

Justice responses to sexual violence

Australian Law Reform Commission

Submission to the ALRC enquiry [REDACTED]

Question 1 I am a victim-survivor of Image-Based Sexual Abuse committed by a former associate with whom I had a relationship for a few months.

I initially reported to NSW Police as I live in NSW but the matter was passed to AFP City Branch as the offences were committed in the ACT.

The only way I found information was by looking on the internet. The NSW Police Officer who initially responded to my report had not heard of the relevant legislation. I sent them a copy. Because of the stalking and harassment that took place leading up to me receiving the image and afterwards, the NSW Police Officer said he feared for my safety and that I should ask for an AVO. Then he said this might need to come from the AFP, a while passed before the AFP told NSW Police to arrange for the AVO. It took one month from the granting of the AVO to the service of the AVO. During this 'interim' time, I received support from the local Women's DV service.

Once the matter was taken over by the AFP the experience became very distressing. The AFP did not provide me with a referral to the AFP victim support service, nor did they give me a case number. They simply raided the offender's apartment and destroyed the images and many other similar images which they said had been taken without my knowledge. They told me the case was finished. I didn't accept this opinion because I'd been told that 4 charges would be made. The AFP support was unbelievably inadequate. I made a formal complaint to the AFP; the investigation was reopened; the AFP told me that they hadn't pressed charges because they didn't know I was upset about the non-consensual nude images. The matter went to the ACT magistrate's court for mention, the offender pleaded guilty to two charges. The matter went up for sentencing, the magistrate's complimentary remarks about the offender were astonishing. The magistrate dismissed the ACT Corrections Pre-Sentence advice (negative to the offender) and ordered a Section 17: proven but not recorded.

I found information about ACT Victim Support (not AFP) and have been in communication with a therapist.

Question 2: I understand that the ACT justice system claims to have taken steps to take domestic violence seriously however, I didn't see signs of this. From a victim's perspective, I can't see anything that's working well. What's not working well:

- An apparent disinterest demonstrated by the AFP in investigating IBSA even though IBSA is considered to be a strong precursor of physical violence
- Little communication with the AFP investigator
- Putting the blame back on me for not initially making charges by saying the detective didn't think I was upset when I was very upset
- Extraordinary lack of communication from AFP and DPP staff; most information I was given was provided only after a lot of requests from me
- The DPP 'forgot' to contact me before the sentencing hearing so that I could speak with the prosecutor

- The prosecutor was very junior and was rolled by the magistrate
- The DPP didn't communicate the sentencing outcome to me
- Sexual Assault (Police) Review Report. ACT Government.

Table 1 - Laying charges in sexual offence cases (2010-2021) - percentage (%) of offences reported⁴

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Charges not laid	72%	78%	75%	68%	72%	56%	71%	79%	86%	85%	84%	93%
Charges laid	28%	22%	25%	32%	28%	44%	29%	21%	14%	15%	16%	7%

Question 3:

- Accessing the justice system and reporting could be made easier for victim-survivors if each jurisdiction published a simple fact sheet on the process of reporting to police and what happens from there
- Police must be made to provide support link details to victim-survivors from the very first contact
- Police should not use (predominantly male) instinct in determining charges and charging
- It would have changed the verdict had the two charges which had been omitted from court had been made – stalking and harassment. I produced documentary evidence proving every instance of this; it was – and continues – to be a significantly traumatising aspect of the experience.

I'm currently writing an academic book about the justice response to IBSA and SA including FDV in the ACT. I've learned a lot during my research, reading widely in the areas of feminist jurisprudence, justice processes, testimonial injustice, pornography and misogyny. Perhaps the most salient literature is Dr Patrick Tidmarsh's *The Whole Story*. Dr Tidmarsh has a long experience in working with SA perpetrators and then in training police forces in how to improve responses to SA in the UK, USA and Australia.

The problem begins with police disinterest in investigating sexual assault reports; this problem is caused by so-called "rape myths" and gendered beliefs about SA. No doubt funding is also a problem, this was made clear to me when I visited the AFP in Canberra City – police need to be careful about how money is spent.

The problem continues at the prosecutor level, especially when prosecutors have no or little experience. This problem is exacerbated by a 'culling' of evidence from the Brief of Evidence.

Then the magistrate, who relies more on their instinctive feeling for a matter – and doesn't require evidence supporting the 'good character' of the offender. It'll be a long time before I recover from the magistrate's praise for the offender and underestimation of my experience. It was an extraordinarily unjust process.

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