



A ROLLERCOASTER RIDE

Victims of Sexual Assault:

Their Experiences with and Views about the Criminal
Justice Process in the ACT **2009**



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ACRONYMS

ABS	Australian Bureau of Statistics
AIC	Australian Institute of Criminology
ACTP	ACT Policing
AFP	Australian Federal Police
CRCC	Canberra Rape Crisis Centre
DPP	Director of Public Prosecutions
VSS	Victims Services Scheme
VoCC	Victims of Crime Coordinator
VSACT	Victim Support ACT
WAS	Witness Assistance Service

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Thank you one and all.

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- Jane Caruana, Office of the Victims of Crime Coordinator;
- Veronica Wensing, Canberra Rape Crisis Centre; and
- Counsellors in Victim Support ACT and the Canberra Rape Crisis Centre.

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The report draws upon and contains work and research conducted and written by different researchers.

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- Kandie Allen-Kelly who conducted and wrote up the qualitative interviews.
- Di Lucas wrote a brief overview of available research and the service framework in the ACT.
- Robyn Holder, ACT Victims of Crime Coordinator, brought the separate components into one report.

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EXECUTIVE SUMMARY

*Their support was important to me.*¹

This report provides information principally derived from two studies involving a number of adults who had experienced a sexual assault and who had reported the incident to police in the ACT. The first component involved qualitative interviews with individual victims of sexual assault to ascertain in depth their views and experiences of the criminal justice process. The second involved the research participants answering questions about procedural fairness using a computer program specifically designed for a larger national research project.²

The decision to report a sexual assault to police has far reaching implications for the women and girls, men and boys who chose to do so. While any individual person will be influenced by a range of factors in deciding to disclose, or not, those interviewed for this research primarily felt motivated to protect themselves and to protect the community by reporting the incident(s) to police.

Victims of sexual assault who participate in the criminal justice process do so with a high degree of ambivalence mixed with a strong sense of responsibility to see justice done.

Victims of sexual assault value highly the principles of procedural fairness. They rank highly the principles of honesty, absence of bias, fair and just decision-making, and inclusion. They value being treated with respect, sensitivity and fairness. They value being made to feel safe and being given clear and timely information.

How victims of sexual assault experience these principles and values in reality produces a mixed picture in the ACT. Most of those interviewed for this research found the police, prosecutors and victim liaison staff to be supportive and positive. Consequently, they did not consider withdrawing their report. For those who actually appeared in court, the judiciary was experienced as supportive and respectful. Interviewees valued the contact made by victim liaison staff in the justice agencies, and considered the support and counselling provided by the various victim services to be helpful and encouraging. Those victims who appeared in court generally found the experience of defence lawyers to be humiliating and difficult.

1 Interviewee (2007).

2 Methodological details pertaining to the research can be found at Appendix A.

A range of specific aspects to the criminal justice process were noted by the participants to this research to be unhelpful and discouraging. In particular, comments or behaviour from justice practitioners that was interpreted as lacking in empathy, understanding or belief, inadequate information, insufficient preparation and lack of follow up, not being given opportunities to be involved or to be heard, some counselling support being difficult to access, the length of time the process took and number of adjournments, and media intrusiveness.

Perhaps surprisingly, victims interviewed for this report were unanimous that their decision to report to police was right for them and that they would encourage reporting to a friend who was sexually assaulted. One, however, was ambivalent about reporting in the future if she herself was sexually assaulted again. All participants wanted the offender apprehended, charged, convicted and rehabilitated (often in prison) because they wanted to ensure that others were safe.

On the question of victim choice and control, all participants in the research project thought the police and prosecutors needed to have the control over the laying of charges and decisions to prosecute. They believed it shouldn't be about their preference. At the same time, all those interviewed felt that police and prosecutors should ask victims their views, and be supportive and respectful of these in the decision-making process.

Similarly, all participants in the research project felt that their views should be taken into account at sentencing but did not feel the decisions about length of sentence and type of punishment should be up to them. They thought the judge should take account of their views and their victim impact statement but that the decision should remain with the judge.

A number of matters limit the general applicability of the findings of this research project. These are that only a small number of people provided feedback, the participants were all adult, and a majority of participants not only had the offence committed against them charged and prosecuted, but also the majority had their case result in a plea or finding of guilt. These last two factors are generally atypical in all Australian jurisdictions.



**PART 1:
INTRODUCTION**

PART 1: INTRODUCTION

1 SEXUAL ASSAULT

Sexual abuse and assault are particularly serious crimes given their intrusive nature and the impact and consequence of such offending on victims.

Anybody can become a victim of a sexual offence although those at highest risk are young people, especially girls. Victims are diverse not just in their age and gender. They come from a diverse range of cultures and experience a diverse range of ability/disability. Victims can also experience different barriers to reporting or seeking support following sexual assault.

- There are about 44,000 incidents of sexual assault against people aged over 18 years per year in Australia, and the rate of self-reported sexual assaults has remained steady in the 2005, 2002 and 1998 surveys.³
- Approximately 80% of victims of recorded sexual assault are female (ABS 2003a), and 86% of self-reported victimisations (ABS 2003b).
- Just under one-third (31%) of those who experience sexual assault are aged between 25-34 years old. The most likely perpetrators of sexual assault are family members or friends (39% for women and 44% for men).⁴
- 12% of women report being sexual abused before the age of 15 years, and 4.5% of men.⁵

3 ABS (April 2005), *Crime and Safety, Australia*, Australian Bureau of Statistics, Canberra.

4 ABS (2005 Reissue), *Personal Safety Survey*, Australian Bureau of Statistics, Canberra.

5 *Ibid.*

2 SEXUAL ASSAULT AND THE CRIMINAL JUSTICE SYSTEM

There are numerous reports that have been written exploring the barriers faced by the diversity of people trying to access the criminal justice system and their experience within it.⁶ A national survey in 1996 showed that 15% of women chose to report the incident against them to police. In 2005, this had increased to 19%.⁷

A similarly small proportion of reported sexual offences result in charges being laid by police. For example, in Victoria it is 15%,⁸ and in the ACT it is approximately 16%.⁹

Approximately three-quarters (77%) of defendants whose principal offence was sexual in nature who appeared before the lower courts in Australia in 2004-2005 were found guilty, and guilty pleas resulted for 76% of defendants in the higher courts.¹⁰ As Borzycki notes (2007:22), the equivalent proportion for all defendants regardless of principal offence type in magistrates' courts was 96%, and in Australian higher courts was 91%.

There has been no specific study of the prevalence and reporting of sexual assault in the ACT. However, official data regarding sexual assault and related offences is published in the *ACT Criminal Justice Statistical Profiles Quarterly Reports*.¹¹ These data includes information about the number of offences (as opposed to the number of incidents) reported to police and the number of alleged offenders, the number of defendants facing the courts and the number of charges.

A number of studies in Australia and overseas have explored the problem of 'attrition' of sexual offences within the criminal justice system, that is, the proportion of charges that 'drop out' as matters progress through the different justice stages (Kelly et.al 2005; Lievore 2005 and 2004; Fitzgerald 2006). A local study (Borzycki 2007) confirmed similar patterns were

6 Recent examples include Victorian Law Reform Commission (2004), *Sexual Offences: Law and Procedure Final Report*, Melbourne; Violence Against Women Unit (May 2006), *Improving Service and Criminal Justice Responses to Victims of Sexual Assault*, NSW Department of Community Services, Sydney; Lievore, D. (2003), *Non-reporting & hidden recording of sexual assault: an international literature review*, Canberra, Office for the Status of Women.

7 ABS (1996), *Women's Safety Survey*, Australian Bureau of Statistics; and *Op.cit* (2005).

8 Statewide Steering Committee to Reduce Sexual Assault (2006), *Study of reported rapes in Victoria 2000-2003: Summary research report*, Melbourne: Office of Women's Policy, Department of Victorian Communities.

9 Borzycki, M. (2007), *Pilot study on sexual assault and related offences in the ACT: stage 3*, Australian Institute of Criminology, Canberra, p.42.

10 ABS (2006), *Criminal Courts, Australia 2004-05*, Canberra.

11 www.jcs.act.gov.au/publications

evident in the ACT. Furthermore a 2008 meta-analysis of studies from 5 countries of rape and attrition in the legal process by Professor Kathleen Daly at Griffith University confirms the decline in the average rate of conviction over the past three decades.¹²

Table 1: ACT Criminal Justice Statistics - Sexual Assault & Related Offences, 2004, 2005, 2006, 2007

	Reports to Police – Sexual assault and related offences		Magistrate’s Court – Children’s Jurisdiction		Magistrate’s Court – Adult jurisdiction		Supreme Court	
	Offences	Alleged offenders	DEFTS	CHGS	DEFTS	CHGS	DP/NG/Dismissed	Guilty/sentenced
2004	397	79 M	35	70	61	131	6	7
2005	339	126 M 3 F	36	65	100	223	8	7
2006	286	97 M	14	28	47	104	6	8
2007	342	141 M 13 F	9	18	49	109	4	8

M – male; **F** – female; **DEFT** – defendant; **CH** – charges; **DP** decline to proceed; **NG** – not guilty

NOTE: the agency statistics in any given year are not directly comparable one to the other.

¹² Daly, K. & Bouhours, B. (July 2008), *Rape & Attrition in the Legal Process: A Comparative Analysis of Five Countries*, Manuscript located at www.griffith.edu.au/professional-page/professor-kathleen-daly/publications at Part 3.

3 VICTIM EXPECTATIONS OF THE JUSTICE SYSTEM

The available research shows clear mismatches between victim expectations and needs, and the objectives of the system overall (see Appendix C for Selected Bibliography). Asking why victims of sexual assault report the incident to police – as an indication of what they want and expect from the justice system – can provide clues for ways to narrow this gap.

Dr Denise Lievore’s report for the Commonwealth Office for Women showed that, while victim objectives in reporting were not necessarily conscious and articulated at the time, many women (variously) felt a sense of duty, had a fear for their safety, wanted justice, and did not blame themselves.¹³ Many of these motivations for reporting reflect those of other victims reporting crime and violence.¹⁴

Notwithstanding the combination of civic duty and personal needs, the majority of victims interviewed by Lievore (2005) held preconceived perceptions that the system would prove a negative and damaging experience for them.¹⁵ In general, once engaged with the process the majority of interviewees were committed to following through. However, once engaged with the process, the majority of experiences were in fact negative both in terms of procedural and substantive justice. Therefore, the common perception in the community (and amongst victims) that the justice system is unsatisfactory for victims acts as a clear disincentive to report, and a clear disincentive to remain engaged as a prosecution witness.

Judith Herman, a noted US trauma expert, has explored, through interviews with 22 victims of sexual and physical assault, what ‘justice’ would look like to them.¹⁶ From her research sample Herman finds that what victims primarily want from the criminal justice system is acknowledgment and vindication.

13 Lievore, D. (2005), *No Longer Silent. A study of women’s help-seeking decisions and service responses to sexual assault*, Canberra: Office for the Status of Women.

14 ABS (2005), *Crime and Safety Survey*, Canberra.

15 Ibid. p. vi

16 Herman, J. (2005), “Justice from the Victim’s Perspective”, *Violence Against Women*, Vol. 11, No. 5, May 2005.

4 VICTIM NEEDS IN THE CRIMINAL JUSTICE SYSTEM

Research has also identified that the needs of victims of sexual assault can vary depending on the circumstances of the victim at the time. In an interview with the NSW Violence Against Women Specialist Unit, Lievore has said that *'individual women have different capacities to negotiate the criminal justice system. Their needs are likely to vary in intensity and nature over time and across situations, such as immediately post-assault, or just prior to the first court appearance'*.¹⁷

Both Herman and Lievore agree that the needs of a victim may conflict with the objectives of the criminal justice system.¹⁸ Lievore, commenting on the time of crisis immediately after a sexual assault says *'... women are likely to be in shock, may be unable to think clearly, or may not fully understand the implications of their choices. At this time their personal needs, such as the need to feel safe, may conflict with the needs of the police investigation, such as collecting forensic evidence.'*¹⁹

Herman (2005:574), commenting on the court process, says *'Victims need social acknowledgment and support; the court requires them to endure a public challenge to their credibility. Victims need to establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and bureaucratic procedures that they may not understand and over which they have no control. ...'* *'Indeed', she concludes, 'if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law.'*

Research undertaken by the NSW Violence Against Women Specialist Unit also found that *'being believed'* was a key theme for victims of sexual assault in their dealings with the criminal justice system. The other key theme was *'being provided with information on a continuing basis'*.²⁰ *'Information is critical and it is not sufficient to only provide this information on a single occasion at the commencement of dealing with the legal system – often information needs to be repeated.'*²¹

17 NSW Violence Against Women Specialist Unit. Sexual Assault Victims and the Criminal Justice System http://www.lawlink.nsw.gov.au/lawlink/vaw/ll_vaw.nsf/pages/vaw_feature

18 However, recent evaluation of the experience of victims of family violence in the criminal justice system has shown that there is more commonality between victims' objectives and those of the criminal justice system than is supposed. Holder, R. (2008), "Catch 22: Exploring victim interests in a specialist family violence jurisdiction", *International Journal of Comparative & Applied Criminal Justice*, vol.32, No.2.

19 Ibid.

20 NSW Violence Against Women Specialist Unit (2006), *Improving service and criminal justice responses to victims of sexual assault: A report of a State-based consultation with adult victims of sexual assault, services and agencies*, p. 58.

21 Ibid. p. 61

The NSW research report also cites recent research from the UK that identified important measures that were either in place or were needed to improve the system. These included:

- *A culture of belief and support.*
- *Access to a simple card or flyer with a phone number where support and information would be easily accessible, including out of hours.*
- *Awareness of the meaning of information, and the time it is most appropriate to give it.*
- *Services keeping proactive contact and being kept informed about case progress²²*

In its concluding remarks the NSW report summarises the starting points to improve service and the criminal justice response to victims. They include, but are not limited to:

- A more integrated and coordinated service system;
- Greater recognition of the diverse needs of victims and their heightened vulnerability; and
- Information about victims' rights, services and assistance available.²³

The respondents in the NSW research made suggestions that would improve the reporting to police. They included:

- Having access to an advocate or support person;
- Linking sexual assault services to police;
- Provision of information about the process of reporting; and
- Having appropriate interpreters available.

Similarly they had suggestions for improving the court process and these included:

- A need for greater support and provision of more information;
- Reduce delay in the court system; and
- Further training/education of members of the judiciary, DPP, legal profession and police around issues of sexual assault and how to support victims.

In summary, the research suggests that victims' needs include:

- Belief and acknowledgment;
- Information;
- Communication;
- Support and advocacy; and
- Responsive court system (including training and timeliness).

22 Kelly L, Lovett J, Regan L. *A Gap or a Chasm? Attrition in Reported Rape Cases*. Home Office Research Study 293. London: Home Office, 2005, pp. 87 - 88

23 NSW Violence Against Women Specialist Unit (2006), p. 62-63

5 REFORM IN THE ACT

A joint report by the ACT Director of Public Prosecutions and ACT Policing produced in 2005, *Responding to sexual assault: the challenge of change*, examined ways of improving the investigation and prosecution of sexual offences.²⁴ The report contributed to a major new initiative of the ACT Government, announced in 2007, in which \$1.4 million over 4 years is being invested to improve the criminal justice system response to sexual offences.

The ACT Government's reform program includes:

- Legislative reform;
- Improved facilities at court;
- Enhanced and coordinated support for victims and witnesses;
- Enhanced focus on police investigations and prosecution practices;
- Training & development of criminal justice staff;
- Provision of information for victims of sexual assault; and
- Evaluation of the reforms.

Understanding more the views and experiences of victims of sexual assault is essential to this reform undertaking. The research presented in this report explores the applicability and relevance of the issues identified in other jurisdictions through the experiences of adult victims of sexual assault who have reported sexual assault to police in the ACT.

²⁴ Office of the Director of Public Prosecutions (ACT) and Australian Federal Police (2005), *Responding to sexual assault: the challenge of change*, Canberra.



PART 2:
**THE VIEWS AND
EXPERIENCE OF VICTIMS
OF SEXUAL ASSAULT**

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THE VIEWS AND EXPERIENCE OF VICTIMS OF SEXUAL ASSAULT

The views of victims and their experiences of the criminal justice process are an essential element to the fair administration of justice.

This section explores in depth the expectations, experiences and views of adult victims of sexual assault (where matters had been reported to police and had been to Court). It contains victims' reflections on issues of control, preference and choice in criminal justice proceedings.

Using a semi structured questionnaire (see Appendix A), individual interviews explored reasons for reporting, whether victim's expectations were met, what supported victims to stay engaged in the criminal justice process, what was difficult about the process, and what they believe constitute good practice in victim support through the criminal justice system. The interview also asked what advice they might give a friend who had been sexually assaulted, and whether they would report if they had their time over again.

1 THE PARTICIPANTS

Six women and one man were interviewed. Five had recent experience of the ACT criminal justice system (over 2005-2007) and agreed to participate through their contact with the Witness Assistants in the Office of the ACT Director of Public Prosecutions (ODPP) or through the Office of the Victims of Crime Coordinator (OVCoC). Two of the seven agreed to participate through their contact with the Canberra Rape Crisis Centre and their experience was seven and ten years ago.

The incidents that the participants experienced ranged from indecent exposure to aggravated sexual assault. In four matters, the perpetrators pleaded guilty to the charge(s), in two others the offenders contested the charges, and in one matter the charge did not proceed.

The experience of the two participants whose experience was 7-10 years ago was notably different to the more recent experiences. This suggests that significant improvements have occurred in the way the ACT criminal justice system works with victims over recent years.

This chapter details the main themes which emerged from the interviews.

2 REPORTING TO POLICE

2.1 REASONS FOR REPORTING

All the participants said that they reported the incident to police because they wanted the offender apprehended, charged, convicted and rehabilitated (often in prison). While this was in part to protect themselves, all articulated that it was primarily because they wanted to ensure that others in the community were safe and did not have to go through what they went through.

One participant articulates this,

First I wasn't going to report. I didn't have the energy. Then with encouragement of family and friends I decided to go the next day. Didn't think it would take this long to go through. I didn't really know what to expect – hasn't happened to me or anyone near me. I wanted them to catch him, get him off the streets. Beyond that I didn't think about or know what the outcome would be. My family and friends appealed to me about him going around and attacking someone else – it was my responsibility to help the community. [That is the] main reason I reported.
PARTICIPANT 4

Said another, "it was just the thing to do". She went on to say:

It was the injustice behind it. You don't do that to someone and get away with it.
PARTICIPANT 7

2.2 EXPECTATIONS

The participants did not have a specific or conscious set of expectations about what they wanted to see happen as a result of reporting the incident(s) to police. Essentially they described wanting the offender caught and taken off the streets.

I wanted them to catch him, desperately. And I wanted them to catch him quickly.
PARTICIPANT 3

I just knew it was illegal and he shouldn't get away with it.
PARTICIPANT 1

I hoped he would be convicted and goaled, pay for what he did. I worry that I'll see him on the street because he will recognize me.
PARTICIPANT 5

Through counseling, I realized if I remained silent nothing would change. I needed to stop them for other people. ... I feel very much responsible in a way.

PARTICIPANT 6

One participant couldn't recall much about the reporting.

[It was] all a blur on the first day, a neighbour heard me screaming, [and] called the police.

PARTICIPANT 2

Once they had reported, the participants agreed that their experience with police was positive. One participant articulated that the police had exceeded her expectations. All stated that the police took their report(s) very seriously, they acted immediately or came over quickly, they understood the victim's fears, and were proactive in checking with the victim things like the appropriateness of having a male photographer and the victim taking time out.

Some specific comments included:

I didn't expect the police to take it so seriously. ... I thought that they would just put it on record and leave it at that. They exceeded my expectations.

PARTICIPANT 1

I hassled them [the police] quite a bit – "are you getting any closer" etc. I wanted to know. They were great, terrific, kept me in the loop.

PARTICIPANT 3

I spent the day with the police. Full day of reports etc. We were supposed to do forensics but that didn't happen. Police were really good. Sexual assault unit officers and those who came were really polite and really respected me.

PARTICIPANT 7

Participants trusted what police said to them about the decision to report.

Said one:

The police said this is what you've got to do and I went along with it. Not pressured but just went on with it. I didn't consider not charging him. Police brought the charges.

PARTICIPANT 2

Others found that as investigations dragged on, the level of contact significantly dropped away. Said one:

The police were really good. For the first week or two they would call me every day but nothing much since. It would be good to hear more about what is happening. I understand they are really busy. I haven't called either but it would be good to get a phone call.

PARTICIPANT 4

A couple of other experiences were also mixed. Comments included:

I was not very impressed with the police officers on the night as apparently they didn't do their job properly. I didn't know that at the time.

PARTICIPANT 5

I remember it very clearly. I had been thinking about [reporting] all week, then when I did it, it was quite liberating though quite scary. I didn't really want to do it. Two police I dealt with - the male policeman was better than the woman.

PARTICIPANT 6

Reporting and the next day were good. Then there was this long gap til the court and then it was all on again.

PARTICIPANT 7

Contrary to previous studies (eg Lievore) participants in this ACT study did not expect the criminal justice process to be a difficult one for them.

2.3 WHO AND WHAT HELPED IN THE REPORTING PROCESS?

There was a degree of uniformity in who or what helped participants through the process of reporting to police. Participants indicated that the fact that police took their report(s) very seriously, acted immediately or came quickly, and understood their fears all helped. In particular, it helped that police treated them with dignity and respect and were supportive.

As one participant articulated so clearly:

They were great in that they didn't press me. 'You don't have to continue now'. 'Are you comfortable with that'? They were really supportive. They were very respectful all the time – that was really important – when someone takes away all that control and dignity it is great that the police reaffirm and give some of that back.

PARTICIPANT 3

One victim (Participant 1) said that, when she arrived to give her statement, the police had a map of the area she had been in – printed out – “*ready for me to show them where I had been. I thought it was really good that he had that already.*” It helped that the police took it seriously enough to be

prepared for her when she came in. Police acting swiftly and taking the report seriously gave this participant confidence in what she was doing.

The length of the interview at time of report was also considered helpful with one of the participants (4) stating, *“Although hard, the lengthy interview helped debrief me because it was so long and detailed.”*

The gender of the investigating officers was commented upon in a couple of different ways. Said one:

The policeman helped. He would offer a smoke, chat on a very human level, talk about other things in my life. Treating me as a survivor [of childhood sexual abuse] not as a victim. The female police officer treated me completely as a victim. Bloke would leave it – come at it tangentially – what school are you at now? What school were you in when x happened? Helped to put times and places together. [This was] much more helpful than demanding to know times and places.

PARTICIPANT 6

One of the policewomen said one of the photographers was a man is that okay. It didn't bother me. Not all men are scumbags but that thoughtfulness was really terrific. The police officer who interviewed me was a woman – don't know that that made a difference. The blokes were as thoughtful and considerate though. It would be good if these good news stories were known – that there are cops that are on our side who will go the extra mile to help.

PARTICIPANT 3

The Victim Liaison Officer from AFP was highly regarded by most victims interviewed especially those who were contacted by her proactively. A couple of participants commented that they thought this role was very important.

2.4 WITHDRAWING FROM THE INVESTIGATION

None of the participants considered withdrawing from the process in the early days of the investigation. Most were supported by family and/or friends and found the police supportive and positive so did not consider withdrawing their report.

One person (participant 2) said that the police officer told her to stop screaming and to look at her hands. She had blood on her hands from being cut. She hadn't realised. She thought he was very abrupt but it did not dampen her otherwise positive experience of the police at the time of the report.

3 EXPERIENCE OF THE ACT CRIMINAL JUSTICE SYSTEM

The participants interviewed for this project were primarily very positive about their experiences of the criminal justice system and the players within it.

3.1 POLICE

The participants generally experienced the police very positively at the time of reporting. Indeed, two of the participants spoke very highly of their experiences of the police throughout the criminal justice process.

One participant's experience (participant 4) is illustrative of what makes a positive experience with police. For her it was important that the investigating officer saw the whole case through, that he did the initial long interview, was a fun friendly person and if she ever needed to talk to him, even if they hadn't spoken for a while he would drop everything and talk to her. Also he arranged to come to see her at work to talk with her about the CCTV for the trial. Victims experienced this level and tone of action as demonstrating that they were "not just another case", and that the officer(s) were going the extra mile.

Another comment illustrates the commitment and longevity required of people within the system. The participant said:

[...] called me about every two months during the first two years. She called me a bit after the case to see if I was doing alright – about a month ago. It was good to know that someone was checking up on me. It was a helpful process.

PARTICIPANT 4

The research participants identified a number of things they experienced throughout the process that were not as positive.

Three participants would have liked police to be more proactive. That is, to contact them and let them know what was happening. Said one:

If I rang up [the police] were good. But they didn't ring to say 'this is going to be in the paper' or 'we've been in court'.

PARTICIPANT 2

It would have been good if [...] could have contacted me first and say "I am x and will be dealing with you now". It was difficult having to call a stranger.

PARTICIPANT 1

I would have liked even more contact with the police. I wanted to know everything that was going on.

PARTICIPANT 3

This participant went on to say:

The need to know does have to come from the victim. If [the police] are giving status reports but you want to be under the doona, this wouldn't be good. They should give you what you want without forcing it on you I think.

PARTICIPANT 3

Other participants found that the amount of contact and information did fall off over time and this was experienced as unnerving and disrespectful. Said one:

I didn't hear anything for 3 and a half months. I found out from family ... what the outcome was. I didn't hear from police [that the case was not proceeding]. It was quite a shock.

PARTICIPANT 6

One participant was confused about who was the person that she was to contact to find out about her case. She wondered at the time why the AFP phone operators didn't seem to know who she was talking about and she found this both frightening and alienating. In retrospect, it would appear that she had mis-heard the person's name and, in the absence of a card or brochure to go back to, she had continued to use the incorrect name.

Two people were very upset by police handling of the forensic evidence in their cases. In both these cases the lack of forensic evidence taken at the time or the handling of it was later recognised to have significantly weakened the case at court. In one of these the victim chose not to proceed with third court proceedings. In the other situation, the offender "got off" the sexual assault charge. The victim in the latter situation was told that the alleged offender would be charged for a similar offence in NSW. This was never followed up with her and she has continued to wonder what had happened.

On occasion a victim may be given information s/he did not want to know. One participant would have preferred not to know who the perpetrator was. She was half told – some police mentioned it, others didn't, no one asked her if she wanted to know.

3.2 OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

A number of aspects of the responses of staff within the Office of the Director of Public Prosecutions were experienced as positive. One participant said that the two prosecutors she dealt with were “*standout people. They were friendly, understanding and I got used to being able to talk about things with them.*” (Participant 4)

For another participant (4) being taken through the court rooms and talking her through what to expect was experienced very positively. An ODPP staff person explained the court processes and provided hope with realism to another participant. This was also experienced very positively.

Meeting the prosecutor before court and receiving information about what to expect was greatly appreciated by a number of participants. However, two of the participants said that they would have liked to have met with prosecutors and staff before court and to receive information about what to expect.

One participant (7) felt really encouraged by the prosecutor. However, after being “attacked” by defence at the trial, feels that she should have been better prepared for what was to come, and would have found it helpful to know how the prosecutor was going to deal with the defence attacks.

Some aspects of prosecution were experienced in a less positive light. One person (participant 2) was critical of the prosecutor who, in trying to explain why charges were to be downgraded or dropped, explained graphically what they would have to show rather than saying we need to be able to prove that he intended to rape you before he reached the door. The victim felt very upset by the manner of the description. This participant went on to say:

DPP should ring victims before they ring anyone else when considering reducing charges. They should not agree with the defense or whoever first before they make decisions. They may not be able to do what the victim wants but they do need to consider the victim’s wishes overtly, maybe find a compromise.

PARTICIPANT 2

Another participant (4) was told that the language she used reduced her credibility with them, and they wondered aloud if she were telling the truth. Because she utilised the recognised vernacular for the acts committed against her, one woman was told she wouldn’t be believed, that they didn’t believe her. She was then questioned in depth about her past by them and

felt she was forced to tell them things she would not have otherwise to try and demonstrate that she was OK. Said this participant:

Luckily I consider myself emotionally stable but another girl it might easily have undone her.

PARTICIPANT 4

This participant went on to say that she almost withdrew from the case when she discovered that the prosecutor who had been dealing with her case and with whom she had formed a bond, had left the Office without letting her know. She said:

Not being notified was a really big thing. [!] recognise that they have a lot of things to do, but the impact was big. Their support was important to me. Stability is the most important thing they can offer us and they could help the transition where they have to be replaced.

PARTICIPANT 4

Letting her know what was going on and introducing her to the new prosecutor would have been preferable and experienced as treating her as someone who mattered.

3.3 COURT

Not all the research participants had a direct experience of being in court. One commented that she experienced the judicial officer as very supportive and respectful (participant 3).

Being given the choice of and giving evidence / statement via CCTV was noted as excellent by three participants. People's complex feelings about giving evidence, seeing the offender, and being strong are evidenced in the comment from one participant.

I was given the choice to [give evidence] via CCTV. At trial I thought about doing it directly but then I decided I might get too emotional. I can be really emotional and I am also able to make myself be really calm. It was good not to have too many eyes watching. I hadn't seen him til the day of the trial – then I thought he wasn't too intimidating so I could probably have [done it]

PARTICIPANT 4

One participant found the absence of CCTV in the Magistrates Court very confronting. She said:

He had no lawyer in the Magistrates Court. He would laugh and gave me weird looks.

PARTICIPANT 7

The participant found it much easier with the CCTV in the Supreme Court. She said:

The CCTV protected me from [his behaviour] and gave me privacy. It gave me a bit of distance which was helpful.

PARTICIPANT 7

However, this participant did go on to wonder whether “being in the court with the jury might have helped them see me and the emotions I’d been through”. Her accused was acquitted of the sexual offence charges.

Knowing more about how the criminal justice process worked and having support afterwards was mentioned as something they would like by other participants. One participant (2) would have liked to know much earlier that she could attend the mentions. She found out from the Office of the Victims of Crime Coordinator that she could, but would have liked to have known that earlier in the process. Said another:

I think I am quite a hardy person and I think a more fragile person might have needed some follow-up support at the time of a court case.

PARTICIPANT 1

Being given an option to read her Victim Impact Statement (VIS) in court was very powerful for one of the participants (3). She felt that it had more impact than those read out by the prosecutor. She said:

*It was good to [read it myself] because listening to the prosecutor reading it removes it but reading it myself meant **he** had to face up to and hear from a real person not an anonymous person he had abused. This is good as it is such a dehumanizing crime.*

PARTICIPANT 3

She went on to say:

It is very important to give people the option to read it out because of its power in helping recovery and the community understanding the real consequences of such a crime.

PARTICIPANT 3

Three other of the research participants would have liked to read their VIS in court but were not given that choice. Said one:

I was sent [the VIS] in the mail and only given a week to do it ... it was very hard to write it down. I didn't get a clear sense of the outcome. I am not sure if anyone even saw it other than [the investigator].

PARTICIPANT 1

One participant did not do a VIS. She said:

I think it is to get someone a harsh sentence or some thing so it is not something I want or need to do. I don't know much about it. [The incident] hasn't impacted too much on me and if it makes the sentence go longer then I don't want that.

PARTICIPANT 4

Participant 7 also said that she didn't have any interest in the sentencing.

Having people wandering in and out of court was experienced as very annoying for one participant (3) who was trying to hear everything that was being said.

Lack of preparation for the experience of defence lawyers made things difficult and the treatment by defence lawyers was humiliating. One woman experienced three days of cross examination where she said that her character was "shredded". She felt unprepared and unsupported by the criminal justice system. She said:

I didn't know anything at all about what to expect. I was drilled like a criminal by defence. I felt I was prosecuted. I lost a lot of faith.

PARTICIPANT 7

Another said she was "made to feel like a moron by the defense in court. The defence (counsel) in court was awful to me – it was quite upsetting and scary". PARTICIPANT 5

Two participants expressed upset about attacks on their background and histories by the defence lawyers while the offenders were able to be shielded.

One participant expressed being really surprised when the offender got off all but the charge which had a witness other than her. As well as it being a lesser charge, the message it gave her was that the community and justice did not believe her. As hers was a very violent sexual assault for which there was an initial confession but which went to a contested trial, she still feels very let down by the system. She understands that the person was subsequently charged with other serious offences in another state and would have liked to be told the outcome of those charges.

The majority of participants expressed the view that the time between the incident, reporting and getting to court was really hard. Said one:

For me it was not very long but for his first victim [four years ago] it was very long and that must have been very awful.

PARTICIPANT 3

'They' [defense] kept on postponing the court date. It was a rollercoaster ride getting stressed and anxious. Then they would call up and say it was being postponed. At the start of this year I said if it isn't going ahead I am going to withdraw because I can't handle it. It was too long.
PARTICIPANT 4

3.4 VICTIM SUPPORT, WITNESS ASSISTANCE & COUNSELLING

Overall participants experienced an active engagement from support people within the criminal justice and victim support agencies with respect to their care and support.

Several participants noted regular contact with the police Victim Liaison Officer (VLO) as very helpful. They spoke highly of the level of contact from the VLO including this:

Victim liaison officer from AFP was brilliant. She would ring occasionally. She would almost have psychic way of knowing when I was about to fall apart. Helped me with the financial assistance application, put me in touch with all the right people.

PARTICIPANT 3

The staff at the Office of Victims of Crime Coordinator (OVOCC) were experienced as very helpful according to three participants with respect to their explanations of court processes and their support over a number of years through the process. The OVOCC were also considered very helpful in following up financial assistance applications when they were taking a long time and this was appreciated (participant 3).

One woman was not put in touch with the OVOCC and did not feel that she had support throughout the process leading up to the courts. She felt that she had no one to assist in helping her to understanding the court processes.

The counsellors within the Victims Services Scheme (VSS) who did assessment interviews with three of the participants were considered very good, supportive, respectful, helpful and encouraging. Some things were experienced as unhelpful. One participant (2) was given a list of providers by VSS. However the list included someone who was on leave and another who had closed their books and others were too inaccessible (person had no car). This person experienced the "run around" trying to find someone to see as a bit annoying. She felt that this might have been completely off

putting for another victim or someone in a much worse state that she was. Of the counsellor she said:

I could talk to her about anything. She wasn't judgmental. Even if you had an irrational fear it may sound irrational but it is a real fear to you. I went for over a year from once a week to once a month.

PARTICIPANT 2

Another participant never followed up with a VSS approved provider after her intake and assessment interview. She commented:

I didn't really want to go to counseling because it would make it more real for me. One thing that really helped me to get through it (not sure if this is healthy or unhealthy) was distancing myself from the incident. I just went on living my life. I thought that counseling might be negative as it would bring me back to this mindset. I didn't want it more real in my head.

PARTICIPANT 4

One research participant found that the psychological report prepared for her by the VSS approved counsellor with whom she had formed a trusting relationship was not accepted by the ACT Government Solicitor (GSO) in her financial assistance application. This caused time delays and a very unsatisfactory process with a psychologist approved by the GSO. The unspoken message given to the victim was that she was not believed. This came about by a psychologist she did not know running a series of cognitive tests and not exploring the impact of the assault with her at all. She felt it was important therefore to ensure that all approved providers are also acceptable to the Government solicitor for this activity.

Two participants (1 and 4) said that they declined the offer of counselling. However one said:

I was shaken for a good week after I found out [the offender] had tried to get someone else into the car. I probably should have been offered counseling then.

PARTICIPANT 1

All of the research participants were offered counselling a few times and even the two who did not take up this option stated how important it was to be offered it and offered it more than once.

Two of the research participants were very positive about the support and counselling received from counsellors at the Canberra Rape Crisis Centre (CRCC). Said one:

I would recommend SAMSSA ... I wouldn't have been able to talk about it and go through with the police if not for [the counselor] being there and counseling me.

PARTICIPANT 6

This participant went on to say that he felt there needed to be shorter timeframes for counselling and follow-up.

Two other of the participants felt that the CRCC worker could have been better informed about the legalities and sensitive to their state when they attended. One person said that:

I would have liked my support person to be more involved. I needed someone beside me, next to me.

PARTICIPANT 7

One participant talked about seeing both a CRCC counsellor and a VSS provider. However, she was asked not to continue coming to the CRCC if she was getting the support for another counsellor. While she understood this she felt the two counsellors should have discussed it with her and explained the issues and responsibilities for clients seeing both.

Where they had the contact, those participants who had contact with the sexual health unit (FAMSAC) noted that the service would ring proactively regarding tests and so forth. This was experienced as really helpful especially as it meant one less thing to have to keep thinking about.

3.5 THINGS THAT SUPPORTED PARTICIPANTS TO CONTINUE IN THE LEGAL PROCESS

Different things were mentioned by the research participants as helping them stay engaged in the legal process.

Most mentioned the active involvement of the police VLO, the police investigator and/or the prosecutor & staff as well as the OVOCC as key factors in keeping the going over the long processes. The support from family and friends was also considered vital.

The police acting swiftly and seriously gave me confidence.

PARTICIPANT 1

The OVoCC always tried to help. If they couldn't or they thought there was something better that might help, they would refer me and they didn't just give me the number, they would ask "did you ring them", "were you able to get them". If I couldn't they'd ask if I'd like them to help me. Sometimes they rang for me and tried to chase it up – housing, work, centrelink, victims' compensation."

PARTICIPANT 2

Being able to take my friends and family in as support people at court was good.

PARTICIPANT 3

[The VLO] *her position not her as such is important to follow up regularly*
PARTICIPANT 4

My partner was so supportive.
PARTICIPANT 5

My counselor kept me going.
PARTICIPANT 6

The final thing that kept victims going in the process was, “staying focused on getting him convicted” (Participant 5). Victims said that the longer it went on and the more delays there were, the harder this was.

3.6 THINGS THAT WERE GENERALLY EXPERIENCED AS DIFFICULT

The combination of the police investigation with the length of the court processes meant that for all participants, the process of ‘resolution’ was experienced as long.

I wished it hadn't taken two years so long. Straight after it when asked if I would do it if I knew that it would take so long, I said no but now I think I would. But it is taxing so I would think twice.
PARTICIPANT 4

Postponing the court dates made continuing very hard for two of the participants. In talking about this one participant exclaimed, “How many psych assessments does someone need?”

One participant withdrew from the criminal justice process when it went to the third court hearing about two years after the offence was committed against her. She described it as *“Too much heart ache and effort to go through it again knowing there wasn't going to be much chance again. I was due to go back to court. One of the head DPP people gave me the option to NOT go through given not high chance of conviction. I wanted to start getting over it.”* PARTICIPANT 5

This participant further said, *“having to go over it and over it again and again was the worst thing”*.

One of the participants almost withdrew from the process when she discovered that the prosecutor she had been working with had left. Finding out by accident, not being told or introduced to the new people who would be working on her case was very upsetting.

Two participants experienced *The Canberra Times* as unhelpful and upsetting due to mis-reporting. One person’s family members thought she was suicidal after reading the papers which had misrepresented her self-harming behaviour shortly after the assault.

Another victim had experienced *The Canberra Times* as intrusive when a reporter questioned neighbours and left his card at the house she had been staying at, at the time of the assault. While the criminal justice processes cannot control the local papers it was appreciated when, after on incident, the media were asked by the police not to contact victims.

It may be that the judiciary, DPP and the police need to remind the media that they have a responsibility and duty of care in the way they investigate and report crimes such as these.

4 REFLECTIONS ON THE CRIMINAL JUSTICE EXPERIENCE

4.1 CHANGES IN EXPECTATIONS

Most commonly the discussion around changes in expectations included how long the process was. Most of the participants acknowledged that while it was better for the police to have all the evidence and the DPP to feel confident about it being a tight case, they wished it hadn't taken so long. Three people were particularly irritated by defence lawyers getting adjournments for what they saw as yet another psychological assessment.

One person expected that the offender would be prosecuted and had been encouraged in this belief by the police and prosecution. However the case fell apart due to lack of forensic evidence and 'tough' defence work and she was bitterly disappointed at the outcome. She also expected to be informed about the outcome of another case the offender was being tried on. This has never occurred. She said:

I put all my trust in the legal system. It was a really big thing, and then only one charge was convicted. I felt so hurt. I did not deserve to be raped and standing up for this and to have it back-firing and it being for nothing. What's the point?

PARTICIPANT 7

Acknowledgement and vindication were themes repeated by participants in the interviews. While not specifically articulated by most, it is why being treated with dignity and respect by so many in the system was so important to the victims. Similarly the reflection of horror or disgust on the faces of the judiciary was also experienced as a vindication.

4.2 HOW WELL THE CRIMINAL JUSTICE SYSTEM WORKED FOR VICTIMS

Two of the participants noted that they would have liked follow up after it was all over especially where the offender had not been found guilty or had the charges reduced.

One participant discussed believing that although she understands that the DPP have to go with charges they believe are winnable, that the victim(s) should be contacted when they are considering reducing the charges. In her case she heard from the police that this was happening and after going and discussing it with the DPP, one of the charges was reinstated.

In reflecting on the process, the participants noted that as victims they would like to be asked whether they want to know the perpetrator's name, see his picture, and to read their VIS in court (one was asked if she would

read her VIS in court and said it was a very powerful thing for her). Another of the participants was given back the clothes and bed linen from where the assault took place. She didn't want them and wished she had been asked, not just given them.

Attending a parole hearing was a very important outcome for one participant. By being able to watch what was being said and how the panel dealt with it, she was able to feel convinced that the judiciary (and thus the public) didn't hold her responsible or blame her in some way and they really did hold the offender accountable for his actions.

She also felt very strongly that victims should be offered the option of restorative justice conference (as well as court). She had been involved in such a process with her offender during his term of custody in NSW. She spoke very highly of the process and of the support she received from OVOCC. She commented that the process "took forever [2 years] but it was great." She went on to say:

Their main interest was the victim. They talk to the victim, the support person, the offender's support person, any counselor the victim has seen, anything to be sure the process will not traumatize the victim. If they just want to write, they will leave it at that. I got to meet him, had a list of things I wanted to say, some I didn't say ... Didn't want to look at him at first (about 20 minutes). I said what would you do if someone did this to your kids. His counselor was good, he was no nonsense ..."
PARTICIPANT 2

She acknowledged that the face-to-face process may not be right for some. She suggested:

Maybe letters is the best thing for most people. The counselors will check the letters first to be sure that there isn't anything traumatizing. Some may even want to just write to the offender and not get anything back.
PARTICIPANT 2

This participant was adamant that this should be an option for all sexual assault victims. The notion was raised with all other participants who agreed that this should be an option, even if it only went as far as the victim being able to write a letter to the offender. One participant even preferred the restorative justice option. She said:

Personally yeah I would have liked the opportunity to confront him with this. Doing it this [criminal justice] way feels like stabbing him in the back. Personally I would have liked to talk to him. It should be an option. For more severe cases people probably wouldn't want to do it.
PARTICIPANT 4

Two participants felt that they probably wouldn't do a face-to-face even if it were offered as they didn't want to see the offender or be in the same room as him. Said one:

I didn't ever want to see him again. Too scared.

PARTICIPANT 5

4.3 TO REPORT OR NOT TO REPORT

The participants were unanimous that their decision to report to police was right for them. This comment was typical:

I would always recommend that people report it. People shouldn't be able to get away with such a thing.

PARTICIPANT 1

They also said that they would recommend reporting to police to a friend who had been sexually assaulted.

Even those who experienced a distressing time with defence lawyers, and where the charges were reduced or the offender found not guilty due to insufficient evidence and the victim who withdrew from the process when yet a further set of hearings were to take place were adamant that victims should report the crime. For most people the decision to report then and now was as much about protecting others in the community as it was getting justice for themselves. All participants wanted the offender apprehended, charged, convicted and rehabilitated (often in prison) because they wanted to ensure that others were safe.

All participants, even those with unsuccessful outcomes, agreed that they would report if they had their time over and would encourage anyone else who experience sexual assault to report. One participant, however, initially indicated that she would report to police if she was sexually assaulted again in the future and then changed her mind and said that she felt very unsure that she would.

4.4 CHOICE AND CONTROL

All of the research participants thought the police and the prosecution needed to have control over the laying of charges. Participants believed that it shouldn't be about their preference although the police should be supportive and respectful of their views. Said one:

I didn't really need control. I reported, then it just happened and they updated me as it happened.

PARTICIPANT 1

Another commented (participant 3) that it was “good that police make the decision to charge because victims often wouldn’t, particularly if they know the person.” Another commented that it would be:

... way too emotional for the victim to have the say about charging etc. I would probably have let him walk off after chatting to him but I believe that isn't the right thing to do.

PARTICIPANT 4

This participant felt particularly strongly that “any information should be the victim’s right to know or not”. She said:

Any choice or control the victim can have should be laid out and made available. I think it is ok for [the justice people] to influence the victim one way or another.

PARTICIPANT 4

One participant acknowledged the difficulty of choice. He said, “if the victim feels [charges] should be done, it should.” However, he went on to say:

Then again, if it is your word against an offender's then it isn't going to stand up in court. Then it is a problem ... I hate the people who do this, but if we start playing god, it isn't good.

PARTICIPANT 6

One participant (2) was strongly of the view that she should have been consulted on any change to the charges before the change is actually made. She felt it was important that “victims should have a say.”

A number of participants reflected on their trust with the people in the justice system. Said one:

With most things they laid it out and I followed. That is fine. I haven't done it, they have. It is important to trust them to know what is best. Whatever they said was better unless I had a strong feeling against it. It was good having direction. If they gave me more choice, I wouldn't have a clue.

PARTICIPANT 4

With respect to sentencing again all felt that their views should be taken into account but don’t feel that the decisions about the length of the sentence and type of punishment should be up to them. Said one woman,

It was hard. Trusting the system was really hard. Just the thought that if the court said 5 years that we would have to live with that. I would have liked to throw him in jail and throw away the key. Having said that, on hearing his hard life story, I felt my sympathy bone being tweaked. I was glad I wasn't the judge. If I were, I probably would have gone 'ah gee' ... maybe. Even though I know lots of people with a bad childhood,

drug problem, hear voices, who don't become serial rapists. I was glad therefore not to have a say in that.

PARTICIPANT 3

They thought that the judge should take account of their views and of their VIS but that the decision should remain with the judge. All were concerned that the offender should be made to seek some kind of rehabilitative treatment as part of their sentence however. One participant acknowledged how his views had changed over time. He said:

If I was 12 years old when it went to court, I would have wanted these guys to get life or be executed. I feel differently now. I feel sorry for them, pity them. I definitely condemn their actions but sentencing I would have no idea.

PARTICIPANT 6

Some participants pointed out that it was good to have more choice over welfare support. Said one:

They gave so much choice – whether I wanted to see a doctor, whether I wanted vaccinations, whether I wanted tests, etc. I think they did a really good job making me feel in the driver's seat – anything to do with my welfare. I could avail myself of their help if I needed.

PARTICIPANT 3

5 CONCLUSIONS AND DISCUSSION

Participants in this small scale study were primarily very positive about their experiences of the criminal justice system in the ACT and of the players within it. Some nuances and subtleties to that experience suggest areas for improvement.

The two participants whose experience was over seven years ago were less positive overall than the more recent ones. Their experience of the support of Canberra Rape Crisis was positive. The five participants with recent experience of the criminal justice system gave very positive feedback about experiences of the police, victims of crime office and victims services scheme. Participants offered very specific feedback about specific practitioners within the system and from all agencies, and from the victim of crime services and the CRCC.

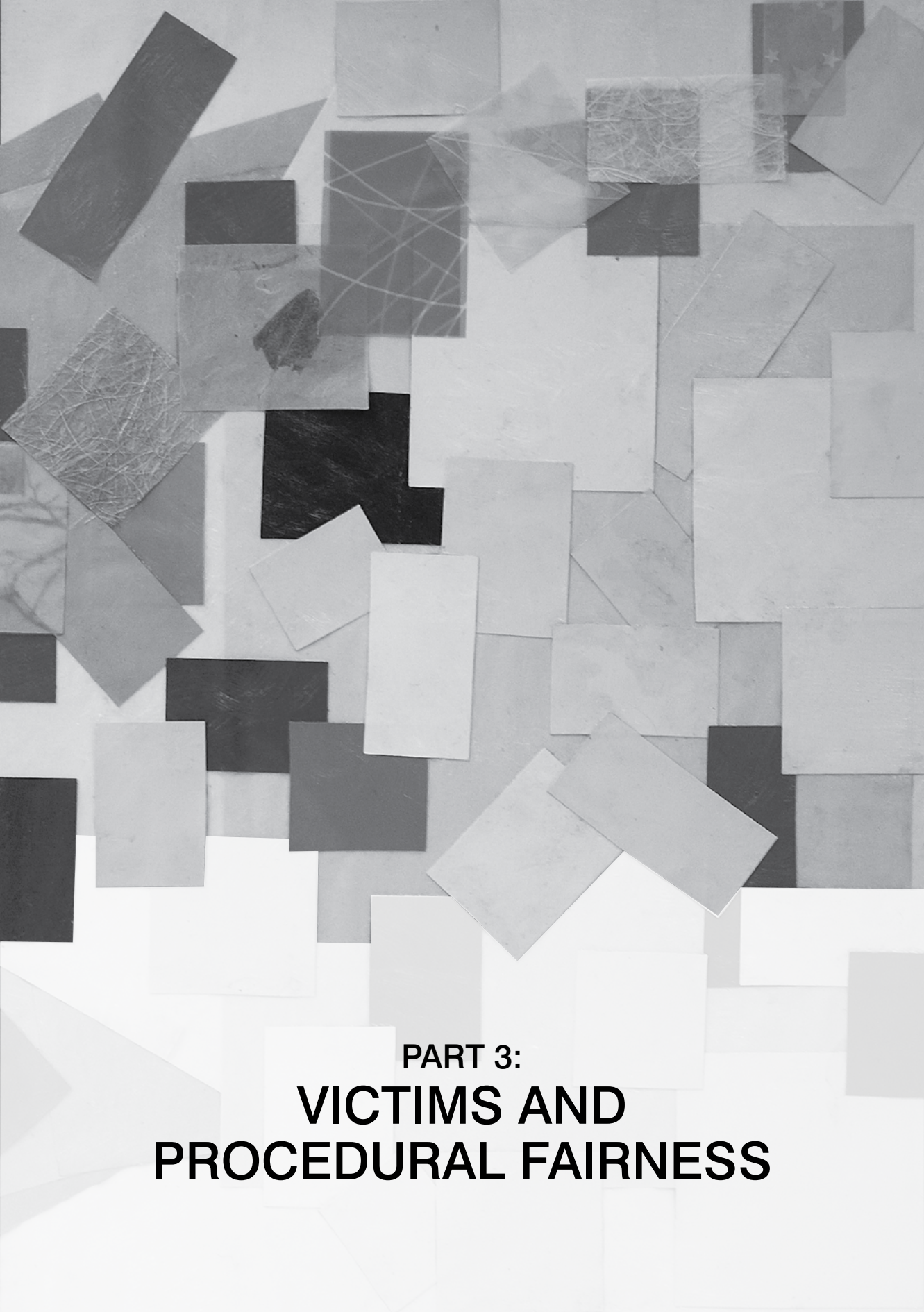
In summary, the positive comments from the participants clustered in the following ways:

- (a) Respectful treatment at all times.
- (b) Prompt and thorough early response.
- (c) High and sustained levels of information.
- (d) Informed practitioners who knew and worked well with others in the system to get information, help and support with and for victims.
- (e) Proactive and regular contact over long periods of time, and after the court case.
- (f) Positive and encouraging engagement by victim liaison and victim support staff in the system.
- (g) Involvement in decision-making though not in the decisions themselves.
- (h) Ready access to counselling and other forms of victim support.

In summary, the more difficult experiences of victims involved:

- (a) The length of time between the incident(s) and the finalisation of the case.
- (b) The number of adjournments in the court proceedings.
- (c) Changes in personnel associated with their case.
- (d) The practice of charge negotiations.
- (e) Cross-examination by defence counsel.
- (f) Media intrusion.
- (g) Inadequate and unclear information.
- (h) Contact and information declining over time.
- (i) Inadequate forensic investigation.

Finally it is clear from this study that victims of sexual assault are seeking acknowledgement, vindication and protection of themselves and the community through their engagement with the criminal justice system.



PART 3:
VICTIMS AND
PROCEDURAL FAIRNESS

PART 3:

VICTIMS AND PROCEDURAL FAIRNESS

1 BACKGROUND

This section relates to a national research project, *“Fairness and Equity for Victims of Crime: What do they want and why don’t they get it?”* that has been funded by the Australian Research Council. The project is being conducted by a team from the University of Melbourne School of Social and Political Sciences and Department of Psychology. Victim Support Australasia is the Industry Partner to the research.

The project involves an innovative interactive computer-based interview methodology developed by the researchers. The first version of the interview was tested in field trials in the ACT in early May 2007 with four adult victims of sexual assault whose case had finalised at court. The purpose of the field trials was (a) to test the ease with which the interview could be administered by researchers and navigated by participants, (b) the extent to which the questions were clear and captured the experience and judgements of the participants, (c) to determine the level of emotional reaction participants are likely to have to the interview, and (d) to get preliminary data.

2 PROCEDURAL JUSTICE

The national research project approaches the problem of what victims want from the criminal justice system from the perspective of procedural justice. The ways that criminal justice institutions operate are typically viewed in terms of formally defined structures of legislation and administrative procedure, and outcomes such as charges laid, hearings and sentences. However, informal procedural criteria are thought to be much more important in determining the actual experiences of people when they interact with these institutions.

Tyler (2003) argues that the legitimacy accorded legal institutions is mainly a function of the perceived quality of decision-making (procedural justice) and the extent to which people trust the decision maker's motives. Social factors such as trust, procedural fairness, and the opportunity to present one's point of view are much more important in determining short-term and long-term satisfaction with the justice system and acceptance of outcomes than are instrumental factors such as receiving a favourable outcome.

Existing research on procedural justice has been mainly concerned with how people perceive the legitimacy of the police and courts as justice institutions and their satisfaction with the outcomes of cases (Tyler & Huo, 2002), and with the procedural safeguards required for the effective participation of children in court processes (Hicks & Lawrence, 2003).

The national research project aims to examine some additional issues including how these procedural and outcome factors interact with variables such as the nature of the offence and the relationship between victim and offender, and how they shape victims' recovery from victimisation and their use of victim support services. There are also some distinctive issues about the trade-offs inherent in providing greater access to and input from victims in criminal justice processes, especially where these impact on the rights of offenders.

3 RESEARCH FINDINGS

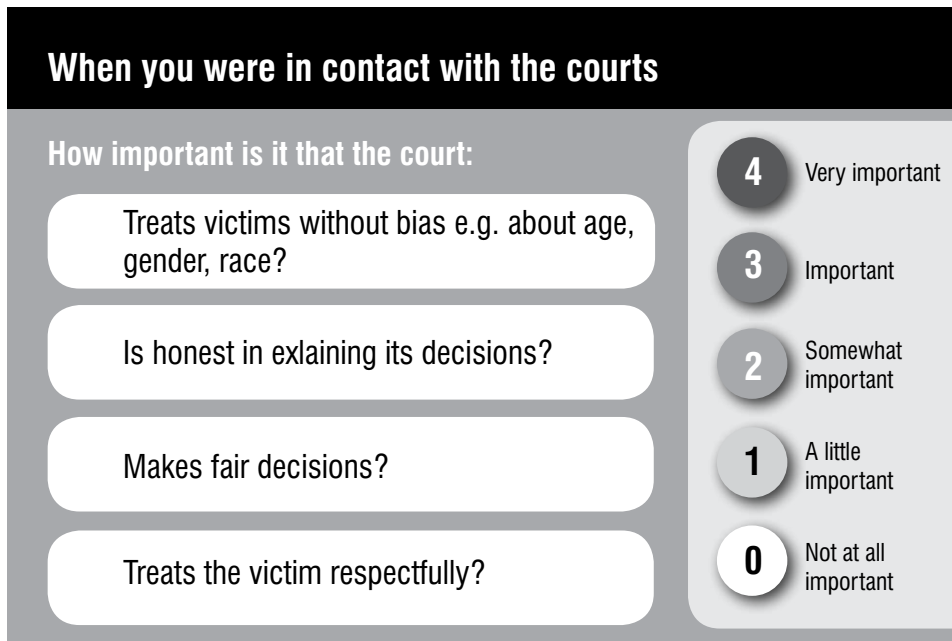
The sample size of four was sufficient for the piloting of the computerised survey for the national research project. However, it is too small to make firm and general conclusions about victims of sexual assault and procedural justice.

One common feature across all participants was the high value they gave to procedural attributes of honesty, the absence of bias, respectful and supportive treatment, fair and just decisions, giving victims ‘voice’, and providing information.

3.1 IMPORTANCE OF PROCEDURAL JUSTICE IN THE COURTS

Participants were asked to fourteen questions each of which related to an element of procedural justice within the courts, and for each one they were asked say how important that principle was. They recorded their responses on a five-point scale, from 0 (“Not at all important”) to 4 (“Very important”). An example of the interview questions and response scale is shown in Figure 1.

Figure 1: Importance of Procedural Justice: Sample Survey Questions



For each of these questions, their responses were either that the principle was Important or Very Important. Table 1 shows the mean scores for the four respondents across these fourteen items.

Table 1: Mean Scores of Respondents

How important is it that the court:	Mean score
Treats victims without bias?	4
Is honest in explaining its decisions?	3.5
Makes fair decisions?	3.5
Treats the victim respectfully?	4
Gives a sentence to the offender that is appropriate to the crime?	4
Makes just decisions?	3.75
Allows the victim to say how the crime affected them?	3.25
Takes into account the victim's emotional state?	3.5
Keeps the victim safe during court proceedings?	4
Allows the victim to say they are being treated disrespectfully by the court?	3.75
Informs the victim of changes in court dates and times?	3
Allows the victim to say they are being treated unfairly by the court?	4
Is as concerned with the victim's interests as it is with the offender's?	4
Uses language that is clear?	4

An important finding from the field trials was that questions asking for participants' judgements of how important certain procedural justice principles were in criminal justice authorities' interactions with victims mostly resulted in a "ceiling effect". That is, all questions asking for the importance of a procedural justice principle were rated either "Important" or "Very important", with very little variation between participants in the degree of importance they accorded to these principles.

3.2 EXPERIENCE OF PROCEDURAL JUSTICE WITH THE COURTS

Participants' experience of these values in practice in the ACT criminal justice process was more mixed. Rather than try to present a generalized account of participants' experiences, this analysis focuses mainly on the patterns and contrasts that were evident in the experiences of each of the four participants. That is, we are mainly concerned with the way that the experiences of each participant with criminal justice processes are reflected in the procedural justice principles that are the core elements in this research. Participants' experiences were examined by asking them

how much they agreed with a series of 14 statements about the way they were treated when they were at court. These statements related to the same set of procedural justice principles that were in the first set of items reported above. Participants' responses were on a five-point scale, from 0 ("Do not agree at all") to 4 ("Strongly agree"). An example of the interview questions and response scale for these items is shown in Figure 2.

Figure 2: Experience of Procedural Justice: Sample Survey Questions

When you were in contact with the courts

Choose a number between 0 and 4:

The court treated me without bias.

The court made fir decisions.

The court made just decisions.

The court was honest when explaining its decisions.

4 Strongly agree

3 Agree

2 Agree somewhat

1 Agree a little

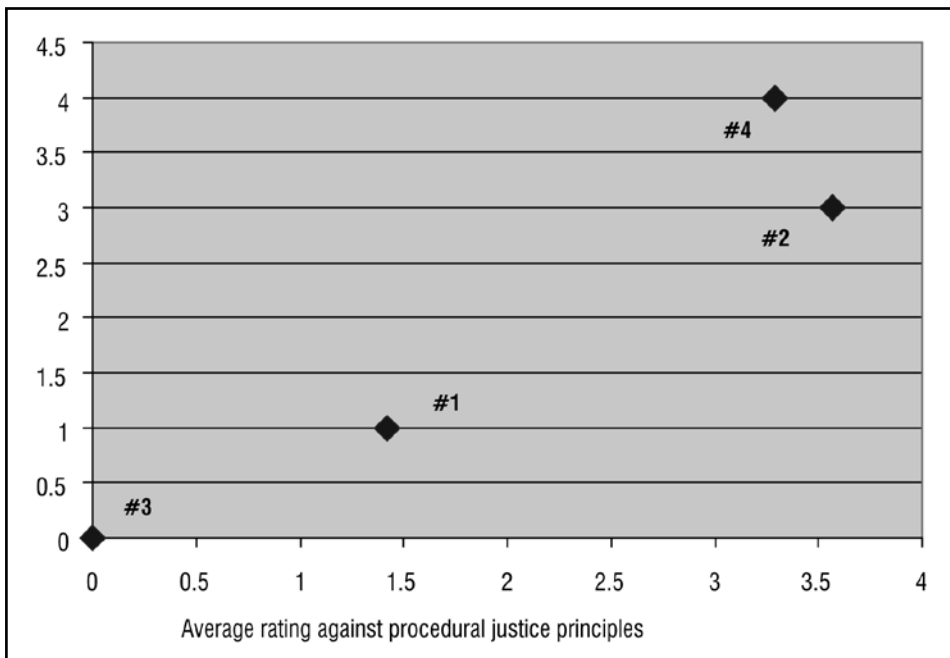
0 Do not agree at all

It is evident that there was considerable variability in the degree to which participants found their involvement with the court was consistent with procedural justice principles. Two participants had generally positive experiences. Participant #2 strongly agreed with 12 of the 14 statements, and Participant #4 strongly agreed with seven statements and agreed with another three. On the other hand, Participant #3 did not agree at all with any of the statements, and Participant #1 did not agree with four statements, agreed a little with another four, and agreed somewhat with another three statements. These differences in participants' experiences can be summarized by calculating their mean response on the 0 to 4 scale. These mean responses were:

Participant #1	1.42
Participant #2	3.57
Participant #3	0
Participant #4	3.29

These average ratings on the degree to which participants' court experiences were judged to be consistent with procedural justice principles can be compared with their overall ratings of satisfaction with the way the court dealt with them. Not surprisingly, as shown in Figure 3, the participants who reported that they had been treated in a manner consistent with procedural justice principles were also generally satisfied (a score of 3) or very satisfied (a score of 4) with their court experience, while those who found that they were not treated respectfully or fairly were only a little satisfied (a score of 1) or not at all satisfied (a score of zero).

Figure 3: Satisfaction Ratings with the Court Experience



As was observed earlier, with only four cases it is difficult to draw any meaningful conclusions about why participants were, or were not satisfied with their experiences in court. It is noteworthy that when asked to say what contributed to their satisfaction one participant who gave a high rating responded that *“the option of reading my Victim Impact statement myself, which was very empowering, as it was the only chance I got to tell the rapist in my own words and voice what he had done”*. In contrast, when asked whether they thought there was anything that needed to be done by the court but wasn't, a dissatisfied participant responded that what they wanted was *“the opportunity to speak in court-regardless of offenders plea bargain”*.

3.3 SATISFACTION WITH POLICE

Participants were also asked about their experiences with the police. All participants rated themselves as “Very satisfied” with the police, but the qualitative questions asking participants to write what was most satisfactory or most unsatisfactory in their contact with the police provided a wider variety of procedural justice and other insight into their experiences and what was important to their satisfaction, including that the police were “*always...there*” and were “*always honest*”.

These attributes that were nominated in relation to their contacts with police that contributed to satisfaction included (Tables 2 and 3):

Table 2: Which aspects of contact with police were most satisfactory?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Helping me and my family, always being there.	1	25.0	25.0	25.0
Phone calls were always returned. I was taken seriously, and matters were treated sensitively.	1	25.0	25.0	25.0
The police always treated me with respect and sensitivity, not just as “a case”. They also kept me informed, as far as possible, of what was going on during the investigation.	1	25.0	25.0	25.0
They were always honest and prepared me for all outcomes—good and bad.	1	25.0	25.0	25.0
Total	4	100.0	100.0	

Table 3: Which aspects of contact with police were most unsatisfactory?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Just the one time I had Trouble getting in contact with a member of the police. Thy were located at another branch.	1	25.0	25.0	25.0
None.	2	50.0	50.0	75.0
None.	1	25.0	25.0	100.0
Total	4	100.0	100.0	

In addition, the mix of quantitative and qualitative questions proved valuable in teasing out procedural justice concepts such as “fairness”. For example, the data in Tables 4 and 5 below show how all participants rated the police as “Very fair”, and that this meant the police weren’t biased and were considerate.

Table 4: How fair were police?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Very fair	4	100.0	100.0	100.0

Table 5: Which aspects of contact with police were most fair?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Everything—can't fault them.	1	25.0	25.0	25.0
I never felt as though they were bias against me.	1	25.0	25.0	25.0
Just doing their job.	1	25.0	25.0	25.0
The were very considerate with regards to how I might have felt regarding contact with male officers. They always gave me a heads-up when the media were about to release any news about the crime.	1	25.0	25.0	25.0
Total	4	100.0	100.0	

4 REFLECTIONS ON THE METHODOLOGY

None of the participants demonstrated adverse emotional reactions to the interview. The feedback received from the participants was that there were no questions that were asked that the participants wished were not asked, and there were no questions they wish were asked that the interview did not ask. The semi-structured nature of the interview did not adversely affect the participants. In addition, all participants continued the interview to the end and felt that the option of pressing Escape to end the interview was a suitable way out if they wanted one.

Generally, there were no major difficulties in administering and navigating the computer based interview. The interview was found to be slightly too lengthy, in that it took on average 40 minutes to complete. The touch pad on the laptop sometimes made it difficult to move the cursor on the screen so it is recommended that a mouse be used if available. In addition, occasionally the continue button and the options on the screen were accidentally pressed by the participant, suggesting that the interview can be slightly too sensitive.

Overall the questions were clear although there were a small number that participants consistently asked clarification for. Also, all participants asked for clarification as to which services or professionals in their case were being asked about in the “courts”, “prosecutions” and “VSS” sections. It is planned that subsequent versions of the interview will have smaller, more specific sections such as ones asking about “the judge”, “the defence lawyer” and “court support staff”. In addition, an explanatory screen at the start of each section is planned.²⁵

²⁵ Subsequent adaptations of the survey instrument have been made on the basis of the field trial experience. To date (January 2008), the survey is being implemented in South Australia, the ACT and Western Australia using male and female adult respondents who have experienced a range of criminal offences.

5 SUMMARY OF OUTCOMES

In summary, field trials for the project, “Fairness and Equity for Victims of Crime: What do they want and why don’t they get it?”, were undertaken in early 2007 to test several aspects of the innovative, interactive computer-based interview method. The outcomes of the field trials were: (a) the interview was easy for researchers to administer and participants to navigate, although too long, (b) most questions were clear and effective, although those asking about the importance of procedural justice principles being met by criminal justice authorities resulted in a ceiling effect, (c) the interview did not adversely effect participants emotionally, and (d) the interview effectively gathered valuable qualitative and quantitative data.



APPENDICES

APPENDIX A

RESEARCH METHODOLOGY

1 PROCEDURAL FAIRNESS METHODOLOGY

Potential participants were identified through either the Witness Assistance Service of the ACT ODPP or the Office of the Victims of Crime Coordinator (VoCC) early in 2007. All were adults who had reported an incident of sexual assault to police and whose matter had finalised. Each person was first telephoned by their primary support person to identify whether they would be interested to participate. Once their consent was obtained, a second follow-up call was conducted by the Victims of Crime Coordinator (VoCC) to provide further information. The person's consent was also obtained to pass their name and contact number to the University of Melbourne researchers. Participants were sent through the post a Plain English Statement explaining the research. Following this, the researchers contacted participants to organise a suitable meeting time.

The ODPP Witness Assistants then organised for each individual to meet with the researchers to conduct the computer-based survey at the Office of the DPP. Each individual was then offered further information and a consent form.

2 INTERVIEW METHODOLOGY

DESIGN

Using a semi structured questionnaire, individual interviews aimed to explore whether victim's expectations were met, what supported victims to stay engaged in the criminal justice process, what was difficult about the process, what they believe constitute good practice in victim support through the criminal justice system and whether they had their time over they would report. The interview questionnaire is provided at p.42.

ETHICAL CONSIDERATIONS

A detailed documented process was put in place for the participants because of the nature of the crimes committed against the participants in this project and the potential for distress. Potential participants were identified through either the Witness Assistance Service of the ACT ODPP, the Office of the VoCC or the Canberra Rape Crisis Centre (CRCC). All were adults who had reported an incident of sexual assault to police and whose matter had finalised.

An initial telephone call from the trusted initial source obtained verbal consent to participate. Then the VoCC wrote to each of the participants contacted by her office confirming their interest in being involved in the interview process and consenting to contact by the researcher. The EO of CRCC spoke with the two people she referred to the project and got consent to give the researcher their phone numbers for contact. The researcher contacted all participants to clarify any questions and to arrange and confirm interview times and venues with participant safety and comfort in mind. The interviewer also recommended follow up with the participant's existing counsellor in the event that the interview caused distress. An information letter was developed for the purpose of explaining this research and signed consent forms were gathered from all participants. Participants were sent a copy of the notes of their interview and/or a recording of their interviews. Feedback was sought on accuracy of the notes ensuring that they reflected the intentions of the individual's interview. Any requested changes were made to the notes prior to completing the report for this project.

PARTICIPANT ENGAGEMENT

In June and July 2007, six women and one man were interviewed. Five of the women were victims of sexual assaults that had occurred within the past three years. The one man and one of the women reported assaults that were reported to the police seven to ten years ago.

The reported Incidents represented by this group of survivors of crime, range from indecent exposure to aggravated sexual assault. Four offenders pleaded guilty to charge(s), two offenders contested the charges and one charge did not proceed.

A small number of participants agreed to read and provide comment upon the final draft of the report.

INTERVIEW QUESTIONS

1. Thinking back to the time when you first reported the incident to police, do you recall what you wanted to see happen or what you thought should or would happen? (EXPECTATIONS)
2. When you made that report to police, what and/or who helped you through this? Probe – support persons, nature or style of officer questioning, having a friend present or not, medical/forensic, information etc. Was it too much, too little or not the right type of support/info?
3. Did you ever think that you wanted to withdraw from the police investigation in those early days?
Probe: if yes, what kept you going? If no, what motivated you to keep going?
4. What worked well for you in terms of
 - a. The police
 - b. The DPP
 - c. The Court
 - d. Other good things / supports/ people? (EXPERIENCES)*Probe: what did “working well” for victims’ look and feel like for you as the victim?*
5. What was really hard / difficult / unpleasant with respect to...
 - a. The police
 - b. The DPP
 - c. The court experience? (EXPERIENCES)*Probe: what did “not working well” for victims’ look and feel like for you as the victim?*
6. Thinking back to what you wanted/expected when you reported to police, has your view of what you wanted, changed?
 - a. Beginning (related to 1.)
 - b. Now*Probe: what has influenced that change if anything?*

7. Thinking about the different victim support, witness assistance, counselling and other victim type people in and alongside the cjs, can you say how well (or not) this worked for you?
Probe: who or what, when and how, and why was or was not some thing/one important?
8. How much control, choice or preference did you feel that you had in the process?
9. Would you have liked more
 - a. Control – over what?
 - b. Choice – around what?
 - c. Preference regarding charge being laid, what happened etc? How much do you think it should be up to you whether a charge is laid or not? (PREFERENCE)
Probe: this is a really challenging area for people working in the CJS. If you had wanted to withdraw from the [investigation/prosecution] process but realised that it was not your choice, would this have helped or hindered? Should victims have the final say? Why? Why not?

Probe: some people say that to be involved in the decision-making is really important to victims, but that it is ok for the actual decision to be made by investigators/ prosecutors. What do you think? Are there things that you really really think should be in victim's control?
10. Was there a time(s) when you thought 'I don't want to continue'? What sort of things made you feel that way?
11. What/who happened to make/support you to continue?
12. Knowing what you know now about the criminal justice process, if a friend was sexually assaulted, what advice would you give them?
Explore reasons if necessary.
13. If you had your time over, would you report? *Explore reasons.*

APPENDIX B

SERVICE PROVISION IN THE ACT (as at July 2007)²⁶

The ACT, like all other Australian jurisdictions, has been addressing the needs of victims of crime generally for the past 15 – 20 years. Most States and Territories have legislated for the systemic response to victims and have established support mechanisms in most criminal justice agencies.

In the ACT the response to victims of crime in the administration of justice includes:

- The *Victims of Crime Act 1994*;
- The newly integrated Victims of Crime Coordinator and Victims Services Scheme creating Victim Support ACT;
- Victim Liaison Officers in ACT Policing, with one specific position in the Sexual Assault and Child Abuse Team (SACAT); and
- The Witness Assistance Service (with 3 officers) in the Office of the Director of Public Prosecutions (DPP).

Other specific responses to victims of sexual assault include:

- Forensic and Medical Sexual Assault Care (FAMSAC, ACT Health);
- Canberra Rape Crisis Centre (CRCC), including SAMSSA (the Service Assisting Male Survivors of Sexual Assault); and
- The Care & Protection Service (Department of Housing & Community Services).

The ACT differs from most other States and Territories because it does not have a sexual assault service for adults based in its health/hospital system. The ACT Government has chosen instead to continue to support CRCC, a non-government organisation, by funding it to provide services to victims of sexual assault, male and female, adults and children. The organisation is funded to provide:

- A 24-hour crisis support service;
- Counselling to victims of recent and past sexual assault;
- A specific response to the Aboriginal communities in the area; and
- A community education program.

²⁶ The information in this section was provided in written form and in interviews with a Project Officer engaged by the Department of Justice & Community Safety in 2006-07 to assist the development of a Sexual Assault Response Program.

CRCC and FAMSAC work together to provide the services (counselling and medical/forensic services) generally found in hospital based sexual assault centres in other States and Territories.

PROCESS FOR VICTIMS AGED 16 AND OVER (AS AT JULY 2007)

A person who has been sexually assaulted and wants to report to police can come into the system via a number of pathways. They may contact the police directly, or they may contact CRCC (or another victim service), or they may contact FAMSAC.

The process is likely to be:

- If the victim contacts the police directly the first police contact is usually with a general duties officer.²⁷ This officer takes basic information and contacts the duty sergeant or Reception Officer, who determines if it is a matter for SACAT or for the general duties police (i.e. a sexual assault or an indecent offence).²⁸ If it is the former SACAT is contacted and in the case of a recent sexual assault, at least two SACAT officers return to duty. For historical offences SACAT is more likely to respond during business hours. The SACAT officers determine if a forensic examination is required and if so they contact the FAMSAC on call doctor who will attend at the SACAT offices at the Winchester Centre to conduct the examination. FAMSAC will attend at the Winchester Centre if required.
- When FAMSAC is contacted they ask SACAT if CRCC has been contacted. If not FAMSAC will contact CRCC. If a victim contacts FAMSAC the service also contacts CRCC and requests their attendance to provide support and advocacy through the process. When CRCC arrives the victim is offered their support and they may accept or reject it. CRCC is also able to provide support and information to friends and family members who are accompanying the victim.
- Until recently, SACAT would not contact CRCC as a matter of course. They would offer a victim a range of options and leave the choice to them. However, as part of the ACT reform process, a Memorandum of Understanding sets out that CRCC will be notified in all instances.
- Within 24 hours of the victim contacting SACAT the SACAT Victim Liaison Officer (VLO) will contact the victim to offer information and support. A package of information is provided to the victim by mail, by phone or in person if the victim is at SACAT. The role of the VLO is

²⁷ The report to police may be made in a number of ways. A call may be made through 000, the 131444 number or the AFP switchboard. From there it may be transferred to the reception officer or to the SACAT VLO. Reports can also be made to Crimestoppers or be made direct to general duties police in the patrol areas.

²⁸ The criteria that apply to the decision-making relate to the nature of the incident alleged, the age of the victim, the recency of the incident and other relevant circumstances.

to provide referrals, information and support through the police process, including the development of a victim impact statement. The VLO can also continue to provide court support. Police are required by procedure developed to underpin the Victims of Crime Act 1994 to contact victims at least once a month to keep them informed of the progress of the investigation (where a suspect is identified). The procedure relates primarily to the responsibility of the case officer. However, for the SACAT VLO this contact may be daily or weekly. The contact may intensify in the lead up to, during and after court proceedings.

- When the police investigation has been completed and the brief has been sent to the DPP the victim enters the next stage of the criminal justice process – from victim to witness and this can be very confusing and disempowering. The focus of the court process is on the offender and the charges. The DPP Witness Assistant Service provides support and information to victims/witnesses through the court process. The primary functions of the Witness Assistants include:
 - Development of strategies, to assist vulnerable witnesses during their experience of, and interaction with, the criminal justice system;
 - Explaining court processes, including the rights and responsibilities of witnesses;
 - Providing witnesses with case status information and results from court proceedings;
 - Court preparation and familiarising witnesses with the physical surroundings of the Courts (including Closed Circuit television facilities), particularly children;
 - Ensuring that witnesses are supported at court; and
 - Interagency liaison.
- Over 2006-07, the operational relationship between the SACAT VLO and the ODPP WAS strengthened. There is continual communication and case liaison between the officers in relation to active cases. Whether the VLO or the WAS took the primary case management role in any particular matter depended in part upon the relationship that evolved between the victim and any of the particular officers. In addition, the WAS developed a new template letter that provided key information to victim/witnesses about the prosecution.
- If a victim is dissatisfied with their experience of any part of the criminal justice system they can make a complaint to the Victims of Crime Coordinator (VoCC). The VoCC is an independent statutory advocate appointed under the *Victims of Crime Act 1994* who has a systemic role in ensuring that victims' rights are upheld within the system.

- In July 2007, the VoCC Office came together with the Victims Services Scheme (VSS) to create a new agency, Victim Support ACT (VSACT). VSACT provides support and advocacy to any victim of crime through the justice process to assist people to access their rights and entitlements including financial assistance. A multi-disciplinary approach with VSS counsellors also ensures victims have access to counselling and a range of other recovery and rehabilitation services.
- There is also the Women's Health Service in ACT Health that provides counselling especially where there are multiple mental health issues and if the incident(s) took place a number of years ago.
- FAMSAC have an operational protocol in place regarding contact with victims. The nurse coordinator initiates contact for all consenting victims by phone within 48 hours, at one-two weeks and twelve weeks, coinciding with particular 'medical' stages. FAMSAC takes the opportunity to check how a victim is coping and if supports are in place, providing further referrals if necessary.

PROCESS FOR CHILDREN (AS AT JULY 2007)

When a child sexual assault is reported to the police it requires a mandatory report to Care & Protection Services (CPS). For police, a similar process is followed except that instead of FAMSAC the Child At Risk Health Unit may undertake any medical and/or forensic examinations (especially where the assault alleged is recent). The family is asked by SACAT if they would like to have support and they can choose who that support might be. It could be a counsellor or support worker that they have an ongoing relationship with or, if appropriate, Care and Protection Services.

The contact from the SACAT VLO is similar to that for an adult victim. If the child is under 15 years, the contact is primarily with the non-abusing parent/carer. If the child is over 15 years, there may be a greater degree of direct contact. Where cases may involve the parent/carer as witness or where there are other complexities in the family, there will be a high degree of liaison between the VLO and the WAS. This liaison distributes the contacts so as to ensure appropriate relationships are maintained.

Some other States have established specific child witness services that provide support and information to the family about the criminal justice system, primarily the court process. In the ACT the DPP witness assistants provide this service as for adult victims/witnesses.

PRIORITIES FOR IMPROVEMENTS

For those working to support victims inside the justice system, there are a number of clear priorities being to:

- significantly reduce the overall time taken from reporting to case finalisation;
- reduce the number of court appearances required of the victim;
- maintain a timeframe on adjudications;
- reduce the waiting times for counselling and other support for victims;
- provide a remote witness facility so that victims do not have to be within the court precincts;
- improve information provision to victims;
- clarify roles and document standards of different agencies/support people;
- make procedures around court preparation and CCTV access consistent and reliable;
- coordinate better the justice support with the emotional support by CRCC;
- identify a 'wrap-around' model of support that includes improved access to and quality of legal advice & representation; and
- improve the appearance and comfort of the existing CCTV rooms.

THE WRAPAROUND PROGRAM

As part of the ACT Government reforms, a more coordinated approach to supporting victims of sexual assault through the criminal justice system is being implemented. The program, called Wraparound, involves a Charter of Objectives Principles signed by the Heads of Agency of ACT Policing, the ACT Director of Public Prosecutions, Canberra Rape Crisis Centre and the Victims of Crime Coordinator.

To underpin the Charter, agencies have developed interlocking Service Standards. A new Information Guide for victims has been developed both in hard copy and web formats. The Guide includes a personalised support plan for each victim.

APPENDIX C

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