

Submission to Issues Paper - Pip Brennan

Question 1 - Reporting

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

Yes, and below I indicate the order in which I did this.

Bearing in mind this is a single-incident trauma with an unknown perpetrator, I was 36 years of age at the time, a middle-class, well-educated woman with the privileges of a stable children, being white, educated, owned my own home.

If you did tell someone, did you contact:

1. a family member, friend, or some other person?

I first rang Paul, the man who is now my husband but at the time lived over the road. I needed to have someone I knew to come and see me in the immediate aftermath of the incident. When the police arrived, they took him away to question him. This was difficult for me and it was only later I understood the evidence gathering requirements, plus of course the intimate partner is always considered a first suspect.

2. the police;

Immediately after ringing Paul I rang the police.

After both the local police station and Sexual Assault Squad offices attended my home and it became clear how many hours the processes would take, I called my parents so that they could pick up my three-year-old daughter. It was a very distressing call for me to make and for my parents to receive.

3. a particular support service;

The police took me to the Sexual Assault Resource Centre which I had never heard of prior to becoming a victim/survivor of sexual assault.

4. a health professional, a teacher, an employer; or

I went to see my GP about a week after the assault as I still hadn't had any emergency counselling at SARC other than the immediate debrief from the social worker on duty when I attended for the forensic. She was the first to mention "post-traumatic stress" to me which was really helpful as she empowered me to start on my own research to understand what this was and how to be mindful that post-traumatic stress wasn't concretised into post-traumatic stress disorder. It was months before I was able to accept that my daughter too was exhibiting post-traumatic stress symptoms and it was a really difficult path to find a mental health professional to review her. In the end I was (reluctantly) given a couple of names of health professionals and I paid out of my own pocket for her to be assessed. I was very lucky that the incident itself didn't leave too much of a scar for her. My very angry and ropy parenting in the months afterwards however did. There are little supports for this kind of single-incident

trauma event – mostly the mental health supports for children seemed to be for those repeatedly exposed to violence and abuse. (Not that I’m trying to suggest parents in this predicament get all the support they need.)

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?

- Absolutely not. You can’t take on board in the immediate aftermath of a home invasion, that by calling the police you will be mobilising the juggernaut of the legal justice system. But what else do you do when you have been the victim of crime?
- SARC as mentioned was not a service I was aware of until I was victimised. I was made to do the statement first, and during that period of several hours, SARC contacted me several times and reminded me that I didn’t need to make a statement. This didn’t make sense to me until after.

What supports did you need at that time? Were the supports adequate?

- I needed a trusted, independent person. That would have been Paul, but of course he was not able to fulfill that role as he had a particular interest from the evidence gathering perspective – as the first person I spoke to his evidence needed to be recorded out of my earshot, and as an intimate partner he needed to be interviewed to be eliminated as a suspect.
- I needed a trusted, independent advocate who could talk through my options with me and help me think through my options. Given it was a home invasion there was a good chance of conviction and less chance that I would experience the “trial by ordeal” that women face in court. But I could have had the dignity of having a forensic examination first and a shower

How could they be improved?

- The key improvement would be for women contemplating contacting the police (whether to report a contemporaneous or historical assault(s)) would be independent, skilled advocacy to walk you through your options and ensure your needs as a victim are not subsumed in the system’s needs for evidence gathering and successful prosecution.

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

N/A

Question 2 What reforms or recommendations have been implemented in your state or territory? How are they working in practice?

- To be honest, it is really hard to find this information out. In 2016 I went to the effort of providing a submission to the Prosecution of Assaults and Sexual Offences (PASO) Inquiry. I also gave evidence. I spent countless hours of volunteer time trying to create a well-supported, cohesive lived experience voice into the work. Reclaiming Voices WA was established and incorporated with the worthy goal of trying to emulate Reclaiming Voices in Victoria. However with the sexual assault services all professionalised it was a constant struggle to try to get a seat at the table.
- I was, as ever, very privileged to be part of discussions. I was invited onto the committee to oversee the implementation of the PASO Inquiry. Then our government changed and my recollection is that the Barnett government indicated they wouldn't support the recommendations.
- Only government agencies attended this committee; no non-profits were allowed. No women's health services, or Aboriginal Community led organisations, or even the George Jones Child Advocacy Centre which was leading the way in trauma informed service delivery. I sat on it for six years, the lone victim and non-government voice. The WA Police member constantly rotated so it was difficult to get any traction. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] I missed one meeting where they changed the terms of reference and decided a victim voice was not required. From my perspective, almost none of the recommendations from that Inquiry were implemented. I returned to health advocacy work and haven't been involved much for some time.
- Meanwhile Victim Services felt threatened by the work Reclaiming Voices were doing but all we wanted was to fill in the many gaps between services, and saw independent advocacy as a tool for this. We were funded by the Criminal Property Confiscation Grants Program for one year and partnered with Women's Health and Family Services to deliver this alongside the Domestic Violence Advocacy Service. The minimal funding and lack of referrals from agencies who didn't "trust" the lived experience-led initiative meant it folded.
- Fast forward to 2021 – I returned to doing some work in the space – I attended this forum: <https://www.wa.gov.au/system/files/2022-09/sexual-violence-strategy-outcomes-report.pdf> and provided a submission, and I can see the policy is on its way out. But what real change is this creating?

- “Western Australia does not have a dedicated strategy or framework in relation to sexual violence”. (<https://csws.org.au/wp-content/uploads/2021/09/Spotlight-on-Sexual-Violence-in-Western-Australia-2020.pdf> page 48)

What is working well?

- I think on the ground supports – the social workers and forensic doctors who are there 24/7, the counsellors at SARC if you can get hold of them, the group programs if they actually run, these continue to do well. Where would we be without caring, dedicated professionals? But what more might be possible if we a) didn’t carve up funding between health (sexual assault) and communities (domestic violence) and b) we co-designed and co-delivered services with lived experience workforces?

What is not working well?

- The lack of ongoing victim involvement is difficult, and without any meaningful changes in the legal system, the worst harms continue unabated.
- There is still no equivalent in my state of what Reclaiming Voices WA was trying to do – have a lived experience voice to be part of discussions, undiluted by also providing a service which brings in its own inherent struggles for survival and can end up failing to properly support the people it is there to service.
- At SARC on the morning of the assault, I was offered *either* one on one counselling *or* a group program. The two are completely different, and in the early morning haze of shock I chose a group program. It was more than nine months before I was able to access a group program (which was excellent) but everyone needs emergency counselling for at least the first six weeks in the wake of an emergency of that nature. Because of this choice I made, I spent more than two weeks after the incident with no counselling at all, other than what I had received by the social worker in the time I was there undergoing the forensic.
- I understand it may be a better paradigm to have (identified) lived experience workforce as part of the mainstream – but why is it so hard for government-funded health agencies to work alongside women’s health services in supporting sexual assault survivors? Why is there this state-based divide between sexual assault and domestic violence which further stretches already tapped resources? Why are these services not routinely co-designed with victim/survivors?

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.

- Independent advocacy from the moment of realising you want to make a report.
- The [National Roundtable](#) point; “Victims and survivors having legal standing in their own right and having access to legal assistance to navigate the system.” (page 5)

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?

- Independent advocacy
- Lived experience workforce in services

Question 5 If you are a victim survivor, did you contact the police? If so, how? What was your experience of the police response?

This is repetitive with Question 1. See above.

Question 6 What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?

I have cut and pasted these from the 2016 Prosecution of Assaults and Sexual Offences (see above)

Recommendation 1 - The operations of the Sexual Assault Squad be expanded to include investigations of all cases of sexual assault.

Is this happening? I don't know. How does a member of the public find out?

Recommendation 3 The Commissioner of Police immediately ensures that any officer be prohibited from investigating any offence where the investigating officer has or has had a familial or personal relationship or any other conflict of interest with the alleged offender, victim or their family.

I really hope this has been implemented, but as above don't have the time to research this.

Recommendation 4 - That the Western Australia Police, the Office of the Director of Public Prosecutions, the Sexual Assault Resource Centre, the Victim Support Service, the Office of the Public Advocate, and the Courts design reliable and valid victim satisfaction instruments appropriate for each agency. The results must be published in each agency's annual report or equivalent.

Again, I have no idea if this has been implemented. If it is I have no awareness of this and can quite confidently assume that there has been no lived experience in developing valid victim satisfaction instruments appropriate for each agency.

Recommendation 7 - The Western Australia Police include on the list of exhibits collected a column denoting the action, if any, taken in respect to each piece of evidence and the status of that action. The list of exhibits will then be signed by a senior police officer and attached to the relevant brief before that brief is forwarded to the Director of Public Prosecutions.

Again, I have no idea if this has been implemented.

Recommendation 8 The Minister of Police and Emergency Services provides full support for the introduction of those systems that the Commissioner of Police recommends for the improvement of police investigatory process in Western Australia.

Again, I have no idea if this has been implemented.

Recommendation 9 - The Government provides the additional funds required to implement the new curricula for ongoing training and professional development to investigating officers and detectives.

Again, I have no idea if this has been implemented. What is required is training that involves victims of crime. I feel pretty confident this has not occurred.

Recommendation 10 The Government expedites the recruitment of extra security personnel, other than police officers, to manage the East Perth Watch House.

Again, I have no idea if this has been implemented

Recommendation 11 - That a review of training programs and practices undertaken in overseas jurisdictions be carried out with a view to providing specialised training in the areas of sexual assault, child development and people with intellectual or decision-making disabilities for all agencies involved with victims.

Again, I have no idea if this has been implemented. I seriously doubt that NGOs like SECCA or Development Disability WA would have been requested to provide their assistance and specialist knowledge.

Recommendation 12 - The Western Australia Police installs suitable recording equipment (video and audio) in interview rooms to permit an experienced third party (senior police officer and/or lawyer) to monitor and advise on interviews conducted in those rooms.

Again, I have no idea if this has been implemented. I do know [REDACTED] at least one [REDACTED] Police Officer preferred to interview child victims in the police station because it was “easier.” “Easier for whom?” I asked. We all know the answer to this – easier for the police officer. Without effective lived experience involvement, the system and staff needs will always predominate. It needs to be a partnership, where solutions that work for both people on the frontline – victim and staff member.

Recommendation 15 - The Government establish a formalised framework for communication between relevant agencies and individuals, who deal or have contact with sexual assault cases, under the direction of a lead agency.

Again, I have no idea if this has been implemented. It also needs to include non-profits who support victim/survivors of sexual violence.

Question 7 What are your ideas for improving police responses to reports of sexual violence? What can be done?

- Specialist response
- Independent advocacy
- Lived experience training of police staff and/or lived experience workforce embedded with WA Police

Recommendation 20 That the Office of the Director of Public Prosecutions, Western Australia Police, Sexual Assault Resource Centre, and the Victim Support Service, the Child Protection Unit, the Department of Child Protection and the Public Advocate of Western Australia (a) collaborate to implement the Child Advocacy Centre model of victim support for children; and (b) investigate the adoption of a similar model of victim support for adult victims of sexual assault.

I don't believe this has been implemented. George Jones Child Advocacy Centre already existed when I was an active victim advocate, but they were barred from membership of the committee supposedly looking at the Recommendations being implemented. They have probably been de-funded since then. There has not an adult version developed to my knowledge.

Recommendation 24 A whole of government approach, driven by the Premier's office, be immediately instituted to improve the adequacy and availability of services for people with intellectual and decision- making disabilities who come into contact with the criminal justice system (both as victims and perpetrators).

I don't believe this has been implemented

Recommendation 25 A whole of government approach, driven by the Premier's office, be undertaken to: a) review current information available to sexual assault victims, with a view to developing specialist information (e.g. a booklet or visually recorded information) to facilitate sexual assault victims being properly informed about criminal justice processes; and b) ensure the development of appropriate information (e.g. pamphlets, booklet and visual aids) to facilitate sexual assault victims being properly informed.

This has been implemented. Leaflets are always easy to implement! I think the opportunity to properly co-design with victims of crime didn't happen.

Recommendation 27- A working party be established which includes the Western Australia Police (WAPOL) and the Office of the Director of Public Prosecutions (ODPP) and, where relevant, the DCP to: a) identify the critical issues of brief preparation and develop these by way of guidelines, and in training for WAPOL; and b) institute an ongoing formalised collaborative process that provides the ODPP with high quality briefs to maximise the prospects for a prosecution.

I don't believe this was implemented.

Recommendation 32 a) The Minister for Child Protection undertakes to develop a purpose built database for specialist child interviewing capable of linking to both Police and Department of Child Protection data collections and incorporating post-interview outcomes. The database should be capable of use across WAPOL and DPP offices. b) The Director of Public Prosecutions develops a database to support the evaluation of outcomes from initiatives such as specialist child interviewing and the video recording of children's evidence.

I don't believe this was implemented.

Recommendation 34 - The Office of the Director of Public Prosecutions, the Western Australia Police, the Office of the Public Advocate, the Sexual Assault Resource Centre and the Victim Support Service, PathWest, the Department of Child Protection and the Courts develop protocols to ensure the effective and efficient coordination of services. Such protocols would include procedures for the referral of victims and witnesses to support services. These protocols would also support the delivery of information to sexual assault complainants, including specification of the information that sexual assault complainants and witnesses should be provided with by prosecutors, the court and/or court support people to thereby inform and keep them informed. This initiative to be driven by the Premier's office.

I don't believe this was implemented. It needs to include Aboriginal Community Controlled Organisations, Women's Health and other NGOs who support victim/survivors.

Question 7 What are your ideas for improving police responses to reports of sexual violence? What can be done?

- Stop the cycle of creating complex reports with recommendations that aren't implemented.
- Introduce independent advocacy.
- Embed lived experience workforce and consultation into the design, development, delivery and evaluation of police responses to sexual assault.

Question 8 – Prosecution Responses - 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?

It took 14 months before the perpetrator was found. In that time I had maintained contact with the investigating police sporadically, when there was anything to discuss. I had progressed therapeutic support with SARC. Then when I first had to ring ODPP I was shocked by the rudeness of the person that answered the phone. It really rattled me, like I was guilty of something, a pest, an unwanted nuisance.

When I was put through to the File Manager managing my case, it was a much better experience, and he apologised for how rude the reception staff had been. He helped me understand the system, but he never, ever appeared in court. It felt like my one chance to have my voice heard was left to whoever was on duty, swamped in court with other case files they had just had to pick up.

The File Management System works so well for DPP but does not work for the victim. Perpetrators have continuity of lawyers – as you can tell when you attend court and one poor, overworked DPP lawyer with a giant suitcase of briefs is stuck in one court room while a dizzying array of defence lawyers pop in and out to defend their clients. Most times matters appear in court it will be a different DPP lawyer who represents the Crown in your matter. It feels so tenuous – how can they know the case when they haven't had any conversation with you, may have only just looked through your file? Having DPP lawyers assigned to sexual assault cases would help reduce this issue.

But much better would be for victims to have legal standing. DPP lawyers will always say "I'm not here to represent you, I'm here to represent the Crown." While technically this is true, it leaves the woman completely exposed if, for example the Defence Lawyer subpoena's her medical/ counselling records and the DPP lawyer doesn't object. As we see repeatedly, women are on the stand, eviscerated through the trial process while the perpetrator doesn't speak. **Women having legal standing and their own lawyer, would be a game changer.**

Question 9 What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?

Again, I am taking these from PASO 2016.

Recommendation 2 - Legislation amending the Evidence Act 1906 (WA) be expeditiously adopted and proclaimed.

https://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol_act/ea190680/

I have no idea and don't have hours and hours required to research whether or not this happened.

Recommendation 17 An independent taskforce be established to analyse the incidence of withdrawal of complaints and make recommendations aimed at reducing such withdrawals. These recommendations should include the collection of data by police and the Office of the Director of Public Prosecutions regarding reasons as to why charges are withdrawn, charges not indicted or discontinuances entered. This taskforce should be established by the Attorney General drawing on the Office of the Director of Public Prosecutions, Western Australia Police, Sexual Assault Resource Centre, Victim Support Service and the Aboriginal Legal Service together with victims of sexual assault. The report of the taskforce be tabled in Parliament before the end of 2009 and thereafter in the annual report of each agency.

I don't believe this has been implemented.

Recommendation 29 - The Attorney General initiates a reform process within the judicial system to eliminate the unacceptable embedded culture of delay.

I don't believe this has been implemented.

Recommendation 30 - The Attorney General meet the additional operating and staffing costs of a case management system and identify this as a separate line item in the budget of the Office of the Director of Public Prosecutions.

I don't believe this has been implemented.

Recommendation 31 - The Minister for Police and Emergency Services funds an upgrade of the existing police case management system so that it effectively interfaces with the proposed ODPF case management system. This upgrade should be funded as a separate line item in the WAPOL budget.

I don't believe this was implemented.

Question 10 Do you have ideas for improving ODPF responses to the prosecution of sexual violence?

Women having legal standing and their own lawyer, would be a game changer.

Question 11 – The Trial Process - If you are a victim survivor, did you experience any of the measures described above? If so, what was your experience?

No I didn't. I would say though that the DPP lawyer was very considerate. As I was assaulted in a home invasion and I wasn't able to see what this person looked like, I was triggered by any men I saw in public who were tall with curly hair. On the day the plea was entered he advised me when to attend, asked that a message be sent so he knew I was there – if I wasn't there he was going to request the matter be held off until I was. It really helped me to see the perpetrator, who I definitely would have passed without knowing. It restored a certain sense of safety for me when out in public.

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?

My concern is that practice lags behind policy. Who is monitoring this is happening? What are the penalties for defence lawyers who continue to badger victims?

Question 13 Do you have other ideas for improving court processes for complainants when they are giving their evidence?

Women having legal standing and their own lawyer, would be a game changer.

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?

N/A

Question 15 Has the use of recorded evidence been implemented in your jurisdiction? If so, to what extent? How is this working in practice? What is working well? What is not working well? What could be improved? Do any of the matters discussed when the recommendations were made (some of which are outlined above) need further discussion in the context of the reforms having been implemented? Are there any other issues? What do you see as the advantages and disadvantages of using recordings of the complainant's evidence at trial?

From PASO:

Recommendation 5 - The Office of the Director of Public Prosecutions, the Western Australia Police, the Child Protection Unit, the Department of Health and the Child Interview Unit review a range of formalised interagency collaborative models for working with victims of child sex offences with a view to improving the quality and recording of interviews, evidence, and briefs.

I am not sure about this, as noted I was aware in the 2006-2009 that there were recording facilities provided by the George Jones Child Advocacy Centre in WA that were not routinely utilised by police. I would be interested to understand what the current state is.

Recommendation 6 - The Office of the Director of Public Prosecutions, the Western Australia Police, the Child Protection Unit and the Child Interview Unit jointly explore the 'Extended Forensic Evaluation Interview Model', to assess its suitability in the Western Australian judicial environment.

I have no idea if this was implemented.

Question 16 – Special Measures - 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. I did however utilise my personal connections and had a lawyer friend provide me with ongoing interpretation of what was happening. He even attended court when anything was being discussed in relation to the matter, and debriefed with me afterwards. This is a privilege marker, to have a friend with those professional skills and kindness of heart to offer his help.

Question 17 Has an intermediary scheme been implemented in your state or territory? How is it working in practice? What is working well? What is not working well? How could it be improved? Have any of the issues described above arisen? If an intermediary scheme has not been implemented in your state or territory, do you know why? Do you think such a scheme would be helpful? If so, what do you think the scheme should involve? Do you have any ideas generally about the use of intermediaries in the criminal justice system?

I have no idea if an intermediary scheme has been implemented in WA and if it is working well.

Question 18 – Assessing credibility of complainants - 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?

Yes I am aware, and I do think it is key to have expert evidence on memory presented. I don't know if this is being done in my jurisdiction but am fairly confident it is not being done at a large scale.

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? How are the directions in Victoria under the Jury Directions Act 2015 (Vic) working in practice? Can they be improved?

My opinion is that it is unlikely to be working well in W.A. and perhaps legislation should be introduced as in Victoria. As noted many times, who is auditing this?

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?

The video idea would allow for this to be done at scale. I would like this video to be co-designed with victims.

Question 21 – Judge Alone Trials What is your view about a trial by judge alone in relation to sexual offending?

Judge-alone trials has great potential to reduce or even eliminate the appalling “trial by ordeal” victims face in our adversarial jury trial system. HOWEVER this is contingent on having specialist courts and Judges trained in trauma responses etc.

Question 22 – Cross Examination - 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?

N/A but this kept me up awake many nights in the months between the perpetrator being caught and his eventual change to a guilty plea.

Question 23 Are the legislative provisions adequate to protect complainants during cross-examination? If not, how could they be improved? Should they be harmonised?

No, and yes to harmonisation. I think there is still a real concern to know how this happens in real life across the many courts in our vast country.

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?

It should be utterly eliminated. It's just wrong. I mentioned earlier that I attended a group program at SARC, about nine months after the attack. I was the most recent victim by years, decades. Most women were just now tackling trauma from twenty to thirty years earlier.

Question 25 - Interpreters 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.

Do I need to point out that this question is in English?

Question 26 Have changes been made to interpreting services for complainants over the last five years? Does there continue to be a problem with availability, training and accreditation? Are there problems in regional areas? Are the available interpreters culturally and linguistically appropriate and diverse, particularly for complainants who are Aboriginal and Torres Strait Islander people? Is the unavailability of interpreting causing difficulties and challenges for courts to ensure pre-trial recordings and trials commence as listed?

My understanding is the core problem is the uptake by agencies. TIS exists but for some reason staff won't use it. Perhaps cost implications or concern that it will take time (it does take twice as long as everything has to be said twice) but how else can a victim's rights be upheld?

Question 27 – Types of evidence If you are a victim survivor, were the records of your counselling or other therapeutic interventions sought prior to or during trial?

N/A but again, it was something I greatly feared when thinking I would have to give evidence.

Question 28 Are the legislative provisions adequate to protect the disclosure and use of a complainant's personal information obtained during counselling or other therapeutic intervention? How are they working in practice? Should they be harmonised? Is there 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?

No they are not, yes it needs to be harmonised, and victims need to have legal standing and their own legal representation. Nothing short of this will change "trial by ordeal" in my opinion.

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)?

I am not sure if legislative reforms have happened in WA or if they have been effective. Yes, always yes to harmonisation.

Question 30 Should there be legislative reform to the admissibility and use of distress evidence? Is this an area which calls for legislative intervention and harmonisation? If so, how should they be harmonised? Should distress evidence be admissible at all?

Distress evidence seems in conflict with our understanding of trauma responses, including dissociation to manage the impact of trauma. Yes to harmonisation.

Question 31 Are there further reforms to be considered to tendency and coincidence or discreditable conduct evidence in addition to the Evidence (Tendency and Coincidence) Model Provisions released by the Royal Commission into Institutional Responses to Child Sexual Abuse?

I am not sure about this. Would need to think and research further before responding.

Question 32 Are there any other evidence issues relating to sexual violence trials that we should consider, including whether there should be harmonisation?

Yes to harmonisation.

Question 33 - Specialisation 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?

Yes to specialist courts – if victims had legal standing however that may not be as important.

Question 34 - Delays 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?

Question 35 What are the causes of delay in your state or territory? Do you wish to comment on the past recommendations (as outlined above) and whether they have been or should be implemented in your state or territory? What are your ideas for reducing delays? Can there be a national approach to reducing some aspects of the delay?

Again, from PASO:

Recommendation 29 - The Attorney General initiates a reform process within the judicial system to eliminate the unacceptable embedded culture of delay.

I have no idea if this gloriously vague recommendation was ever actioned.

From the PASO report FYI; “ODPP develop a protocol with the police. Additionally: All the files are now allocated to the lawyers before they are committed for trial. Now all lawyers get the files before they have even come to the District Court and I tell them that must negotiate with the defence lawyer and be satisfied they can prepare the indictment before they are allowed to go before the District Court. That was designed specifically to change that [embedded] culture [of delay]. I regret that it has not been entirely successful. The Department of the Attorney General conducted a subjective evaluation that asked a number of defence lawyers, prosecutors and magistrates to fill out a questionnaire about whether they agreed or disagreed with various statements. My level of concern was raised when I learned that a lot of people were agreeing with the statement that prosecutors do not approach cases with an enthusiastic attempt to resolve them and that some do not appear to have the authority to make a settlement. That caused me to reflect on the directions I give my staff to make sure that they do not put it off until trial; they must try to resolve earlier. I am doing work to ensure that we can improve that process”. (page 160)

It would appear no victim surveys were undertaken.

Question 36 – Pleas 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.

Yes, he did eventually. I am not clear if there was a negotiation. It was some months after his arrest and the delay was his inability to accept that he could do something so heinous, as I understand it.

Question 37 Have any recent changes in sentencing laws had an impact upon the preparedness of accused persons to plead guilty to sexual violence offences?

I am not sure. How would a general member of the public find this out?

Question 38 Are sentencing indication hearings (or their equivalent) effective in terms of resulting in guilty pleas? Can the process be improved? Are there other ways in which guilty pleas may be encouraged?

I am not sure.

Question 39 - Sentencing Are there aspects of sentencing practices and outcomes which may be harmonised across jurisdictions?

Harmonisation is always a key aim in reform in my opinion.

Question 40 If you are a victim survivor, what was your experience of the sentencing process? What aspect(s) of the sentencing process were important to you? Did you make a Victim Impact Statement? If so, how did you find that process? What could be improved?

Having such a strong sentence – nine years – was definitely very affirming. But it left me conflicted too. I had met a young woman who had been repeatedly raped by her father, before she was able to recall and right through until her teens. She is (amazingly) living a full life, however some of the things taken from her include a normal, adult sexuality and ability to form a relationship with a partner. He got four years, but served two. How could this be right? Just because I was “the perfect” victim as there was no “contributory behaviour” or prior relationship, just because I am a white, middle-class, educated professional, why should I get to experience this validation when 99% of women never will?

I did do a Victim Impact statement. It was definitely a positive process, given how sidelined victim/survivors of sexual assault are. I was not in court when it was read out.

Question 41 Have there been recent changes to the role of victims of sexual violence in the sentencing process in your jurisdiction? Are Victim Impact Statements given appropriate consideration by the sentencing judge? Are there further improvements to be made? Should victims have independent legal representation during sentencing submissions?

I am not sure. How does a member of the public find out?

Question 42 Do you have ideas for improving the sentencing process in matters involving sexual violence offences?

Harmonisation is a key task to consider. The option of recording VIS could be good, and no, victims should not be cross-examined on the content. I think the Victim Notification Register in WA works very well and would be important to have in every jurisdiction.

Question 43 - Appeals If you are a victim survivor, what was your experience of the appeal process? In responding, you may wish to consider the following: What information or support did you receive about the appeals process and its possible outcomes? If you received some information or support, how useful did you find it? What information or support did you receive about the decision made on the appeal? If you received some information or support, how useful did you find it? What impact did the appeals process have on you? If the appeal resulted in a re-trial, were you consulted about whether the prosecution should proceed with a re-trial?

I actually can't now recall – I think he did appeal but this was quickly dismissed. My personal lawyer friend kept me across all court appearances. Independent advocacy would be valuable to assist victims in this area, as in all areas.

Question 44 What are your ideas for improving the appeals process in matters involving sexual violence offences?

Actually implement the ideas from previous consultations. I like the idea of “tasking an independent agency to collate data on appeal outcomes, to identify areas for reform, and to assess whether reforms have achieved their aims” but this needs to be co-designed with victim/survivors.

Question 45 – Restorative Justice - 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?

I undertook victim offender mediation when the perpetrator had been in prison six years. For me, it was a very helpful process. I think it's not well-understood and certainly I understand victim reluctance, but there can be huge empowerment in facing perpetrators. Also, the way our prison and legal systems work, there is little real rehabilitation. Perpetrators rarely have to look their victim in the eye, hear the hurt and harm that they have caused, and are not called on for some kind of reparation. I do think it can be a powerful crime deterrent.

I was also involved in a religious based restorative justice program, Sycamore Tree. At this, I was able to tell my story to six sexual offenders, and possibly this may have deterred them from future crimes. I personally am not a fan of these being religion based. They need to be secular skilled, funded programs.

Question 46 What reforms have been implemented in your state or territory? How are they working in practice? How could they be improved? Have things changed? What is working well? What is not working well?

As I have said repeatedly, I'm not sure, and not sure how to find out. I have included the PASO Recommendations as I don't believe they were implemented.

Question 47 What are your ideas for implementing restorative justice as a way of responding to sexual violence?

I think it needs to be divorced from the process of prosecution, so it's not seen as an "out" for a perpetrator who hasn't really accepted blame and is looking for a shorter sentence. But it needs to be an option. As always, I think this needs to be co-designed with victims of crime.

Question 48 – Civil Litigation Which of the measures listed above are likely to most improve civil justice responses to sexual violence?

Trauma informed. "Balance of probabilities" rather than "beyond all reasonable doubt" would be one of the key ways we could increase the successful prosecution up from 1%.

Question 49 Apart from those listed above, are there other recent reforms and developments which the ALRC should consider? Are there further reforms that should be considered?

Not that I can think of – other than focus on ACTION not more PAPER with more RECOMMENDATIONS THAT NEVER HAPPEN.

Question 50 If you are a victim survivor who experienced sexual violence in connection with a workplace, which factors led you to take legal action, or not take legal action, regarding the violence?

N/A

Question 51 What provisions or processes would best facilitate the use of civil proceedings in this context?

I am not sure.

Question 52 – Compensation 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?

Yes. The process was positive in that the agency were very responsive and kind, and considered my needs carefully through the process. Undertaking the required report from SARC was quite a negative experience. One session with someone I had never met before. I read the report and was quite unhappy with it, but it did the job. I think it would

have been preferable to have my regular counsellor or someone that had met me during the group program to write about me, or for it to be more of a collaborative process.

Question 53 - What changes to compensation schemes would best promote just outcomes for victim survivors of sexual violence?

Raise the pathetic amounts offered!

Question 54 – Victims Charters - 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?

I feel somewhat mixed as Charters can be nice bits of paper that get ignored, and what’s the consequence to any agency or individual that doesn’t uphold the rights? None. I would need to think more carefully about what is included in the Charter and **would like it to be co-designed by victim/survivors.**

Question 55 Have reforms been implemented in your State or Territory? If so, how are they working in practice? How could they be improved? Have things changed? What is working well? What is not working well?

See my many comments. Yes they are, but never to the full scope of the ambition of the reform papers, and with an opacity that is very hard for people not working in the sector to detect.

Question 56 What are your ideas for ensuring victim survivors’ rights are identified and respected by the criminal justice system? What can be done?

Again, I will need to consider this more carefully. The first point is for **victim/survivors of sexual assault to have legal standing.**