Beyond reasonable doubt?

Understanding police attrition of reported sexual offences in the ACT

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Sexual Assault (Police) Review

Independent cross-agency Oversight Committee

- chaired by Christine Nixon AO APM and Karen Fryar AO
- head of agency representation from DPP, Chief Police Officer, Victims of Crime Commissioner

Two stage review:

1. Investigation Case Analysis (led by DPP)
2. Police Process Review (led by Dr Rachael Burgin)

The Police Process Review aimed to understand why so few cases proceed to charge in the ACT (7% in 2021).

Reviewed 389 police case reports matters that did not proceed to charge*:

- **penetrative sexual offences** reported between **1 January 2021 – 31 December 2021**
- non-penetrative/non-contact sexual offences reporting 1 July 2021 – 31 December 2021

Interviews with victim-survivors (n= 33) and AFP/ACTP policy documents

* Before 1 May 2022

DPP review

	Number of cases identified	Percent of cases
Re-investigation	30	4%
Possible further action	182	27%
No further action	472	69%
Total	684	

- Matters from all categories have since proceeded to charge (currently before court or resulted in conviction)
- No further action – broad category; victim withdrawals, open investigations

Acknowledgements

Victim Support ACT
ACT Policing and the Australian Federal Police
ACT Office of the Director of Public Prosecutions
ACT Government

Context

1. Covid-19

2. Investigation of Bruce Lehrmann

Importantly, these factors do not themselves explain low charge rates.

‘I have seen in the media how women get treated who make reports and press charges, and I did not want that to be me.’ (Cora)

**‘I didn’t want to be a Brittany Higgins.
So, I wasn’t going to say anything.’ (Abigail)**

PROMIS (police) reports

Overall, 389 PROMIS reports were analysed as part of the Police Process Review.

1. Adult sexual assault (n=164) – penetrative sexual offences against an adult (16 years and older)
2. Child sexual assault (n=100) – penetrative sexual offences against a child (15 years and under)
3. Other adult sexual offences (n=84) – non-penetrative or non-contact sexual offences against a child (16 years and older), such as indecent assault, image-based abuse offences etc.
4. Other child sexual offences (n=41) – non-penetrative or non-contact sexual offences against a child (15 years and under), such as indecent assault, child exploitation material

Limitations of the dataset

Sexual offences suffer from **‘hidden recording’** (Lievore, 2003) – where victims report sexual offences to police, but:

- Reports are mislabelled as non-sexual crimes
- Reports are not recorded by police

Why does this happen?

- Police do not believe a crime as occurred (lack of belief in the victim)
- Police adopt an ‘evidentiary model’ of recording practice (believe that before recording a crime, sufficient evidence must first be identified)

Reporting

Most incidents reported as sexual assault and recorded as such.

Victims were the most common complainant type

Most common method of report was in-person at a police station or via phone

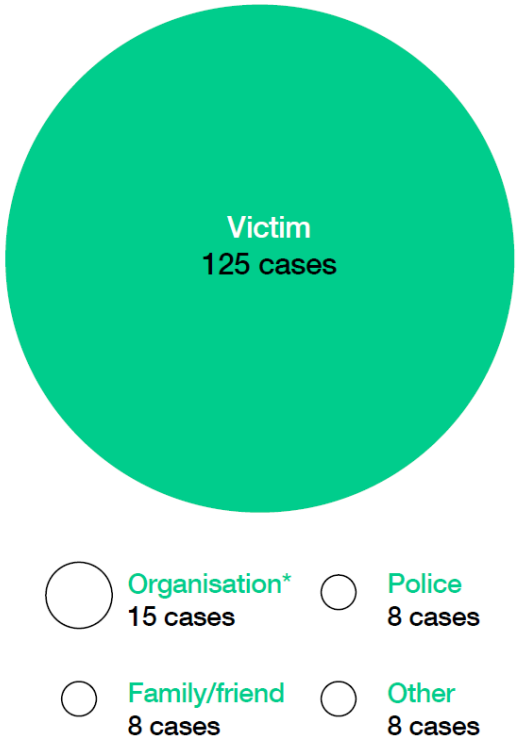

Figure 1: Complainant types, adult sexual assault reports

*Including schools and workplaces

Time between incident and report

Single incident adult sexual assault matters:

1/3 of single incident sexual assaults against an adult were reported within 24 hours

1/2 cases of child sexual assault were reported after 12 months or more

Varied and inconsistent definitions of ‘historical’ were applied by police – impacting responses, including failure to collect forensic medical evidence

Time between incident and report	Number of cases
Within 24 hours	40
Within one week	22
Within one month	14
Within 6 months	17
Within 12 months	10
More than 12 months	17
Total	**120**

Table 4: Time between incident and report, single incident, adult sexual assault reports

Reason for reporting

- For their safety, or the safety of others
  - **‘I might be preventing someone else going through something similar.’ (Alex)**
- Because sexual violence is wrong
  - **‘I thought it was the right thing to do to report it, because he did the wrong thing.’ (Megan)**
  - **‘I believed police [are] the only people to approach.’ (Desi)**
- Accountability, but not necessarily through a charge
  - **‘I basically wanted validation that this had happened to me; that what had happened to me was wrong. I didn’t necessarily want him to go to court. But I wanted him to own what he had done.’ (Selena)**
- No other option
  - **‘I never wanted to go to the police in the first place. So, I went to my workplace … and they did a workplace investigation … that basically came back six months later as “Not our problem”. … And it was kind of like, well, I’m out of options here.’ (Abigail)**
- Take back control
  - **‘[My psychologist] thought it would make me feel, I guess, like, more empowered to have some sort of control over the situation.’ (Aya)**

Experiences of reporting

Some very problematic experiences of reporting were identified:

- Some victims were turned away
  - Told they were too busy that day and to 'come back tomorrow': **'They kind of said, "Look, sorry we can't take a statement right now"… they said they didn't have staff. Yeah so no one could have taken a statement from me then. But they also had kind of said that it would be more organised coming in the next day and whatever.' (Sofia)**
  - Told to go to a police station closer to where the offence occurred
  - Told to report online

- Never heard from police again
  - **'Honestly, to be honest, not a whole lot. I was kind of like... there was a period of waiting for them to get back to me. And then by the time I kind of realised that they wouldn't, I'd moved on.' (Casey)**

- Police arranged appointments for victims to attend a station at the same time as the suspect

- Police missed appointments, turned up unannounced
  - **'Just three police officers showed up on the doorstep and I wasn't ready. Like, I wasn't even dressed. I didn't have a support person with me. So, I was just like "I don't want to report [right] now. You told me you were gonna call me".' (Nicole)**

Case characteristics

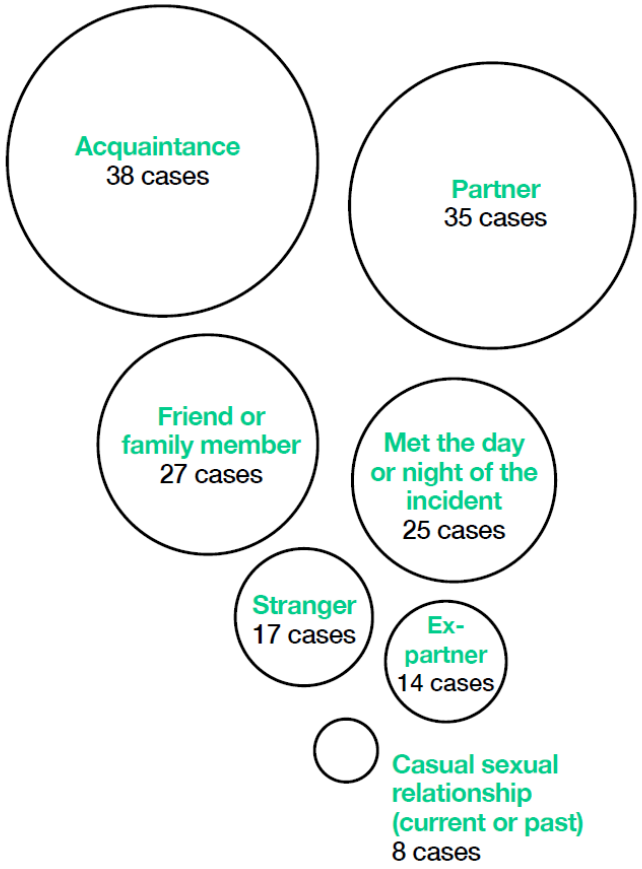

Figure 10: Relationship types, adult sexual assault reports

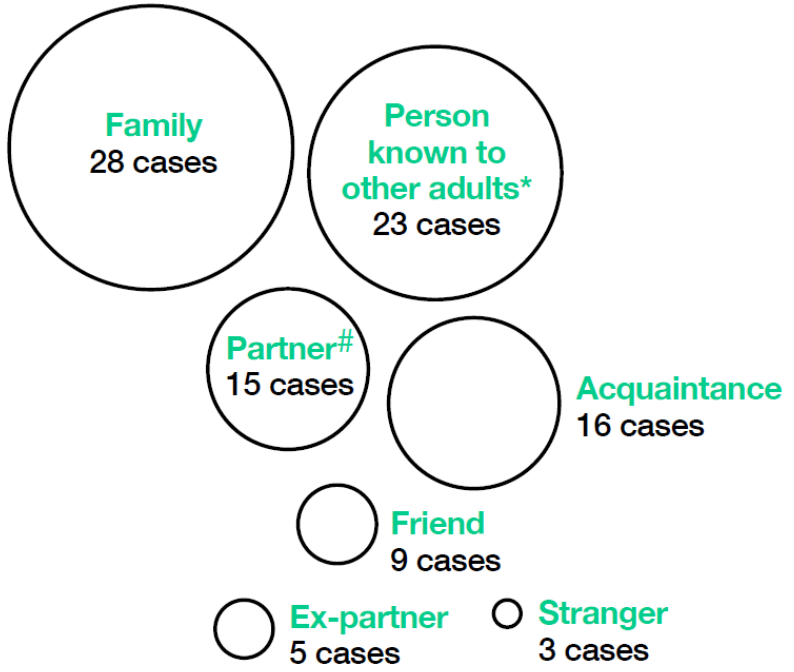

Figure 11: Relationship types, child sexual assault reports

*Including authority figures

Including matters marked as 'partner' by police, where consent was unable to be given

Non-fatal strangulation

16% of adult sexual assault reports involved report of non-fatal strangulation. Approx 22% of those were charged.

In a further **19%** the victim described some form of pressure to the neck. In all of those cases, police failed to identify non-fatal strangulation.

7% of cases of child sexual assault non-fatal strangulation was recorded. One case was charged.

Why low charge rate?

The low rate of charge was directly related to a failure to investigate sexual offences.

Underpinned by:

- Belief in and adherence to rape myths, stereotypes
- A lack of understanding of the law, including the legal test to charge (an issue of contention post-Lehrmann in the ACT)

Therefore – cases closed early based on false understandings of sexual violence and the law, **not** on the evidence.

Rape myths in police decision-making

Demonstrations of non-consent

As at 2021, s 67(2) of the *Crimes Act* (ACT) expressed:

A person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.

Yet, police decisions for case closure…

‘She didn’t really want to, but she didn’t say no or tell him to stop.’

‘She did not verbalise to the male…that she did not want to proceed or did not provide consent.

…

She is unable to assess in her mind if the male knew she did not wish to participate in the sexual activity. … There was never any conversation around consent.’

‘EICI taken with complainant, who at no time expressed her withdrawl [sic] of her consent either verbally or physically.

Police would be unable to prove that the offender was reckless in knowning [sic] that the complainant withdrew her consent, therefore unable to prove the elements of the offence.’

‘[Victim] did not withdraw her consent at any time.’

Sexual history and implied consent

Reliance on the victim's sexual history was also a driver for case closure

'The [Case Officer] is reviewing messages to other males from the [victim] to ascertain whether she has mentioned the incident or has had similar experiences.'

…

'The [victim] appears to engage in a Dom/Sub style relationship with some males and the messages indicate that she is consensually agreeing to being physically struck or choked.'

Credibility, reliability and ‘risky’ behaviours

Victims are blamed for contributing to their own victimisation, and their actions before an assault are considered in an assessment of credibility.

‘They all drank heavily, played spin the bottle involving long passionate kissing.’

‘By admission [victim] was intoxicated and experienced memory loss.’

‘Police are of the belief that [victim] has deliberately left out and exaggerated specific details from her version of events in an attempt to exaggerate the story.’

Belief that children can consent

Cases of child sexual assault refer to consent when where the victim was below the age of consent.

Victim 15 years; suspect aged between 35-45 years: ‘She consented to both sexual encounters.’

Victim 15 years; suspect 30 years: ‘Mutual oral sex would occur.’

2 child victims reported becoming pregnant as a result of the offence. Both cases involved suspects more than 20 years older than the victim. Neither were charged.

Beyond reasonable doubt? – Understanding the test to charge

Police did not understand the legal test to charge a suspect – contentious issue in the ACT

‘In summary, I think there is definite criminality here, but it has occurred in the context of a very kinky (dominant / submissive) relationship so it may be hard to prove the offences beyond reasonable doubt.’

‘On that basis, there is minimal likelihood of a finding of guilt beyond all reasonable doubt and so the investigation is finalised’.

‘There is sufficient evidence to form suspicion that an offence has been committed on the basis of the EICI provided by the complainant.

However, there is insufficient corroborative evidence available to establish the requisite recklessness of the suspect as to whether or not the complainant was or was not consenting at the time.’

In a stranger rape case, with a suspect, immediate report, forensic medical report of internal and external injuries:

‘Should this matter be tested in court, police believe it would be highly unlikely to reach the threshold of beyond reasonable doubt and a failed prosecution would be the outcome. This matter cannot proceed on its own merits.’

Police are playing the role of prosecutor, judge and jury.

Interviewing suspects

17% of suspects were approached by police and less than 5% were formally interviewed (adult sexual assault).

15% of suspects were approached by police and less than 10% were formally interviewed (child sexual assault).

Police closed cases when a suspect refused to interview.

‘[Suspect] denied the incident, as he could not recall everything from the night in question. ...

Police are able to corroborate the [victim’s] timeline of the incident but are unable to corroborate any evidence to support the allegation of sexual assault.’

Victims' experiences of 'doubt'

Advised:

'And I remember him saying very, very clearly, we don't have evidence to support it beyond reasonable doubt.' (Abigail)

Ignored:

'They told me they'd go and speak to him and if I had any questions, to call. They also advised they'd give me info [about] support services. I never heard from them again. I followed up, nothing.' (Tessa)

Made to feel like a perpetrator:

'She's like towering over me with her fucking bodycam.' (Malia, then 15)

Questions?

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