

Justice Responses to Sexual Violence Issue Paper (2024)

23 May 2024

I am the founder of the campaign ‘WA Consent’ which advocates for legislative reform in WA’s Criminal Code Compilation Act regarding intoxication and consent. I am a victim-survivor of multiple instances of sexual assault; however, this submission will focus on the most recent instance – the same instance that sparked the creation of WA Consent. I believe it is important to stress that I am not a monolith for all victim-survivors. Whilst my views and opinions are informed by my tertiary education, campaign engagement, and general advocacy work, my comments are solely reflective of my personal views. I do not intend for my voice to be raised above anybody else’s, nor do I believe that my views are the only answers. I am making this submission as someone who never thought they would be listened to but is now taking every opportunity to have my voice heard because, unfortunately, my story is more common than people would like to believe.

Abigail Gregorio
WA Consent Founder

Disclosing to Services (Question 1)

Due to living alone, I had no personal connections to disclose what happened to me. My domestically abusive family wasn't an option, and the few friends I had were either the perpetrators, or friends of the perpetrators. The incident itself occurred just days before the first WA COVID-19 lockdown, forcing me to try and process everything in isolation. The complex circumstances, coupled with the shock, made it incredibly difficult for me to acknowledge what had happened.

On the recommendation of a university triage counsellor, I contacted one of the peak sexual assault services in WA, where I was abruptly told to “just go somewhere private” and that even if I did wait for the 3 months it may take to see someone, I would not be guaranteed help. I understand that resourcing is restricted; however, the manner in which I was treated did not reflect the principles of trauma-informed practices and forced me back into isolation for my experience as I was spoken to with such little respect as a human, let alone someone who just experienced a traumatic event. I am aware that working in such an area would be emotionally taxing and that I may have only been one of the hundreds of calls that the operator had taken that day. However, they were the second call that I made and after the experience left me feeling even more isolated it also became my last. Unfortunately, I am not the only person who has had this kind of experience with this service. In fact, I have yet to meet a victim-survivor in WA who has had a positive experience with this service, as it has become infamous for the way their operators treat people with such little disregard despite their supposed function as a resource centre.

Increasing Accessibility to the Justice System (Questions 3 and 4)

Education efforts are one of the largest areas that need support. The current top-down, reactive approach, can only do so much. There needs to be a shift in the understanding of respect and bodily autonomy across education sectors for children, and within professional settings, where many people foster outdated misconceptions and are not provided with the opportunity to learn differently. WA's large geographical area makes it harder to implement cohesive approaches; however, this is not an excuse not to do it. The current approach usually focuses on the metro and rural areas, which leaves many places that do not quite fit either definition without support. For example, I grew up in Bunbury, three hours south of Perth, where I was never taught what ‘consent’ or ‘bodily autonomy’ meant. Sex education was based on heteronormative reproductive practices, which in and of themselves were lacking. It is also integral that all places, particularly WA, have a culturally informed approach. The invisibility of sexual assault is exponentially increased when involving First Nations people, and it is important that this does not get left to the side. Not only should approaches be culturally informed, but they should also be accessible. If future focus groups are to be established, they should centre the voices of those disproportionately victimised by sexual assault, in particular First Nations people, people with disabilities, and people within the LGBTQIA+ community.

Current Implementations

(Question 6)

WA's Safe2Say reporting portal is a great step; however, I have been told by both users and WA Police representatives that it is overwhelmed with reports and struggling to keep up with demand. Many people are left without contact for much longer than the service claims, and once people get redirected to other service areas, they go back to encountering the same systemic issues that often prevent victim-survivors from receiving adequate support. I believe that with more resourcing and marketing, Safe2Say could be a transformative new step in sexual assault reporting; however, it is widely unknown to the general public, which raises concerns about who truly has access to the platform.

Improving Police Responses

(Question 7)

Police responses need to be trauma informed, and all police officers, both new and experienced, should have ongoing training for sexual assault trauma responses. Many victim-survivors have disclosed how members of the police force have been dismissive of them, even in cases involving physical violence. I once spoke with a victim-survivor who is a black belt in Tae Kwon Doe, where the police officer discounted her report because she "should have been able to protect herself". Thankfully, she held steadfast in her resolve and spoke to multiple people until someone listened to her, but not every victim-survivor will have the ability to do that. Countering deeply rooted, and unproductive, misconceptions is essential to reforming the way society and the criminal justice system treat victim-survivors.

Improving Court Processes for Complainants Giving Evidence

(Question 13)

There should be accommodations for First Nations people giving evidence. Australia's legal system is the result of colonialism, and consequently, so are the approaches to giving evidence. The westernised idealisation of a trial involving stunted responses from witnesses does not align with Aboriginal cultures and their practices of storytelling and discussion. Cultural responses, such as 'gratuitous concurrence', should be accounted for during the trial process as it benefits nobody to have victim-survivors further scrutinised for their way of communication.

Presenting the Effect of Sexual Assault on Memory within a Trial

(Question 18)

Expert evidence on the effects of trauma on the brain should be included in trial cases to provide the jury with an increased understanding of sexual assault. The physiological impacts of sexual assault vary and should not be presented in a way that defines any one kind of experience, rather, it would benefit the jury to have a general scientific understanding to allow better comprehension of sexual assault. Many victim-survivors, such as myself, have experienced multiple incidents of sexual assault. This can lead to the development of Post Traumatic Stress Disorder (PTSD), Complex-PTSD (CPTSD), and a range of other mental health issues that impact the body's physiological functioning. Many people with PTSD/CPTSD are emotionally dysregulated and often function with increased levels of cortisol in the

body.¹ Prolonged exposure to abnormal cortisol levels can lead to ongoing physical health issues that create a cyclically negative effect on the body in all regards: mental, physical, and emotional. This may lead people with PTSD/CPTSD to respond in ways that the jury may deem outside of ordinary behaviour and consequently disregard the experience of the victim-survivor. It cannot be expected that jurors will be privy to the physiological effects of trauma on the brain; however, it also cannot be commonplace for victim-survivors to be put in vulnerable positions (such as giving evidence in a trial) without jurors having an appropriate understanding of their position.

Specialist Training for Judges and Lawyers (Question 33)

It would be beneficial for lawyers and judges who work with sexual assault cases to have some form of trauma-informed training. Not only will this provide a better education that can be used to assist the jury, but it will also strengthen the trust that victim-survivors have in the system. However, making this a requirement may burden an already under-resourced area of law. Victim-survivors already struggle to attain the necessary supports; however, it could be argued that waiting a longer time for a trauma-informed lawyer would outweigh the disadvantages associated with the possibility of a non-trauma-informed lawyer. Theoretically it would be advantageous to have specialised lawyers and judges; however, implementing strict requirements should not happen until there is sufficient resourcing as the people who are more likely to be left waiting are those that are already disproportionately affected by sexual assault: First Nations people, people with disabilities, and people from low socio-economic areas.

Whilst it may not be feasible to import requirements for specialised training, there should be barriers put in place for lawyers who pass the bar despite having previously committing sexual assault. In the case of *KMB v Legal Practitioners Admission Board (No 1)* [2018], a person who pleaded guilty to multiple counts of sexual assault was admitted to the bar.² The appellant pleaded guilty to two counts of sexual assault after working as an escort and being sexually involved with a 15-year-old who had responded to the appellant's newspaper advertisements.³ The judgement states that the appellant had shown remorse and listed several academic achievements as a way of illustrating the appellant's standing as a "fit and proper person".⁴ However, I find it difficult to believe that a 25-year-old was unable to recognise that someone who was 15 years old was underage. Furthermore, the appellant said that once knowing the victim-survivors' age, the appellant assumed that the victim-survivor was able to consent at 16 years old despite the law of consent being 18 at the time of the incident.⁵ Furthermore, as the sexual assaults had occurred 10 years prior to the appellant's admission to the bar, it was commented that the incident had happened as a result of the appellant being "young and callow" which I do not believe to be an appropriate response to sexual assault in any circumstance.⁶ This case illustrates that people with sexual offending histories are still able to work in the legal system which raises great concern if the appellant is to work with children or sexual-assault survivors. If such people are still to be admitted to the bar, they should at least have restrictions on what cases or clientele they are able to work with.

¹ Shirley Davis, *Inflammation and the Brain Changes Observed in Complex Post-Traumatic Street Disorder* (Web Page, 29 July 2019) <<https://cptsdfoundation.org/2019/07/29/inflammation-and-the-brain-changes-observed-in-complex-post-traumatic-stress-disorder/>>.

² *KMB v Legal Practitioners Admission Board (No 1)* [2018] 1 Qd R 94.

³ *Ibid* [5].

⁴ *Ibid* [18].

⁵ *Ibid* [10].

⁶ *Ibid* [22].