

Justice Responses to Sexual Violence

Questions in the ALRC's Issues Paper

Reporting the experience of sexual violence safely

Question 1 If you are a victim survivor, did you decide to tell someone about your experience?

If you did tell someone, did you contact:

- a particular support service;
- the police;
- a health professional, a teacher, an employer; or
- a family member, friend, or some other person?

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?

What supports did you need at that time? Were the supports adequate? How could they be improved?

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

Response:

Fifty years ago I disclosed to my father that child sexual abuse of myself and other teenage girls was happening at an institution. He reported it to the Director of the institution. I was then expelled. No action was taken. I was told to forget it and get on with my life. Now I am over 60. I have made a submission for redress, but it is unlikely to be granted because the sexual assault was not penetrative. Psychological counselling will be available after the submission is granted, but I must relive the trauma alone. I have a Redress Assistance Nominee to help with the application paperwork, and without her, I wouldn't even bother going through the trauma of dealing with it.

Fifteen years ago [REDACTED] disclosed to me that she was being sexually abused by her partner and was unable to leave him. [REDACTED]. I took her to the police station to make a report. The officer refused to take a statement. I insisted and the officer threatened to charge me. [REDACTED] had no lawyer and no psychological counselling. She had to face her abuser in court and cross question him. She is still going through court now, trying to work out parenting orders with her abuser.

Three years ago [REDACTED] disclosed sexual abuse to her teacher. She was on a waiting list for six months before she could get an appointment with a child sexual assault counsellor. During that time she was told not to talk about it with her mother [REDACTED] [REDACTED] could compromise the case by 'influencing' her. She had no one to talk to about it. She had to make statements to police and appear in court before she was ready.

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.

Response:

Trying to report and get help requires the victim telling the same story over and over again to multiple strangers. Instead of going to police, lawyers, counsellors, doctors, etc, victims need an advocate who can guide them through the process. There are waiting lists for most services and a lack of lawyers. There are huge backlogs in court causing delays. So even if it was easier to report, there is still a long wait for services.

It is hard to find legal information online because all states have different legislation and programs.

Criminal justice responses to sexual violence

There are 16 sub-categories in this section.

1. Police responses to reports of sexual violence

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

Response:

I was a child in an institution. I reported the crime to my father. He reported it to the institution. They did not report to police.

██████████ reported sexual assault and family violence to police. She was discouraged and not taken seriously. They refused to take a statement and threatened to charge me for insisting it be recorded.

████████████████████ reported to her teacher. She had to wait six months for a sexual assault counselling appointment and had to make a statement to police before she was ready. The perpetrator is a previous offender who was under orders not to live in a complex near children. Police failed to monitor him and he sexually abused ██████████.

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?

Response:

I am not aware of any reforms in my state. Nothing has changed.

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

Response:

Victims are being urged to come forward, but even if it was made easier to report sexual abuse to police, there is a gender bias in the police force. Police officers, including senior constables, are family violence abusers themselves. There is no accountability for them. They remain employed while persistently breaching intervention orders and after conviction. They access the database for personal information of victims. In Victoria, 63% of police had their charges withdrawn or struck out by the court, compared to 12% of general community defendants having their charges withdrawn. There is no oversight. This is a serious concern. The low charge and conviction rate speaks volumes about the ongoing culture of impunity within the police force and the level of risk victim-survivors, mainly women and children, are facing. There is a long way to go before community confidence is built in the police. I have no confidence in the police investigation and response to sexual assault reports.

2. Prosecution responses

Question 8 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?

Response: [REDACTED] a witness in the sexual assault case of [REDACTED]. She has been kept in the dark about the case by the prosecution. She was made to feel disempowered and paternalized.

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?

Response:

In 2017 the child abuse Royal Commission made twelve recommendations to State and Territory governments to implement measures to improve the experience of giving evidence for victims in child sexual abuse cases. Of the 98 projects to implement those recommendations only 18 had been completed by 2020, and half the projects had achieved no progress at all.

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

Response:

The prosecutor's job is not to protect the victim, who is just a witness. The prosecutor is not allowed to 'coach' the witness. Victims come to court to be cross examined. They have no one advising them on how to navigate the system or how to give evidence and cope with cross examination. They have to relive their trauma under pressure.

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

Victims are not protected in State Charters of Human Rights and Responsibilities from unnecessary trauma, intimidation and distress while giving evidence. The accused is protected. There is a concern that giving victims protections or coaching could hinder an accused person's due process rights to a fair trial.

5. 'Special measures': intermediaries and ground rules hearings

Question 16 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?

Response:

There was no intermediary to support the victim. All the resources are devoted to defending the perpetrator.

7. Judge-alone trials

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

Response:

There is an entrenched gender bias and a patriarchal hierarchy among judges. The Tasmanian Supreme Court judge, Gregory Gleason, has been arrested and is currently facing charges of physical and verbal assault, emotional abuse and intimidation.

, and tracking a person's movements using technology. Charges reveal he is alleged to have subjected a person to persistent yelling and screaming, exhibiting jealousy, rage, anger and aggression for seven months.

This is the antithesis of all the values he is supposed to represent and put in place as a judge.

8. Cross-examination and the law of evidence

Question 22 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?

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

Response:

██████ didn't even have a lawyer. She had no one advising her how to navigate the system. The Court Supporter was sympathetic, but not legally trained. They can direct you on the agenda and give you a box of tissues, but ██████ needed someone powerful and influential who understood what was going on. Someone she could build trust with, someone on her side. She needed to be better informed. She had to cross question her abuser in court, and was cross examined completely alone by a criminal defence lawyer with years of experience. She had to relive her trauma, was not believed and had no one to make sure her human rights weren't abrogated. Victims are shouted at and bullied in court when they should be believed. They cannot give their best evidence under so much stress. The criminal defence counsel should not be allowed to ask questions that confuse or intimidate the victim. Language should be direct with no bullying. Just because you treat the victim with the care and respect they deserve, and tailor the questioning to meet their needs and vulnerabilities, doesn't mean that the accused won't get a fair trial.

Why would anyone go through all that trauma with no chance of justice? Perpetrators know they are unlikely to be found guilty and this is no deterrent to stop them continuing their heinous crimes.

10. Personal information

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

Response:

There are long waiting lists for counselling and a limited number of sessions allowed.

11. Types of evidence

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)?

Response:

This is the crux of the matter. Sexual assault happens in private. There are no witnesses or evidence. It is an impossible situation. There is no possible way to prove

sexual assault in a court system that is evidence based. The assault must be proved beyond reasonable doubt. The defence counsel is searching for reasonable doubts. The defence doesn't have to prove the facts of the case. They don't have to prove their version of events isn't true. They simply have to show that there is reasonable doubt that the case is not true. If there is any doubt in the victim's story, any inconsistency, a suspicion that the person might not be 'credible', a niggling concern that something is not quite right, then the jury can't convict the accused beyond reasonable doubt. The fact that it's usually word against word. In historical child sexual abuse cases it is almost impossible for the jury not to have reasonable doubt because of the 'effluxion of time'. Even if the jury thinks the accused had committed the crime, if there is any doubt whatsoever the perpetrator will be set free.

Victims are encouraged to come forward to police in the hope that they will receive justice and prevent their perpetrator from ruining more lives. They don't want this to happen to other children. But the justice system fails them.

The lived experience of sexual assault is not remembered in a neat, consistent, scientific parcel. Yet the law insists it must be. And without such evidence the law too often finds testimony 'unbelievable'. A rape is not an accident. It is a crime against a person. When a woman says 'no' and her actions say 'no' and she is violated, she feels the pain and terror. But she is told she is mistaken, confused, too drunk to remember. If she doesn't deliver her evidence neatly, in a clear linear story, with consistency in recall, then she is lying. You go through all that trauma and the legal system makes you look like a liar. Inconsistencies are proof of doubt in sexual assault cases. They tell the jury they couldn't possibly be sure.

Consistency is the litmus test of credibility in sexual assault cases. To the victim, the rape and the perpetrator are vividly recalled, the peripheral details not so clearly. If a woman is rattled by reliving the nightmare in court, if a woman's experience of rape is not the way the court can accept, then they conclude she is lying, that she must be disbelieved. How is it possible for the victim to ever win?

The law of sexual assault spins on the wrong axis. A woman's experience of sexual assault does not fit the male-defined system of truth so it therefore cannot be called justice.

12. Specialisation and training of judges and counsel

Question 33 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?

Response:

Widespread sexual harassment, discrimination and bullying revelations have rocked the legal profession. Victims are still not being supported to speak out for fear of the potential adverse impacts on the careers of student lawyers. The Equal Opportunity

Commissioner revealed entrenched gender bias and a patriarchal hierarchy. People in leadership positions; judicial officers, senior lawyers, police and government, feel that they can get away with it and blatantly engage in that conduct. This is the antithesis of all the values they are supposed to represent and put in place as lawyers and judges.

There can be no justice for victims until this is changed.

13. Delay

Question 34 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?

Response:

Court cases take years. [REDACTED] disclosed child sexual abuse in [REDACTED] 2022. She waited six months for counselling. [REDACTED] told not to talk to her about the incident because it might compromise the case. The court case will be heard in [REDACTED] 2024. Meanwhile, the perpetrator lives in the same town [REDACTED]. He has threatened [REDACTED] [REDACTED] extremely stressed and had to remain calm [REDACTED] [REDACTED] had to increase [REDACTED] house security. I worry about him abusing other children. I live in a state of heightened anxiety.

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?

Response:

Staff shortages and under funding. Court backlogs. Waiting lists.

14. Guilty pleas

Question 36 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.

Response:

The offender has pleaded not guilty.