

National Victims of Crime Conference 2008
New Ways Forward - Pathways to change



'Enabling Justice'

CRICOS Provider Number 00103D

Acknowledgement

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Why this research

Anecdotal evidence suggests that reports of sexual assault made by adult victims with cognitive impairment, if they get reported, do not proceed beyond investigation stage.



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Definition

Cognitive impairment

“people whose mental functioning is impaired because of mental illness, intellectual disability, dementia or brain injury” (Crimes Act, 1958).



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Research Focus

- What factors determine the progress and exit points of sexual assault reports made to police by adult victims with cognitive impairment?
- What are the influences on discretionary decisions made by police?

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Methodology

Multi method approach

1. Focus groups (13 focus group interviews)
2. Case study (multiple sources of evidence including interviews with advocate, victim and police officer, trial transcript and police file)
3. Analyses of case narratives from the Law Enforcement Administration Program (LEAP) database: Jan.2004 – Dec.2006

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Overview of literature Crime and Victim

More vulnerable

- Prevalence; more vulnerable to sexual assault than other members of the population.
- Disability – level and type;
- Social, systemic and environmental aspects;
- Low reporting rate;
- Majority of perpetrators known to victim;
- Subject to repeat abuse.

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Overview of literature Justice system response

- Decisions from point of initial report are influenced by social myths and misconceptions about rape and rape victims;
- Few progress to court or conviction;
- Recent efforts to reform – VLRC between 2001 and 2004

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Case study

Why this case?

- One of the few cases which has led to conviction;

What can we learn?

- What factors lead to case progression and eventual prosecution?

Multi source case study:

- Police file
- Trial transcript
- Interviews
 - Victim, Mother/advocate, Police officer

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Case background

- Victim (mild cognitive impairment) and offender (learning disability)
- Both over the age of 18
- Three offences occurred over 6 month period
- Victim was left in the same environment as offender even though the institution knew (to some extent) what had occurred

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Levels of analysis

Explanatory and exploratory case study:

Focus on the process, what happened and why it happened and compare this to what normally would have happened.

Social Model of Disability:

Focus on the Dis-abling society: societal structures and systems which disable, not necessarily the impairment: what were the 'disablers' or 'enablers' to justice in this case?



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Report pathway

Characterised by discrete areas of specialisation, layers of decision making

- 1. Initial Police Report**
- 2. Referred to Sexual Offences and Child Abuse Unit**
 - Formal Police Statement by victim using VATE
- 3. Investigation – Criminal Investigation Unit**
 - Authorisation brief of evidence
 - Charges laid or not: decision based on evidentiary and discretionary elements
- 4. Brief & Charges to Office of Public Prosecutions**
 - Plea bargain, prosecute, convicted or acquitted



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Why was this case successful?

Odds were against success:

- Victim has a disability
- High acquittal rate in region
- Late report
 - Implications for forensic evidence

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What were the enablers to justice?

Determination to seek justice:

Advocate

Despite (Vicki's) past, her future could be different

Police officer

'...we should be taking more cases to court, be they intellectual disabled or not and lose more at court, because we would...we'd lose more in court. Just to start changing the attitudes of those in the court system, the jury the judge... to start them changing the system' (interview transcript – Police Officer)

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What were the enablers to justice?

Police: Continuity

• **Relationship building**

- Good first response from police officer
- Built rapport with victim and mother;
- Kept victim and mother informed;

• **Investment in seeing it through**

- Decision to investigate the case;
- Consistent personnel



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What were the enablers to justice?

Police: Decision to investigate:

Not interested in taking it on:

'it depends on who's on in our CIU as to whether they're interested or not'
(interview transcript –Police officer)



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What were the enablers to justice?

Police: Determined, despite pressure from superior to let the case go:

'to be perfectly blunt, I think probably the attitude was "well, she's intellectually disabled so it's not going to get anywhere". So it'll all be a storm in a tea cup, get it over and done with and that's it' (interview transcript– Police Officer)



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What were the enablers to justice?

Victim/survivor

- Evidence was consistent
- Was able to articulate what had occurred
- Strength and courage
 - Asked that questions be repeated



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Enabling Justice – Ways forward

Creating an enabling system of justice

Police

- Consistent personnel through out;
- Cultural change – informed by societal views but also experience of the justice system process which demonstrates that these cases do get through;

Advocate:

- Strong, consistent and trusted by the victim;

OPP

- Time to know the case and the victim – consistent across the state;

Court/evidence act

- Change focus from deficit to assets;
- Alternative forms of giving evidence;
- More convictions would send message to police and perpetrators that cases can and will be prosecuted.



**A justice system which is
accessible to the most
vulnerable, is accessible to all**

