

## **Sexual Assault experience**

### **Sexual Assault 1986**

I was sexually assaulted in 1986. I was 21 years old. I was walking home from work at night and was taken into a laneway and robbed at knife point and sexually assaulted. It was an assault from a stranger.

The incident occurred in a laneway close to my house and my housemates rang the police straight away. They came within 30 minutes but at the time I was in shock and did not think they would come so quickly. I was not fearful the police would think I was at blame or at fault. I had confidence they would believe me and they did. The assault was coupled with an armed robbery as well and the offender threatened to kill me many times, so I was distressed. The police took me to where the assault took place and we talked through the events and then I gave a statement. The assault was 10.30 pm and by the time the police left it was 1.30am. The statement was concise and there were details missing, in hindsight it would have been better if I had been asked to reread it the following day and finalise the report then when I was not so tired.

I had more contact with police over the next 2 days. I went to the station and sat with an artist and they compiled drawings. The staff were friendly, always respectful and polite. The police advised me to move house as they thought the offender may come back, so I did. They advised me that I was lucky to be alive. I was told there was a run of sex assaults in the area and I was left feeling there was not a lot of chance of the offender being caught. I was not offered counselling or had any follow up after this initial period. A policewoman did offer me a brochure about claiming for crimes compensation. I struggled for several months after the event and would have benefited from some psychological support. I became withdrawn tearful and didn't date men for several years after. I spoke to my family after the assault but told them I never wanted to speak of it again and I didn't.

### **Case Solved by Cold Case Police**

In 2014 I was contacted by the cold case division of Victorian Police. They informed me that they had a DNA match from a semen sample collected as evidence from the assault in 1986. I had not thought of the assault for many years and this was a shock to have it raised again. This was done in person and the officer was very polite, friendly and respectful. The officer remained my contact through the entire process and I refer to him as the police informant. The person who committed the assault I refer to as the offender. If my terms are incorrect I apologise. The police informant informed me that the match was found as the offender was in prison for killing his wife and the DNA match was collected as part of a court ordered collection from a prior charge. When I heard the offender had shot his wife several times killing her, I was shocked but also felt that I was lucky to be alive as the police had commented years ago. The police informant asked me if I wanted the police to prosecute

and go ahead and charge. As the offender was in jail for murder, I decided not to at that time. I did not need closure and felt he was not a risk to society as he was in prison.

In 2015 I was contacted again by the police informant who told me that the offender had been acquitted and was free in the community. He wanted to know if I supported the offender being charged. I did need to think about this for a little while. I was fearful of retribution from the offender, now I knew he was a dangerous person. I agreed as I thought he may reoffend and felt a responsibility to do what I could so he could not harm others.

### **Court Proceedings- Magistrates Court Feb 2017**

In Feb 2017, the case went to committal hearing at the Magistrates Court. I was not as well prepared as I could have been. I knew that I was to confirm my statement, but I was not aware I could provide amendments, until I met the barrister just prior to the commencement of the hearing. I was offered a phone meeting with the legal team earlier in the week, which in hindsight I should have taken, but I wanted to meet them face to face. As a result, I felt a bit out of my depth when the hearing started. I did still provide verbal amendments to the court, to address some of the missing details in my statement. I would recommend others meet their legal representatives on a separate day to the hearing to help them prepare.

I testified through a video link. The court staff were supportive and respectful. The police informant was supportive, meeting me prior to testifying and texted me straight after saying I had done a good job. I chose to testify through a video link as I did not want to be in the same room as the offender and I think this made me able to talk more freely and confidently.

### **Court Proceedings – County Court Oct 2017**

On Monday 9<sup>th</sup> Oct 2017, the case was scheduled to be heard at the County Court. On Wednesday 4<sup>th</sup> October I met with the Office of Public Prosecution (OPP) for the first time. I met the barrister and solicitor and they introduced themselves and briefly explained the process. The meeting was in their lunch breaks and went for approximately 45 minutes. I met the OPP team only once more before the hearings and I was surprised how little time my case was allocated. My case was an armed robbery and aggravated indecent assault during which he has threatened my life. I thought it would have been assessed as being a serious case and allocated more time.

On Saturday 7<sup>th</sup> October I was contacted by the police informant to let me know the case was deferred as the Judge was caught up in another case.

The second meeting I attended with the OPP was on Wednesday 11<sup>th</sup> October. I was told I was not required to come in and they would link me in with a call if needed but I requested to attend in person. It was important to me to be informed and part of the process. I didn't

bring a support person because I was not aware of the importance and focus of the meeting. At this meeting the barrister informed me that she had offered the offender a plea bargain which comprised of the bundling up the charges and offering a Community Correctional Order (CCO) as an acceptable sentence. I didn't know this was a possibility and a common practice.

The barrister asked me how I felt about this and I told her I was not happy and did not agree. My motive in pursuing this was to protect the community and my expectation was a prison sentence. I felt the barrister should have consulted me or the police before offering a plea bargain. The police informant had worked with me over the past 2 years and he knew how I felt and what I wanted. I was told I could object and the plea bargain maybe withdrawn if head of OPP agreed but if the offender was found guilty a CCO was a likely outcome once the judge knew it was offered by OPP and accepted by the offender prior to trial. I felt very let down by the OPP. The barrister had met me once for 45 minutes and made this decision on my behalf. I know there is risk in a jury trial but I was very invested now in getting justice. I was told the case was strong. Further DNA tests had been done and there was a very low probability that the accused did not commit the offence. When the offence occurred I was in a nurses uniform, travelling home from work, he was a stranger to me, threatened my life, took money, I was a virgin. My understanding was there was little chance the sexual assault could have been explained as consensual and little ambiguity that it was an act of violence.

When approached by the police in 2014 I had no need for closure. I had buried the events deep in my memory and rarely thought about it. Once I knew it was going to trial I knew I needed to recall the events of the past as well as I could. I knew this would hurt me as I was affected straight after the assault and my way of dealing with it has been not to talk about it at all to anyone after it was dealt with by reporting to the police. To recall the events in the week prior to trial at County Court I visited the site of the assault and retraced my steps of that night. I also had trouble sleeping the week before so sat in a darkened room and thought of that night and bit by bit it all came back.

So by Wednesday 11<sup>th</sup> October I was heavily invested in seeing this through and getting justice. Although I was fearful of testifying, I was ready and I wanted the opportunity to tell my story and also hear his. I needed to know if the attack was random, was I a target, why would he do this, why would he think it was OK to do this? Why when I offered him the money he asked for he could not take it and walk away? He had performed other armed robbery's but I was the only sexual assault and I needed to know why that was, was it something I had done?

On Thursday 12<sup>th</sup> October I attended court and the offender pled guilty.

On Friday 13<sup>th</sup> October I attended court and there were arguments placed by both sides to influence sentencing. I read out a victim impact statement as did my husband.

On Monday 16<sup>th</sup> October the offender was sentenced to a community correctional order.

During all these hearings I felt powerless. I was not a victim but a witness. I had no ability to ask questions or have any say in what was happening. The assault was described many times in great detail. I had to sit there and hear what he did to me over and over. I did not learn the answers to any of my questions. The offender did not speak except when stating his plea. He did not need to speak to me or apologise or explain. His legal team answered all questions on his behalf. They said he was remorseful. They said he could not remember the event but it must have been him as the DNA said it was. The judge accepted he was remorseful and even commended him on pleading guilty and saving me from testifying. There was no acknowledgment that he had pled so far into the process. He did not save me from testifying at committal or from reliving the assault in my head over and over again in preparation for trial. The judge called me damaged but not broken. Something that stuck with me for a long while. I did feel damaged by this process and having to say how it had affected me all these years and I did question if I was damaged. I did try and ask the Judge a question during the final hearing and I was ignored. Eventually the barrister asked me what I wanted and relayed my question to the judge.

After the sentencing hearing I met with the OPP team for approximately 10 minutes and the sentence was discussed. I asked about an appeal and was told the sentence of 3 years CCO was within acceptable sentencing range and could not be appealed. The offender could appeal but as a victim I could not.

It had been explained to me that as the offence occurred in the 1980s the sentencing would be similar to what would have been given if tried in 1980s and less than if the crime occurred today. It was also explained that as the offender had been in remand for approx. 450 days for a crime he was acquitted of and it could be a consideration taken into account. I knew of all this but I still felt that justice had not been served as an armed robbery and aggravated sexual assault is a serious crime and I felt deserved a harsher punishment.

### **VOCAT and Counselling**

After the trial I needed counselling and the police informant referred me to the Victims Assistance Tribunal. They advised me that as I had received compensation in 1987, through crimes compensation tribunal, I could not apply for funding through VOCAT for further counselling but could receive 3 sessions funded through them. They explained that under legislation, applications to vary an award were limited to a 6-year period. My award was in 1987 which far exceeded the 6-year variance window. I did not want to seek a financial settlement, I had taken time off work but I had leave entitlements to cover this. I did need further counselling and to find out I was not entitled made me feel very unsupported by the government.

It may seem like a small thing not to be eligible for counselling, but my life had turned upside down. I was happy and content with my life before being asked to be part of this process. I had agreed to testify and as a result relived the assault; been through a criminal process where I felt powerless; my life was discussed in public; it had been picked up by general media and was on even on the nightly news; I felt justice had not been done and I just needed to talk about it and start to heal. I felt the least the government could do was fund counselling.

The police informant was also surprised by my inability to receive funded counselling after the initial 3 sessions. He had offered to arrange counselling on many separate occasions throughout the process and thought it was a given entitlement. He made enquiries and said that it was discussed when the cold case division was opened that there would be victims that would have received awards in the past and would be exempt from support due to this legislation but all would be cared for.

The police informant was very supportive and advocated for me. He spoke to his team and arranged short term additional counselling through Merri Health. I was happy that he was able to help me but I worried about others in my position that were not so fortunate to have long term employment and leave entitlements to cover absences and did not have as diligent a police informant.

### **Government notifications**

After the hearing I was hurting and had a lot of questions about how things didn't go as I had thought they would. I tried to alert the government to what I saw as areas they needed to investigate, so future victims of historical crimes got better outcomes.

In 2018, I wrote to the government and made them aware of the short fall in the legislation expecting that they would take steps to remedy the outdated legislation that did not cater for victims of historical crimes. Victims that were coming through the justice system because of advancements and availability of DNA analysis and creation of a specialist police unit solving these crimes. I sent many emails to various MP's but almost all were not acknowledged or responded to.

As discussed earlier I also felt justice was not served as the offender was not sent to prison and was given a CCO. The OPP had said the main reason for this sentence, was that the sentence given was to be similar to that which would have been given if tried and sentenced at the time of the offence. This didn't seem fair for two reasons. The first reason being that the victims of historical crimes have to recover twice from the offence - once when the offence happened and again many years later when the offence was tried. The second reason being that sentencing of sex crimes was minimal in the 1980's and does not reflect the current values and expectations of the community. In 2018, Victoria was investigating the introduction of sentencing guidelines and looking at the UK model. I attended a lecture

held by Sentencing Advisory Committee where it was explained that the UK model sentenced historical crimes in line with current community values but could not exceed the maximum penalty at the time the offence was committed.

With this information I decided to review crimes similar to my own, as in sex assaults and armed robberies and document the differences in sentences given between similar offences based on when the offence was committed. I reviewed all similar crimes tried at County Court in 2017, used UK sentencing guidelines to work out likely sentences and compiled a 10,000 word report. I sent this report along with a request to investigate the legislation to allow historical victims the ability to receive counselling to several MPs and almost all emails were not acknowledged.

### **Office of Public Prosecution**

In April 2018, I wrote to the OPP to ask if I could meet to discuss the process and outcome of my case. The readings I had done in compiling the sentencing report raised questions on my own case. My motive for this was not to allocate blame but to get a greater understanding of how things worked and I hoped to regain some faith in the criminal justice system. One of my main concerns was why a plea bargain was offered. Did they feel the case was not strong, that I was not a credible witness and this was the best option?

This initial request to meet was refused. The police informant pursued this on my behalf as I was not able to liaise directly with the OPP, and after a further 6 months negotiation they agreed to meet in Oct 18. The reason I was given, that my initial request was denied was they cannot meet with everyone who asks. I was also told I had had an opportunity to discuss the case after the trial in Oct 17. This was true but it was a short conversation immediately after the final hearing at a time I was not clear headed coming straight from court. Now I had more questions and I felt I would benefit from a meeting as I was having trouble putting all this behind me.

It seemed like I was not granted a meeting as it was not policy to do so rather that a decision based on the merits and needs for the request. This reinforced my experience of being a victim that although I was hurt by the offender, the crime was against the state and as such I had very little say in the process, outcome or even being allowed access to meet with people who could provide information on decisions made for a crime that after all did happen to me.

### **Restorative Justice**

In 2018 I was still trying to find some closure and contacted Monash SECASA and tried to arrange restorative justice. They thought I was a good candidate and sent a letter to the offender through the police informant. The police informant hand delivered the letter to

make sure it was received but the offender did not respond. For me restorative justice would have been beneficial. As discussed earlier I had and still have, many questions I would like answered and would gladly agree to meet the offender if it was offered to me today.

I would like restorative justice to be a mandatory option as part of any criminal justice process. Not in place of trial process but in conjunction to it, in between verdict and sentencing. Not all victims will want to or benefit from meeting with the offender but I think it should be discussed and available.

I hope my account of what I experienced is useful. I want to add I was very well supported by the Victorian Police. I had the one officer make initial contact in 2014 and stay with me through thick and thin. This was important to me to have the same contact and is a feature in the Cold Case Division. I have not had a lot of experience with the Police, so I was surprised at the role he played. He was an expert on all things police and court processes but also very much a support person.