

## Australian Human Rights Commission

### Access to justice in the criminal justice system for people with disability

The experience of the South Eastern Centre Against Sexual Assault, Victoria.

#### Questions

*The South Eastern Centre Against Sexual Assault (SECASA) provides services to children and adults, both female and male, who have been sexually assaulted or have experienced family violence. The Centre also works with non-offending family members, partners, caregivers and support workers.*

*Our service operates in the Southern Metropolitan Region of Victoria, Australia and encompasses the south east suburbs of Melbourne, covering the Mornington Peninsula, Westernport and the Dandenong, Berwick, Cranbourne and Pakenham growth corridors.*

*SECASA is currently running a pilot program, called Making Rights Reality, in conjunction with the Springvale Monash Legal Service and the Federation of Community Legal Services.*

*Making Rights Reality is a program to increase access to the criminal justice system for people who have been sexually assaulted and have a cognitive impairment and/or communication difficulties. The program enhances existing services to provide greater accessibility.*

*The service provides clients with crisis care, counselling, advocacy, legal information and advice, and support through the justice process, including police investigation, prosecution and crimes compensation processes.*

*Communication support, attendant care or transport is provided as needed to ensure access.*

1. *What are the biggest barriers for you or other people with disability in the criminal justice system?*

*The data emerging from the Making Rights Reality project suggests that of clients **who have been referred to SECASA** a higher proportion have reported the sexual assault to the police than our broader client group.*

*However, only 15 clients were self-referred, and eleven clients were referred by police. The majority of clients were referred by agencies or parents. This indicates that people are receiving support to access*

SECASA's services.

*Where people have not disclosed, or have disclosed to non-supportive others, it is likely that people will experience significant obstacles to reporting.*

*Reasons for not reporting may include such things as not knowing the assault is a crime, difficulties in communicating what has happened to them, non-believing or non-supportive gatekeepers making decisions on behalf of the person about reporting or access to medical examinations or counselling. In addition, fears about the implications of reporting, particularly if the person is reliant on the offender for care or support or accommodation, may influence the person's decision.*

*Sexual Offences and Child Abuse Investigations Team (SOCIT) police have been supportive of the Making Rights Reality Pilot Project, and where SECASA staff have attended to provide an ITP service for people with a cognitive impairment, this has been responded to positively.*

*However, the data about outcomes of investigations into sexual assault cases emerging through the project indicates that very few of these cases are progressing to court, for the most part due to "lack of evidence". It is unclear at this point how much a person's disability is taken into account in the making of these decisions. However, with the OPP's Prosecution Policies (The Prosecutorial Discretion) stating:*

*"What sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination? Does the witness suffer from any physical or mental disability which is likely to affect his or her credibility? Note again that the Evidence Act 2008 defines 'credibility' quite broadly, and arguably includes ability to communicate",*

*there are clear obstacles for police in getting briefs authorized if a decision is being made about a person's credibility based upon their disability.*

## **2. What could be done to remove these barriers and help people with disability in the criminal justice system?**

*Police need to be aware that a communication difficulty does not necessarily mean that a person cannot tell them about a crime committed against them. Police training, and the right supports can ensure that this can happen.*

*The presence of an Independent Third Person when a person with a cognitive impairment makes a statement is essential. SECASA Counsellor/Advocates have been trained as ITPs in order to provide continuity of support through the process.*

*People may need more time and more supports to access the justice system, and these should be offered. The Making Rights Reality project provides some of these, but this is in one region of Melbourne, and is dependent on police and gatekeeper awareness of what resources are available.*

*Where the person needs an Intervention Order, supports need to be available to facilitate access to the courts. Processes and forms are confusing, particularly where someone has a cognitive impairment.*

*Internal specialist staff who can provide training and support to police members may assist.*

*It is very important that people with disabilities have information about what a crime is and how to get help.*

*This means police and victim services liaising strongly with clients and staff in disability services to ensure information is being distributed effectively.*

*Some good work is being done in these areas currently (ie. DoJ Easy Read Materials and Forum on Victim and Witness services.).*

*Better outcomes for people who navigate the justice system, particularly in relation to sexual assault would have a significant impact. Conviction rates are very low across the board, whether the victim/survivor has a disability or not. The process itself can be very traumatising and disempowering for victim/survivors, and does not appear to have great capacity for responsiveness to individual needs, particularly where there is a cognitive impairment, complex communication needs or mental health issues.*

### **3. Can you provide information about support that has helped you or other people with disability to participate in the criminal justice system?**

*The purpose of the Making Rights Reality Pilot Project is to help people with a disability participate in the criminal justice system through provision of resources and consistency of support and advocacy throughout points of contact with the justice system.*

*The vast majority of SECASA's clients have been victims of crime (specifically sexual assault or family violence). Recent file reviews have determined that approximately twenty percent of clients identify as having a mental health issue at intake.*

*In the first 18 months of the Making Rights Reality project 80 clients with cognitive impairment (Intellectual disability or Acquired Brain Injury) or communication difficulty, who had been sexually assaulted, were referred to the service.*

*Numbers of clients with a psychiatric disability only have not been assessed, however of the approximately 2500 referrals SECASA has had over the 18 month period of the pilot project, an estimated 500 clients would fit this criteria.*

*Many of SECASA's clients attend for counselling in relation to an historical sexual assault that they have not reported to police.*

*Of clients referred to the MRR Pilot Project so far, 39 have reported the sexual assault to police during the lifetime of the project. Two cases are known to have progressed to court, with one offender found guilty.*

*An additional seven clients have reported the assault to police in the past, with 4 of these cases progressing to court and 3 resulting in a conviction.*

*Support provided through the project includes counsellor/advocates attending as ITPs while clients make a statement to police; brokerage for a support worker during court hearing; advocacy by counsellor/advocates with police; referral to Springvale Monash Legal Service in order that clients can access crimes compensation; production of easy read materials outlining services available to people who have experienced sexual assault (including interaction with the justice system); training of counsellor/advocates to provide a better counselling service to clients with a cognitive impairment or communication difficulty; capacity for outreach.*

4. Please tell us about any time that you or another person with disability experienced barriers to justice.

*Feedback was sought from SECASA counsellor/advocates about their clients' experiences of the criminal justice system.*

*Some responses included:*

*-Courts, magistrates and juries appear to lack consistent understanding of disability and how it may influence the person's presentation in a courtroom. This can result in poor outcomes for victim/survivors through the justice system. (ie. If the person does not act like a sexual assault "victim"). This can be a particular issue if the person has a mental health issue, an intellectual disability or another cognitive impairment.*

*-Where there is good liaison between victim support services, the courts and police, victim/survivors can feel supported and empowered through a reasonably responsive system (within the limitations of the law).*

*-This is essential for people with a mental health issue, particularly when they may be suffering psychological aftereffects of the very crime being addressed by the courts, such as anxiety, depression, or PTSD. A poor and retraumatising experience of the justice system can severely exacerbate people's mental health difficulties. In addition, the use of medical records by the defence to demonstrate that a person is an unreliable witness because of their disability (particularly where there is a psychiatric disability) is horrendously invalidating and humiliating, and mostly irrelevant.*

*-When appropriate accommodations are not made, people feel, and are, disadvantaged by the system. When the system is not responsive to people with a disability, it results in a societal message that people who cannot easily access our justice system are not protected by the law.*

*- Enhancing capacity for regulation of disability and health services to ensure all staff who have allegations made against them are prevented from working in these roles is important. ie. not relying only on a conviction when so few of these cases are successful in the courts. The burden of proof should be less- ie. probable rather than "beyond reasonable doubt".*

*An example raised has been that of PSAs, who do not have a registration body to oversee them and therefore cannot be de-registered.*

*Additionally, SECASA has found through some of its community education programs, particularly in the SRS sector, that some workers have said that they are reluctant to report or support a client reporting because they are concerned it will be 'bad for business'.*

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