023). In December, Miller was to stand trial on even more historical sex offences in Melbourne County Court, but it was determined he will never be held to account for any further allegations made against him as he was found unfit to stand trial. Please note, during special hearings relating to these matters, juries found Miller guilty of 13 offences against 7 victims. However, he was released unconditionally and allegedly resides in an aged care facility [REDACTED].

This should not and will not be the conclusion. To conclude at this point is to deny ourselves so much in the way of important learning opportunities and discovering better ways to prevent or failing that respond and perhaps prosecute cases of sexual violence committed by serial offenders within medical settings or other similar settings for that matter.

As I’ve mentioned, there have been any number of transgressions or anomalies that I could outline in detail, however I will list the following lesser known examples:

- 1) Miller was able to remain in the Army Reserves as a Medic (doctor) until 1995 when he was discharged due to health reasons. In 1983 he had already been convicted and imprisoned for sexual assault and 1984 struck off Victorian and NSW medical registers. (NSW deregistration not sighted by author in Government Gazette) His continued engagement until 1995, ought to have raised serious red flags with the Armed Services. Of interest, is the timing of his 1995 discharge which appears to coincide with the commencement of investigation/prosecution of further matters against him.

- 2) In 2007 court documentation to support a non-custodial sentence for further convictions, Miller was portrayed as having sustained brain injury affecting cognition, in very poor physical health, suffering severe alcoholism, and yet was able to work as a Manager/Pathologist for Macquarie Health in NSW. This raises questions about what criminal history and register checks were made for Miller to be employed in this role as well as these contradictions remaining unchallenged by Prosecution in the “life story” proffered by Miller’s Defence.
- 3) Miller was recently released unconditionally to an Aged Care Facility [REDACTED]. He was deemed low risk of offending because he would be in an ACF, and have less access to alcohol. This implies a de-facto supervisory role of registered sex offenders such as Miller upon ACFs (yes, he has remained on the Sex Offenders Register since 2007). Furthermore, Miller committed many of his crimes within the context of a busy medical clinic and not hidden in other remote and isolated locations. An ACF with Miller as a resident could in fact prove to potentially put vulnerable residents and their families in harm’s way.
- 4) As mentioned, Miller’s recent release from custody was unconditional. One would assume, he is not bound by any order to remain in an ACF, but only bound to abide by the conditions set out for him as a Registered Sex Offender, which he was able to fulfil when living independently, prior to his most recent incarceration. In the report relied upon in Court, stating Miller is at a higher risk of reoffending if not in an ACF, it becomes very difficult to have confidence in the management of a prolific offender such as Miller. David Frederick MILLER would appear to be a threat whether he were in an ACF, or not in an ACF.

*** Miller was assessed by a Forensicare psychiatrist as having mild neurocognitive deficit and other physical ailments and there were no concerns for him to live independently, but no such accommodation was available, so he was transferred instead to an ACF [REDACTED]

This submission may well have gone beyond the bounds of what was asked. But I urge those reading it to see my intent is that of highlighting how the parts of “the system” function and impact on each other, perpetrators, and unfortunately and far too often negatively so on victim survivors.

What is troubling in examining the examples above is that the transgressions or anomalies have seemingly continued. Each one may look different to the other, but they have the same effect. The effect of failing to do right by the ones who've been perpetrated against and protecting, even if unintentional, the perpetrator. The failings and transgressions followed in the wake of Miller's crimes, at critical points when young girls and women ought to have been nurtured and heard. It is my fervid desire that we embrace and move toward ensuring this is what we have for victim survivors, if it isn't there already. Please know, when it's done badly, then it's a legacy that we are left with, and unfortunately I write this with experience.

Trauma doesn't stop being created when the crime stops. It can be replicated each and every time poor intervention or investigation or judicial hearing occurs. Speaking for myself, I want to heal from the trauma, ALL of it, not just the parts before I first disclosed. I don't think I am alone in wanting this.

Thank you.

I am tired, so, so very tired. That state of being comes about following decades of despair with how victims of sexual assault, including myself, have been left emotionally battered and bruised. It is not only the aftermath of the assaults themselves that have impacted on my health and wellbeing. It has also been a consequence of the responses by those who would learn what had happened to me, and the responses described in the media by other victims who have made disclosures of sexual assault.

I have heard so often how it will be years after that a victim may disclose what has happened. I now wonder if that is really all that accurate. Is it possible that victims have attempted to disclose and before the words are barely uttered, they are shut down again and again and again?

Do we need to ask ourselves what disclosure means? If we see disclosure as the act of articulating a description of sexual assault to a counsellor, police officer, teacher, trusted friend, then we may well be failing victims by not seeing disclosure as a process with many and varied steps. Steps? Hmmmm, perhaps not. Why? Let me tell you.

Life from the moment of sexual assault to a future point in time is not a journey (oh how much I detest that word). It is for me an amalgam of absolute initial terror, disbelief, grief and any other emotion that may arise. How disclosure is made, if and when it happens, will be as varied and layered as human experience allows.

The expression of "dipping one's toe into the water" is apt. Disclosure may be one of saying just enough in the hope it elicits a helpful response and failing that one can withdraw, put the shutters up and one day that toe might again be dipped in the water. Eventually that toe has been dipped many times and, in many ways, and hopefully a victim is heard, believed and justice prevails. However, a perpetrator imprisoned in a cell for a prescribed period cannot and will never be the conclusion in achieving justice for a victim. The reality is this may not happen for many victims anyway. I was abused by four perpetrators and I was only able to witness the conviction and sentencing of one. There are so many variables that come into play to achieve that kind of justice each and every time for victims. It is an important complexity that members of society need to wrap their collective head around, and like I said, I am tired and my energy is sapped so I'll leave it to others to elaborate on that point.

I have continued to disclose about my experiences, many years later. I'm doing it right now. I'm not giving graphic details, but I'm sharing my thoughts and experience of disclosure and what that might be. I have shared, not because I want an outcome for me and me alone, but to stand up in solidarity with each and every other victim and hopefully my voice, our voice, will count for something and make a difference. If I want to speak, let me speak. Let

me use my voice. Let me show my face. I am not ashamed of who I am. I am not the perpetrator.

In past times I have seen myself as a survivor and not a victim. I'm not so sure about that now. I think it is ok for me to say I have been profoundly wounded by my experiences, both at the time of the assaults and from thereon. It has altered the person I may have been and for that I am saddened. I will try my best to get up each and every day, and find purpose and joy in what I do. All I ask is we allow other victims to do likewise. Those listening to the stories may not know what to do once they've heard what has been shared. In fact, the story may well be barely uttered, a snippet. But listen if you can, don't decide for her what you think she should say, for she may want to say a little, or the whole story. She may not want to speak of it again. But it is her story, and it always will be.

Assault to Conviction Timeline

1977 to 2007

DATE EVENT & OUTCOME

1977

- Sexually Assaulted by Dr David Miller
- Informed mother of assault
- Confrontation at Miller's office between mother and Miller.
- [REDACTED] Doctor [REDACTED] informed of assault by mother. [REDACTED] "Doctors don't do that sort of thing."

1984

- Disclosed assault to "Sexual Assault Service" - Counsellor [REDACTED] [REDACTED] stated: "Misunderstood action by Miller and was probably just a standard internal examination."

1991

- Disclosed again to CASA Counsellor [REDACTED] Believed and supported me.

25/9/92

- Statement made to police. Police investigation to follow.

1993

- Informed by Det. [REDACTED] - Case not proceeding as was "not in public's interest to do so"
- Bendigo Advertiser publish article regarding my frustration at decision not to proceed
- Contacted Office of Public Prosecution requesting review. Advised by OPP to contact [REDACTED] and request file be sent to DPP for review.
- Attempt to contact [REDACTED] - Not available - Spoke with his senior officer [REDACTED]. [REDACTED] stated "Nothing to do with DPP" see letter to [REDACTED] 24/3/93.

- Runaround by police for brief time.
- DPP requests Chief Comm. Of Police to refer file to him for further investigation. File subsequently referred.
- Matter reviewed by DPP. Miller to be interviewed.
- Miller interviewed. Denies allegation.

1994

- Informed by DPP - matter not to proceed - no reasonable prospect of conviction - case closed. Decision accepted by self.
- Contacted by Det. [REDACTED] - Informed - case reopened as two other victims have made statements regarding Miller and there are similarities between all three cases.
- Miller reinterviewed. Charges laid.
- Miller requests reversal of charges. Denied.
- Ongoing contact between Miller and OPP.

1995 to Nov. 1997

- Date set for Mention - Adjourned.
- Date set for Mention - Adjourned.
- Hearing in Magistrates Court - Adjourned
- Mention - Adjourned
- Hearing - Adjourned
- Mention - Adjourned
- Committal Mention - Adjourned
- Committal Mention - Adjourned
- Committal Mention - Adjourned
- Committal Hearing - Adjourned - Warrant of arrest issued.
- Committal - Miller remanded on \$15000 bail
- Committal - Miller to stand trial on all three charges
- Trial date set for 2/6/97.
- Trial date dropped - Magistrate at Committal did not set date for arraignment.
- Arraignment - Adjourned to 1/8/97.
- Trial set for 10/11/97.

10/11/97

- Trial aborted following Judge Barnett's ruling in relation to 'lost' medical records. Medical records pertaining to the visit during which I allege occurred sexual assault were unable to be found. This was deemed prejudicial to Miller (defendant) in his defence and a permanent stay of proceedings was ordered.

26/3/98

- Phone call to [REDACTED] - Detective [REDACTED]. Purpose of call to ascertain when medical records went missing. [REDACTED] unable to assist. Suggested I contact Barnard Street Clinic.
- Phone call to Barnard Street Medical Clinic. Asked [REDACTED] when records relating to patients of Miller would have likely disappeared. Response - records are likely to be still in existence. Clinic policy is to maintain records indefinitely. All records were transferred to Barnard Street (new premises). Informed [REDACTED] that this was unlikely as C.I.B. had attempted to locate the relevant records and were informed that the records were missing. [REDACTED] added that she was unaware of any contact with C.I.B. but would check with other staff/doctors to confirm this. If records relating to my visit to Miller were missing, [REDACTED] stated that this would be more likely due to Miller removing the file himself.
- Received phone call from [REDACTED]. She had spoken with other staff at the clinic and confirmed that there appeared no contact made by C.I.B. in relation to location of records. [REDACTED] stated that the records were likely to have been archived at the Barnard Street premises and would search them on Saturday - 28/3/98. She would contact me Monday - 30/3/98 following her search.

30/3/98

- Received phone call from [REDACTED] Medical record found and a photocopy of same was available for me and could be picked up from front office.
- Contacted [REDACTED] - [REDACTED] Centre Against Sexual Assault. Informed her that records had been found and a copy available. [REDACTED] to attend with me to collect copy later that day.
- Attended Barnard Street Medical Clinic with [REDACTED]. Asked for [REDACTED] [REDACTED] handed copy of medical records to me (contained in envelope). I

requested that I formally acknowledge receipt of the photocopied record. Wrote brief statement certifying that on 30/3/98 I had received a photocopy of my medical record pertaining to my visit to David Miller. [REDACTED] agreed to also provide her signature to this statement. Did not witness this however.

- Contact made to Police Ombudsman Office - spoke to [REDACTED]. Advised of Complaints Procedures/Options. Elected to lodge formal complaint with Ethical Standards Department.

1/4/98

- Attended Ethical Standards Department with Counsellor/Advocate from the Centre Against Sexual Assault [REDACTED]. Brief summary of my complaint to Snr Constable [REDACTED] who then arranged for Detective Snr [REDACTED] to take my statement.
- [REDACTED] perused 'record of events' post aborted trial.
- [REDACTED] then stated he would check with the [REDACTED] officers concerned regarding my concerns. This was done apparently by phone. Neither [REDACTED] or myself were witness to the phone calls made.
- Snr Sgt [REDACTED] returned and stated that the officers concerned maintained that they had attempted to locate the records and had both done so by telephoning the Clinic only to be told the records were not there. That being the case, I was told that I had no basis for complaint and that there was no point in taking my statement.
- Snr Sgt [REDACTED] added that he had spoken with his senior officer [REDACTED] [REDACTED] had told him not to take a statement from me. [REDACTED] informed me of Public Incident Resolution procedure.
- Raised objection to Ethical Standards Department's refusal to take my statement and stated that the process of a Public Incident Resolution was not sufficient.
- Asked Snr Sgt. [REDACTED] if I could have it in writing that the Ethical Standards Department was refusing to take my statement and he said he would ask [REDACTED] to speak with me. I repeated my request to [REDACTED] to which he stated he wouldn't and didn't have to provide his decision in writing.

19/5/98

- Formal complaint to Ombudsman [REDACTED] lodged.

19/2/99

- Reply from Ombudsman.
- Summary of Ombudsman's Investigation: Ombudsman was unable to prove whether [REDACTED] did or did not make enquiries regarding medical records relating to my visit to Dr Miller. However, based on the assumption they had undertaken such enquiry - it was deemed that such investigation was deficient at least in procedure and should have entailed a more rigorous and systematic search. In relation to my complaint regarding the Ethical Standards Department, the Ombudsman raised concerns about the Department's handling of my complaint and found that ESD at the very least could have taken a brief written statement from me.

2004

- Phone call from Det. [REDACTED]
- [REDACTED] telephoned to inform me that my case was being re-opened as there had been another two or three other women who had come forward with allegations against Miller. Given legislative changes, it is apparently now possible to run the charges within one trial, without defence having much opportunity to demand split trials.

2005

- Awaiting outcome from OPP. There is currently legal debate about a precedent following Mobilio case regarding consent to medical procedure.

2007

- April 30th - subpoena re: trial date of May 7th 2007
- May 10th – Guilty Plea entered
- May 11th – Sentenced by Judge Jenkins

