

# Improving the justice response to victims of sexual violence: victims' experiences

Research report  
August 2018

## Acknowledgements

This report was written by Tania Boyer, Sue Allison and Helen Creagh from Gravitas Research and Strategy Limited and commissioned by the Ministry of Justice.

The Gravitas team acknowledges and thanks Drs. Sue Carswell (Carswell Consultancy) and Claire Gray who provided invaluable interviewing support in Christchurch, and Judy Paulin (Artemis Research NZ) who peer-reviewed the data collection materials. We would also like to thank our 'key informants' - Jane Tronson (Ministry of Justice), Deborah Morris-Travis (Ministry of Justice), Dr Kim McGregor (Chief Victims Advisor), Sarah Brodie (Crown Law), Frauke Mai and Paddy Groenewald (Court Victims Advisors) and Kathryn McPhillips and the team at HELP Auckland - whose information and advice was used in the design of the research.

We would also like to thank the Ministry of Justice staff who provided guidance and support throughout the project, particularly Holly Thomson and Wayne Dougherty (Commissioning and Service Improvement Team), Megan Noyce (Courts and Justice Services Policy) and Michael Slyuzberg (Research and Evaluation), and the dedicated team of Court Victims Advisors who made time to contact victims of sexual violence they had worked with and ask them to have their voices heard through participating in the research.

And finally, our heartfelt thanks to the 39 courageous people who agreed to so candidly share their experiences with the research team. Your emotional strength, resilience, perseverance and spirit are an inspiration, and your openness and honesty have made this report a rich recount of the current experience of sexual violence victims within the justice system. The research team hope that this report does justice to your stories and contributes to achieving your collective desire to improve the experience of victims of sexual violence who will follow you through the justice system.

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# 1 Executive Summary

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## 1.1 Background

Sexual violence is a significant social problem in New Zealand, with approximately one in six people experiencing one or more incidents of sexual violence at some point during their lives<sup>1</sup>. Many victims of sexual violence find that their lives are severely negatively impacted by the offending in wide ranging ways, but particularly in relation to emotional and mental health. These effects can be long-lasting and affect relationships, wider family/whānau, and work<sup>2</sup>. Only a small proportion of these victims report the incident to Police.

The Law Commission report on the justice response to sexual violence (2015)<sup>3</sup> considered whether the processes for justice in cases of sexual violence required changing to improve fairness, effectiveness, efficiency, and how complainants experienced the court system.

The report found that the justice system often failed to respond appropriately to victims of sexual violence and that this could lead to significant secondary victimisation<sup>4</sup> and contribute to the low rates of reporting of sexual violence to NZ Police. Fear and distrust of the legal system is another reason that victims often do not report incidents of sexual violence perpetrated against them<sup>5</sup>.

The Ministry of Justice is currently implementing a suite of operational changes aimed at improving the experience for sexual violence complainants in the criminal justice system, with an emphasis on reducing the risk of revictimisation. In addition, the Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) is considering legislative reforms in response to other outstanding Law Commission recommendations. To be able to assess the impact of these operational changes and any potential legislative reforms in the future, the Ministry of Justice commissioned Gravitas Research and Strategy to collect baseline data on the perspectives of victims of sexual violence who have had some contact with the justice system, that is the Police and courts, over the previous three years.

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<sup>1</sup> Ministry of Justice (2015). 2014 New Zealand Crime and Safety Survey | Te Rangahau o Aotearoa Mō Te Taihara Me Te Haumarutanga 2014. Wellington.

<sup>2</sup> Kingi, v. and J. Jordan (2009). Responding to Sexual Violence: Pathways to Recovery. Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine. Wellington.

<sup>3</sup> Law Commission Te Aka Matua O Te Ture (2015). The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes. Wellington.

<sup>4</sup> Orth, U. (2002). Secondary Victimization of Crime Victims by Criminal Proceedings. *Social Justice Research*. Vol. 15, No. 4.

<sup>5</sup> Kingi, v. and J. Jordan (2009). Responding to Sexual Violence: Pathways to Recovery. Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine. Wellington.

## 1.2 Objective and Method

The overarching objective of the research was to explore the experiences of victims<sup>6</sup> of sexual violence in NZ who have journeyed through the justice system in the past three years, with focus on what aspects risk revictimisation or retraumatisation for victims through the justice process and how it could be improved for victims.

Data for this research was collected via n=37 interviews with participants (nearly all face-to-face) and two self-completion questionnaires. Participants were primarily invited to take part in the research via Court Victim Advisors (CVAs) and then chose to opt in to participate. CVAs were selective in who they invited to participate in the research to minimise the risk of retraumatisation. In addition, interviewers were equipped to meet respondent needs and to refer them to professional support if so needed. Participants were fully informed of the nature and purpose of the study and gave consent before taking part in the interview. Interviews were audio recorded and transcribed for analysis. Participants represented a wide range of ages and socio-cultural backgrounds and included both males and females. Interviews were of a duration of 45 minutes to an hour and a half and took place in participant homes or at a neutral location selected by them. Interviews were conducted by fully trained senior qualitative researchers and took place between 26 April and 7 June 2018.

In line with the objectives, the research only included victims of sexual violence who had made a Police complaint. Therefore, findings do not describe the experiences of victims of sexual violence per se, but rather a sub-set of victims, those who had reported the offending. Charges had been laid against offenders<sup>7</sup> in all but one case and therefore the overall findings do not reflect the views of those whose complaints did not result in court proceedings.

*Note: Throughout this report, comments made in relation to ‘victims’ refer to the 39 research participants spoken with/who completed questionnaires only rather than victims of sexual violence generally.*

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<sup>6</sup> Some working within the realm of sexual violence prevention and support prefer the term ‘survivor’ or ‘victim/survivor’ when referring to people who have experienced sexual violence. For the purposes of consistency with legislation and agencies in the justice sector, the term ‘victim’ has been used throughout the report. This term is in no way intended to imply a value judgment on those who have experienced crime, or to exclude those who prefer to identify themselves with another term in the context of the offending.

<sup>7</sup> It could be argued that “alleged” should be used when referring to individuals who have been investigated and/or charged and acquitted of committing crimes of sexual violence. However, as the data collected and reported for this project presents the perspectives of victims of sexual violence, we have used the term ‘offender’ throughout the report to refer to the person who they perceive to have committed the offence of sexual violence against them.

### 1.3 Police Complaint

- Timeframes from offence to reporting varied widely. Victims delayed reporting for a wide range of reasons consistent with the general literature.

Victims included in the research may have delayed making a complaint to NZ Police for a range of reasons and the decision was not made lightly or without due consideration. Most victims making a complaint to NZ Police did so with some understanding and awareness that the process would not be an easy one and that they would need to be prepared to share very personal information and to recall traumatic events. However, generally the perception of what the justice process would entail, and how difficult it would be for them, was underestimated by victims.

Complaints to NZ Police were made from immediately after the assault, to a delay of 40 years. A range of factors impacted on victims delaying reporting sexual violence crimes to NZ Police, including feelings of shame, guilt, whakamā, self-blame, fear of not being believed, and concern about the perceived impact on others (family/whānau).

- Victims were generally satisfied with the Police complaint process.

There is the opportunity to improve victim experiences through a (continued) emphasis on choice, which empowers victims, for example providing options and choice around the kinds of supporters they may access or involve, location, timing, environment, and gender of Police staff.

- Victim experiences varied considerably, different locations, different staff, variability in provision of information, follow up to the complaint, the nature of the case and the environment where the complaint and statement(s) could be made contributed to considerably different experiences for victims we spoke with.

Most participants found that making an initial complaint was straightforward. They valued that Police treated them with courtesy and compassion and with respect for their dignity and privacy. In very few cases were victims unhappy with their treatment by Police. These instances included when a victim perceived to have been given misinformation by Police and when a victim felt that their complaint was not being dealt with in a manner that was consistent with the gravity of the offence being reported.

Being given a choice of gender of Police personnel to deal with was valued, as was the acknowledgement that this might be important to their sense of safety and comfort in the process (regardless of the gender mix).



Victims were also highly appreciative of being able to make an appointment time to meet with an officer, and even more so when Police were flexible and, for example, met the victim in the community, including in their own home.

➤ Access to timely information about the complaint and justice system processes can help to reduce stress and anxiety. The participants who were better prepared and informed seemed to have more positive and tolerable experiences.

Lack of information and understanding of how the process might work and what to expect going forward was problematic for a number of those we spoke with.

At the time of making a complaint, or soon after, victims would like to be provided with a clear 'road map' of how the process is likely to pan out - who will be involved, what their role will be in any investigation and subsequent court proceedings, how frequently they will be contacted and by whom.

As many victims had had no prior contact with NZ Police in relation to criminal activity, they were often unaware of what they needed to know and therefore what to ask. Some useful things victims suggested included:

- a checklist or fact sheet outlining key aspects of the process going forward;
- being directed to the material already available on the Ministry's Victims Website<sup>8</sup>; and/or
- making the Ministry's published material for victims (pamphlets) available more widely and specifically to complainants of sexual violence.

## 1.4 Investigation

➤ Victims were disadvantaged when they did not clearly understand their role, the process and the timeframes involved in the investigation.

➤ The evidential statement was traumatising for some victims.

Few participants had any prior awareness of what to expect during the Police investigation, and information sources were generally limited to anecdotal accounts and via the media and television.

The key aspect of the investigation with which victims were involved was providing an evidential video statement. Often victims recalled this being a traumatic experience in that they were required to recall, in detail, the events of the offending, much of which may have been suppressed for years.

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<sup>8</sup> [www.victimsinfo.govt.nz](http://www.victimsinfo.govt.nz)

For some victims, the lack of adequate preparation for giving the evidential statement led to considerable distress. Some victims felt they had not done themselves justice in giving their statement because of their lack of understanding about the process and its significance. Others were disadvantaged because they were unprepared for the duration, intensity and detail of the questioning. A number of those we spoke to experienced emotional exhaustion after giving their statement.

However, there were a number of things that made a positive difference for some victims, including:

- having been briefed on what to expect;
- Police members conducting interviews being adequately skilled and experienced, showing empathy and respect;
- Police questioning which helped them to give as complete an account as possible;
- having a support person available (but not necessarily present);
- allowing for breaks and not rushing or pressuring the victim; and
- having as comfortable an environment as possible.

Some of the trauma experienced in the interview might have been avoided if all victims had been briefed in advance about what to expect regarding:

- the level of detail required;
- the duration;
- the presence and role of the video, including who will see it; and
- who can and cannot be present.

➤ Being regularly and proactively kept informed by Police of investigation progress, particularly key aspects (questioning of offender, arrest, charges being laid), is important to victims, even when the contact may be to explain that there is a delay and/or the reasons for the delay.

Victims felt particularly vulnerable at the point of arrest or charging of the offender. A key concern was how the offender (and their supporters) would react and whether they would try to contact the victim. Other causes of anxiety were getting information about the progress of the investigation from third parties rather than directly from Police and having long periods of time where they hear nothing regarding progress.

## 1.5 Going to Court

- Long timeframes and delays to proceedings caused considerable distress for victims. Prioritised scheduling would support victims' wellbeing.

One of the most difficult aspects of the justice process for victims was the lengthy timeframes between charges being laid and dates for court hearings. Victims described the process of waiting for court appearances as effectively holding them back from making progress in other aspects of their lives, hence there was a strong desire to have matters addressed as expediently as possible. Delays to proceedings going ahead, often notified close to court dates, had a detrimental impact on victims' mental and emotional wellbeing.

- More preparation for court, including greater access to information on what to expect, multiple opportunities to visit court, and more time with prosecutors, would help to alleviate anxiety around the process for victims.

Few victims were able to meet the person prosecuting their case prior to the day before the trial. Many felt that meeting the prosecutor earlier would have made a significant difference to their experience, helping them to become acquainted with the prosecutor and feeling more prepared. There was also a perception for some victims that the prosecutor was "their" lawyer and that a positive outcome might pivot on a rapport being built.

Almost all participants were able to tour the court prior to the day of trial and to receive information from the Court Victim Advisor assigned to their case. This was very useful in alleviating some of the stress associated with being present at court. However, some would like this to have happened earlier, to allow time to process the information and for additional questions to be asked.

Few participants felt well-prepared for attending court. Those that did had undertaken significant preparation for the experience of cross-examination. Particularly useful was undertaking role-plays of the cross-examination process, for example with a counsellor.

- Support by a dedicated liaison person throughout the process from initial complaint would be of benefit.

Court Victim Advisors were generally described as being valuable sources of information and support, however there appeared to be some variability in how much time was spent with victims and the level of support offered to each.

- Victims' rights were not always upheld, including the right to input into bail conditions and name suppression for offenders.

Few participants recalled being asked for their views on either bail or name suppression for the offender. Many we spoke to felt that bail conditions were insufficient to allow them to feel safe in the lead up to the trial.

## 1.6 The Trial

- Cross-examination by defence lawyers was the most traumatic aspect of the justice process for most of the victims interviewed, and a cause of revictimisation.

The most difficult aspect of the trial, in fact of the justice process, for those who were called to give evidence, was the cross-examination. Even those who felt they had been prepared for what to expect (by Police and/or prosecution) said that this was harder than they had anticipated it would be. Challenging aspects were the length of time being questioned, the nature of questioning (i.e. repeated questions on the same point), questions unrelated to the offences, and having their character and morals called into question. In addition, there was anxiety for many about how they would 'come across' to the jury. Some victims expressed that they felt like they were on trial when giving evidence. For parents of child victims, the experience seemed to be exacerbated. Children whose parents had participated in the research did not appear to be given 'easier treatment' in cross-examination. Parents expressed that their children were violated through the experience and commented that they would not make the same choice to make the complaint had they known how traumatising it would be for them and their children.

- The role of complainant witnesses at trial was often misunderstood by victims and was found to be a cause for considerable distress and retraumatisation. Greater access to information about the role of witness and other aspects of processes during the trial would benefit victims.

In addition to the inherent difficulties faced by victims of trauma and violence participating in court proceedings, the lack of understanding of the way in which the New Zealand justice system views the complainant was a big disadvantage. Because many of those interviewed drew their understanding of court room proceedings from (misleading) television programmes or other media, there was commonly an expectation that they, as the victims, would be empowered by the courtroom process. Finding this was not the case was extremely difficult, even for those who were reasonably well prepared by Police, Court Victim Advisors or prosecutors. The experience of being both the victim of the crime and (reduced to) a witness to that violence in the judicial process was psychologically demanding at best and damaging at worst.

Most victims felt that they were kept well-informed during the court proceedings and of the verdict if they were not present in court. For those few who were not, however, not being informed was a demeaning experience considering their experience of sexual trauma.

➤ Private waiting spaces and being able to avoid contact with offenders and their supporters at all times, in and around the court, supports victims' wellbeing.

Victims in the research appreciated when they were able to wait in a safe space away from members of the public and where there were systems in place to minimise the risk of encountering the offender in and around court. The sense of safety afforded by this process was highly valued. Victims interviewed felt that the quality of evidence they were able to give was enhanced by being in a comfortable, calm room prior to being called.

➤ Having choices about, and contact with, support people during cross-examination would help victims.

Participants felt that, in general, they were treated with courtesy and respect by court staff and judges. They valued being able to have a support person present with them during evidence, but some would have preferred to be able to have a friend or family member in this role (not currently possible if this friend or family member is a witness themselves). Victims in the research expressed that it was important to be able to have, at least, visual contact with the support person during the cross examination.

## 1.7 Sentencing

➤ Delays and rescheduling caused distress for victims we spoke with.

Victims in this research experienced a great amount of frustration and distress when sentencing dates were postponed, particularly when this occurred at the last minute. They invested considerable time and energy preparing themselves for what they expected to be a highly emotional day and then felt let down and needing to put more energy into another period of waiting. This was particularly frustrating given the sentencing represented what most considered the end of an arduous process and the beginning of a new phase of life and recovery.

- Some victims felt unsafe in and around the court due to the presence of the offender and their supporters.

Most victims involved in the research chose to be present at court to hear sentencing and often felt less protected and less safe at this time as they waited in public waiting spaces and were at risk of encountering the offender and/or their supporters.

- Preparing a victim impact statement can be experienced as empowering or traumatising. Appropriate and consistent guidance and support would be beneficial as would greater emphasis on meeting the victim's needs and allowing them to make their own choices.
- The option to read a victim impact statement from behind a screen or with a support person next to them would alleviate victims' anxiety.

Most, but not all victims we spoke with, were provided with the opportunity to write a victim impact statement, an experience that differed widely for different people. Some found it cathartic, others finding the need to 'relive' the feelings as traumatic. Victims valued when they were provided the opportunity to choose to have their statements read to the court. This did not always occur, and for those who were unable to have a choice, there was considerable disappointment.

Where there was (perceived) lack of choice about writing and delivering victim impact statements, this was revictimising. Participants were (again) denied the opportunity of exerting their own agency in the context of a proceeding which, to them, was about their own violent sexual trauma.

- Victims in the research were disappointed (and sometimes distraught) at 'light' sentences, particularly home detention, and sentence 'discounting'.

Many victims involved in the research were disappointed on hearing the sentences handed down, particularly those of home detention and in cases where the defendant was discharged without conviction. There was a strong feeling among participants that, for many offenders, home detention was not a sufficient punishment nor deterrent, and that it set a (poor) precedent for future cases. There seemed a mismatch between the scale of what they had been through as victims, and the outcomes for the offender.

Most participants made aware, chose to go on the victim notification register. However, not all participants were made aware of the register.

- Victims wanted more ‘follow-up’ post-sentencing support as this could be the time when they experienced significant emotional impingement but were ‘left alone’.

There was often a sense of ‘let down’ post sentencing. For some people, they were left alone, feeling under-resourced to cope with the aftermath of the process. Several of the research participants suggested that offers of counselling or similar support at this point would be of value.

## 1.8 In Conclusion

- The justice process can cause revictimisation and retraumatisation for victims of sexual violence.

The experience of the justice system can have a negative impact on the overall wellbeing of victims, including severely negative impacts on mental and emotional health, amounting to revictimisation.

- Victims described that their needs were not always considered by the justice system.

Due to the long timeframes involved, often repeated delays, fear of - or actual contact with - the offender or offender’s supporters, the harsh experience of cross-examination, disappointing outcomes at sentencing and lack of support at the end of the process, victims often did not feel that their needs were recognised or met by the system. For those we spoke with, there was often a sense that the rights of offenders took precedence in the current justice system.

On reflection, many participants would still seek a justice response to a sexual violation even given the difficulties they had faced, however, they expressed that they would be better able to cope if they were more fully informed about all stages of the process, what to expect, what their rights are, and how to properly prepare for every element of the process, most particularly when giving evidence in court.

- Victims’ rights were not always upheld through the justice system.

This research indicates that victims’ rights and entitlements were not always upheld, most particularly in relation to:

- access to services;
- entitlement to a restorative justice meeting;
- provision of information;
- offender name suppression and bail conditions;
- privacy; and
- return of property taken in evidence.

One of the biggest disadvantages faced by victims, based on this research, is their lack of understanding of, and access to, information about the judicial system, the process, their role and entitlements. Importantly, victims are not well placed to 'know what they don't know', nor are they well placed, as traumatised individuals, to pro-actively seek information or advocate for themselves. It seems, based on these findings, that an active stance from justice organisations and staff is required, towards ensuring delivery of rights and entitlements to victims.



## 2 Introduction and Research Objectives

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Sexual violence is a significant social problem in New Zealand, with approximately one in six people experiencing one or more incidents of sexual violence at some point during their lives<sup>9</sup>. Only a small proportion of these victims report the incident to Police. In 2008, the New Zealand Crime and Community Safety Survey found that only 7% of sexual offences were reported to NZ Police, a decrease on the previous measure (9% in 2005)<sup>10</sup>.

Many victims of sexual violence find that their lives are severely negatively impacted by the offending in wide ranging ways, but particularly in relation to their emotional and mental health. These effects can be long-lasting, and affect relationships, wider family/whānau, study and work<sup>11</sup>.

In 2014, the Ministry of Justice formally requested that the Law Commission report on the justice response to victims of sexual violence. The subsequent report (2015)<sup>12</sup> considered whether the processes for justice in cases of sexual violence required changing to improve fairness, effectiveness, efficiency, and how complainants experienced the court system.

The Law Commission report found that the justice system often failed to respond appropriately to victims of sexual violence and that this leads to significant secondary victimisation<sup>13</sup> and contributes to the low rates of reporting of sexual violence to NZ Police. Fear and distrust of the legal system is another reason that victims often do not report incidents of sexual violence perpetrated against them<sup>14</sup>.

The Law Commission (2015) made wide ranging recommendations as to how the justice system could address the issue of revictimisation and ensure that victims' rights were being upheld throughout the justice process.

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<sup>9</sup> <https://www.justice.govt.nz/justice-sector-policy/research-data/nzcass/survey-results/results-by-subject/sexual-violence/>; accessed 20.6.18

<sup>10</sup> <https://www.justice.govt.nz/justice-sector-policy/research-data/nzcass/survey-results/results-by-subject/sexual-violence/>; accessed 20.6.18

<sup>11</sup> Kingi, v. and J. Jordan (2009). Responding to Sexual Violence: Pathways to Recovery. Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine. Wellington.

<sup>12</sup> Law Commission Te Aka Matua O Te Ture (2015). The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes. Wellington.

<sup>13</sup> Orth, U. (2002). Secondary Victimization of Crime Victims by Criminal Proceedings. *Social Justice Research*. Vol. 15, No. 4.

<sup>14</sup> Kingi, v. and J. Jordan (2009). Responding to Sexual Violence: Pathways to Recovery. Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine. Wellington.

The Ministry of Justice is currently implementing a suite of operational changes aimed at improving the experience for sexual violence complainants in the criminal justice system, with an emphasis on reducing the risk of revictimisation. In addition, the Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) is considering legislative reforms in response to other outstanding Law Commission recommendations. To be able to assess the impact of these operational changes and any potential legislative reforms in the future, the Ministry of Justice commissioned Gravitas Research and Strategy to collect baseline data on the experiences and perspectives of victims of sexual violence who have had some contact with the justice system, that is the Police and courts, over the previous few years.

The objectives of the research were to explore the experiences of victims of sexual violence, from their own perspectives, as they journey through the justice system, with emphasis on those aspects that were most difficult and had the potential to cause revictimisation and/or additional trauma.

## 3 Research Method

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### 3.1 Recruitment and Sample

An information sheet was developed to provide an overview of the project and to invite participation from those who had experienced some aspect of the justice system in relation to sexual violence during the previous three years (2015-2018). This information sheet was distributed to Court Victim Advisors (CVAs) in Auckland, Manukau, Hamilton, Bay of Plenty, Wellington, and Christchurch.

CVAs in these areas were provided with background to the project and its objectives and acted as conduits for recruitment, by contacting victims with whom they had worked and requesting consent from them to pass on contact details to the researchers for those who indicated they were interested in participating. Care was taken to avoid contacting anyone who CVAs felt might be at risk of re-traumatisation through being invited to talk about their justice process experiences.

The researchers contacted victims whose contact details had been received from CVAs and were able to answer any questions that potential participants might have and to schedule a meeting at a time and location convenient to the participant.

For those who were not comfortable with a face to face meeting but wanted the opportunity to share their experiences, a self-completion questionnaire was developed and made available to the CVA to send out to victims.

The information sheet, self-completion questionnaire and an accompanying information poster were also distributed to sexual violence support agencies who had agreed to support participant recruitment for the research.

A total of n=37 interviews with victims were conducted and a total of n=2 self-completion questionnaires were received. N=34 of the interview participants were recruited by CVAs, with a further n=2 approaching the research team directly in response to seeing the information sheet or poster and n=1 participant being approached directly by the research team after speaking publicly about their experience of sexual violence.

This indicates that, for research of this nature, participants seem more willing to be involved if they are invited to do so by a professional with whom they have had prior contact in relation to their sexual violence complaint. The proportion of participants who chose to share their experiences via interview rather than self-completion questionnaire further indicates that victims of sexual violence may prefer a more personal format in which to share their experiences. Table 3.1 outlines the sample profile.

**Table 3.1. Client Sample Profile**

	Interview (n=37)	Questionnaire (n=2)		Interview (n=37)	Questionnaire (n=2)
<b>Gender</b>			<b>Region**</b>		
Female	29	2	Auckland/ Manukau)	13	
Male	8		Canterbury	11	
<b>Age group*</b>			Wellington	7	
Under 16 years	4		Waikato	3	
16-24 years	9		Bay of Plenty	2	
25-34 years	11		Nelson	1	
35-44 years	7		Unknown	0	2
45 years and over	6	2	<b>Verdict</b>		
<b>Ethnicity</b>			Guilty	28	1
NZ European	25		Not guilty	4	
NZ Māori	6		No verdict	4	
Pacific	2	2	No charges laid	1	
Other	4		Unknown	0	1
<b>Process</b>					
Court trial	20	1			
No court trial	17	1			

\*Note: Age brackets are indicative only and refer to the approximate age at the time of the Police complaint/investigation or trial process. Victims were not asked directly their age at the time of these events; this information was generally, but not always, provided by Victims' Advisors on referral of victims.

\*\*Region indicates the location where the victim made Police complaint and/or was witness in a court trial.

### Sample Scope and Limitations

In line with the objectives of the research, the scope of the sample of participants was those who have had some experience of the justice system (Police and/or courts) in the previous three years. Excluded from participation were victims of sexual violence who had not made a Police complaint.

Charges were laid in all except one case for victims that we spoke with. However, it is estimated that less than one-third of complaints made in New Zealand about sexual violence result in charges being laid<sup>15</sup>. The findings, therefore, do not represent the experiences of victims who make a complaint of sexual violence to NZ Police, but rather a sub-set of those (i.e. where the complaint was pursued through the court system).

<sup>15</sup> Triggs, S., Mossman, E., Jordan, J., Kingi, V., (2009). Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System. Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine. Wellington. Pg. 35.

It is also important to point out that participation in the research was by a two-stage selection process. Firstly, CVAs were briefed to be careful to avoid contacting victims who they perceived to be at risk of retraumatisation by either participating in this research or by being invited to participate, including any victims who they knew to have a formal mental health diagnosis such as Post Traumatic Stress Disorder (PTSD). Secondly, those invited to participate were able to 'self-select' to receive further information about the research and/or be contacted by the researchers to get further information before agreeing to participate or not. The impact of this selection process is likely to be that anyone who was considered by CVAs to be currently experiencing trauma or likely to be retraumatised by invitation to the research was excluded from the opportunity to participate.

For these reasons, the findings included in this report are not generalisable. They do not represent the views of all complainant witnesses in sexual violence cases, but rather represent the views of those who were selected for invitation by CVAs and then self-selected to take part. The recruitment process ensured that participants had as much choice about participation as possible and that those taking part in the research would have, as far as possible, a low likelihood of experiencing (further) harm through participation.

### 3.2 Data Collection

Data was collected via in-depth interviews conducted by members of Gravitass' research team<sup>16</sup>. Most interviews were conducted face-to-face (n=33) with the remainder (n=4) conducted by phone or digital audio-visual link (for those who were residing outside the scope of fieldwork locations, including now living overseas).

Participants were given a choice of interview location, with all interviews taking place either in a private room at a district court (arranged by CVAs), at the participant's place of residence, or at another pre-arranged private meeting room – for example at local libraries or community venues.

The purpose of the interviews was to gain insight from the perspectives of victims/complainants of sexual violence of their experiences of the journey through the justice system from the time of deciding to make a complaint to Police, right through to the conclusion of a court trial (in cases where one occurred) and sentencing.

Interviews adopted a 'story-telling' approach in which participants were asked to describe and talk about, in their own words, their experiences of the justice system in relation to their complaint of sexual violence. In this way, participants were able to raise those aspects of their journey which had the most impact on them and/or those that they determined were most worthy of discussion.

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<sup>16</sup> Gravitass Research and Strategy are an independent research consultancy with extensive experience conducting qualitative research on sensitive subject matter and with vulnerable participants. All interviews were conducted by skilled qualitative researchers.

Interviews were guided to some degree by a topic guide (see Appendix), which had been developed collaboratively by Gravititas and the Ministry's project team and with input from key informants, so that prompts could be used by interviewers to ensure that key areas of the justice process were covered.

Two self-completion questionnaires were received by mail.

### 3.3 Comparison of Data

Qualitative data does not lend itself to comparison in the same way that statistical survey data does. We can, nevertheless, look for changes in the themes that arise, the issues that appear important and the intensity of the impact of traversing the justice system as the victim of a sexual assault.

Provided the same recruitment and sampling approaches are utilised for future qualitative data collection from victims, the findings will be able to be compared across different time points. A comparison will not show the metric scale of change, but whether and how the nature of the experience evolves over time.

### 3.4 Note on Terminology Used

We understand that some working within the realm of sexual violence prevention and support prefer the term 'survivor' or 'victim/survivor' when referring to people who have experienced sexual violence. In the context of the justice system, the term 'complainant' is also used. For the purposes of consistency with legislation and agencies in the justice sector, we have used the term 'victim' throughout the report. The term 'victim' is in no way intended to imply a value judgment on those who have experienced crime, or to exclude those who prefer to identify themselves with another term in the context of the offending.

Similarly, it could be argued that "alleged" should be used when referring to individuals who have been investigated and/or charged and acquitted of committing crimes of sexual violence. However, as the data collected and reported for this project presents the perspectives of victims of sexual violence, we have used the term 'offender' throughout the report to refer to the person who they perceive to have committed the offence of sexual violence against them.

In this report, as specified by the objectives, we refer to revictimisation. This term is a proxy for the one used by Orth (2002)<sup>17</sup>, in his investigation of secondary victimisation in the criminal justice system. Orth quotes Montada (1994), the definition being:

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<sup>17</sup> Orth (2002). *Secondary Victimization of Crime Victims by Criminal Proceedings*. Social Justice Research. Volume 15, Issue 4. Pp 313-325

*A negative social or societal reaction in consequence of the primary victimization (sic), experienced as further violation of legitimate rights or entitlements by the victim.*

Retraumatization, or secondary trauma<sup>18</sup>, on the other hand, refers to a psychological process whereby the psychological impacts of the initial trauma are re-experienced by the individual concerned and this exacerbates and reinforces, rather than ameliorates, their psychological response and vulnerability.

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<sup>18</sup> Lingardi, V. and McWilliams, (2017) Psychodynamic Diagnostic Manual, Second Edition, 2017, The Guildford Press, New York  
Vittorio Lingardi and Nancy McWilliams editors.

## 4 Context

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Deciding to make a complaint to NZ Police about sexual violence is not a decision that is taken lightly or without due consideration by most people involved in this research. For some, it has taken years for them to be ready to take this step. The act of going to a Police station to make a complaint about sexual violence was the first step in what, for many, would be a process that lasted several years and included numerous court hearings and delays in proceedings. We found this process often takes a high toll on victim's emotional and mental wellbeing, and impacts on many, if not all, aspects of their lives and often the lives of their family/whānau as well.

Few participants had any idea of what the justice process would be like prior to making a Police complaint, and in hindsight, few could have imagined how arduous it would be or how long it would take.

*I knew it was going to be hard but not this hard.*

*It was definitely an incredibly taxing process ... It's very hard to keep that stuff to yourself, and it's very hard to continue on with work and study.*

*I was a different person. For two and a half years, I felt like I lost me because I just was not operating. And that's how bad the stress is. It's so hard to describe. I literally was a different person. I couldn't think straight...I was crying all the time, I was reactive, I was surprised my family didn't divorce me.*

However, whilst the experience of the justice system was traumatic, the greatest share of participants felt that holding the offender to account was important enough to warrant the personal toll that the process had taken.

*[The process] was a million times harder than I thought it would be. But I don't regret it. If I had to do it again, I would. What [offender] did was wrong and why should he get away with it just because the process is a bit hard? I would definitely go through the process again if it means we get justice – and a bit of closure. I think I would regret it if I didn't do anything about it. (Guilty)*

*I would strongly suggest [victims of sexual violence] go into the Police station and make a formal complaint. The perpetrator needs to face accountability with the justice system. (4 years since complaint; no trial yet)*



For others, the process was able to give them back a sense of empowerment:

*I still tell people every time I'm asked – you won't regret coming forward and giving [the Police] information. I say to people "even if you don't secure a conviction, at least you've done everything you can to try." It's so important to do that. It's so important to try your best to take back whatever power you can. (Parent of victim; no verdict)*

In contrast, for a smaller group of victims (particularly those whose cases had not resulted in a conviction or where the sentence was perceived as too lenient), there is a sense that had they not made a complaint to Police and pursued a justice response to the offending, they would now be in a better position in their lives in terms of overall wellbeing and ability to move on in a constructive way. It is important to note however that outcome of the justice process is not a direct predictor of how participants felt about the process overall and their perceptions on making a complaint. Some participants whose cases had not resulted in a conviction still cited some positive personal outcomes (as described above) as a result of having been involved in the justice process.

*I would advise them to talk to the Police, but without high expectation. Even if the most you'd get out of it is that this person's name is in the system, and has had a complaint about it, that's better than nothing, you know? It's very hard to get your voice heard from people beyond your detective. You might have to be satisfied with it just being a complaint (Not guilty)*

Other victims, whose offenders had either pled or been found guilty, would not necessarily recommend a justice response to those who experienced sexual violence.

*Logically my mind is telling them to go to the route that I've taken, got to the Police, do the right thing you're supposed to do right, and get it going. But my gut and my heart's telling me don't bother, you're just going to get retraumatised and thrown around, and the defendant's rights are going to be defended more than yours. (Guilty)*

*If anyone ever came to me and said, "this has happened to me, what should I do?" I would never recommend that they go through with a prosecution. I wouldn't recommend it for anybody to be honest. Honestly, I would probably tell them to see a psychologist over a Policeman. (Guilty)*  
*There's been no benefit to speaking up, and if it happened to me again I would just get on with my life. If it hadn't of been for this process, then I would have probably had a wee bit of time off work just to get over the stress and that's it. But I've actually never gone back to work since that happened. My health has hugely suffered and not because of the assault, but because of the process. (No verdict)*

*I've got to deal with this now. I've got to deal with what this man did to me and also deal with being degraded through the court system. You hear of people getting assaulted, and I know I shouldn't think this, but I think "poor person, they're going to have to go through that system". They're going to get treated like dirt and at the end of the day I don't have much hope that they will get justice. (Discharge without conviction)*

# 5 Police Complaint

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## Key Findings:

- Timeframes from offence to reporting varied widely and victims we spoke with delayed reporting for a wide range of reasons consistent with the general literature.
- Experiences of participants varied considerably. Different locations, different staff, variability in provision of information, follow up to the complaint, the nature of the case and the environment where the complaint and statement(s) could be made contributed to considerably different experiences for victims we spoke with.
- Victims were generally satisfied with the Police complaint process.
- There is the opportunity to improve victim experiences through a (continued) emphasis on choice, which empowers victims, for example providing options and choice around the kinds of supporters they may access or involve, location, timing, environment, and gender of Police staff. Where a choice is not available, acknowledgement to the victim that circumstances may not be as they wish can improve the victim's experience.
- Victims we interviewed valued dealing with Police who showed courtesy, respect and empathy.
- Access to timely information about the complaint process and justice system processes going forward can help to reduce stress and anxiety. The participants who were better prepared and informed seemed to have more positive and tolerable experiences.

## 5.1 Decision to Make A Complaint

The decision to make a complaint to Police regarding an offence of sexual violence is often not an easy one for victims like those in this research to make. This is underpinned by the low rates of reporting of sexual violence crime<sup>19</sup>.

### Timeframe

Among participants, the time frame between the offence(s) occurring and reporting to the Police varied considerably – from immediately afterwards (going straight from the location where the offence took place to the Police station) to 40 years. Research participants who had been offended against by a stranger were more likely to report to Police shortly after the offending. The longest delays in reporting were among those who were offended against as children and later disclosed as adults.

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<sup>19</sup><https://www.justice.govt.nz/justice-sector-policy/research-data/nzcass/survey-results/results-by-subject/sexual-violence/>; accessed 20.6.18

## Reasons for Delay in Reporting

Many of the key reasons that victims delay making a complaint about sexual violence to Police are the same reasons identified by Kingi and Jordan<sup>20</sup> that victims do not report sexual violence at all. Where delays in making a complaint had occurred among those we spoke with, fear of not being believed was a key reason. Even at the time of making the complaint, the fear that their recount of events may be doubted was often at the forefront.

Other reasons for delay in making a complaint to Police included those in the emotional, intellectual and relational spheres:

- Embarrassment, shame, whakamā;
- Feelings of guilt and/or self-blame;
- Perception that they could ‘move forward’ more effectively without involving the justice system;
- Lack of certainty as to whether the offence constituted a crime;
- Close relationship to the offender (intimate partner or family member) and in some cases, fear of the repercussions from this person if a complaint is made; and
- Potential impact on family – not wanting to cause negative consequences for others.

*At that point, you have that fear of wondering if they'll believe you, wondering if you're doing the right thing, you know? Am I wasting their time, especially if it was historical. You have a whole bag of self-doubt that your story's not going to be believed, even by the Police.*

*[Reporting] is a big step, especially for a male. Going along and telling that some other man has been abusive towards you, putting hands on you. It's the hardest thing to do for a male, very much so. It's very, very hard. It's that whole male thing - 'we're tough and don't touch us' type thing.*

*For a lot of the time I thought that it was my fault leading to the incident, so that's why I didn't go to [the Police].*

No participants said that the reason that they delayed making a complaint to Police was because of a perception that the justice system would be too difficult or traumatic to navigate<sup>21</sup>.

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<sup>20</sup> Kingi, v. and J. Jordan (2009). Pg. 58

<sup>21</sup> Acknowledging that the sample was selected to include only those who had experience of at least some part of the judicial process, those that may not have made a complaint were not included in this research.

## Motivating Factors to Making a Complaint

### Victim-Initiated

A range of factors were identified that had ‘pushed’ participants to making a complaint to Police. In cases of historical offending, a common ‘push factor’ in deciding to make a complaint was discovering that the offender had offended against others, often within the same family.

*I had found out that [perpetrator] had raped my brother.*

*My dad came to me and said “[offender]’s been at it again”. It turns out that their nephew who is about four or five years younger than me had the same thing happen to him. I was really, really gutted at that point. And in the same conversation I find out that my younger brother had also been abused by the same man. I had no idea. I was so angry that all of this had happened.*

Other factors prompting a complaint among those we interviewed included:

- Fear of a risk to others, for example the participant finding out that the offender had access to children:

*It was my half- sister’s father and he came and took her against everyone’s will...But because he was her father, and nothing could be done about it, so it was kind of trying to keep her safe, it wasn’t really about me anymore, what I wanted. Otherwise I’d probably would never have told anyone.*

*[Offender’s ex-wife] told me [offender] had remarried a lady who had brought two children into the relationship. I was instantly worried for those kids.*

- The passage of time and increased maturity and confidence contributed to victims’ readiness to make a complaint:

*You’re actually dealing with it all your life to get to a point that you’re confident enough in yourself that you can now deal with it.*

- A change in lifestyle, life circumstances or relocation allowed a new perspective on the offending and was the impetus for some victims to decide to make a historical complaint:

*The offending happened when I was 15. I grew up in a very small, rural town...so moving to a big city, going to University exposed to different ideas and thoughts. I thought that I had an obligation to go to the Police in case there’d been other victims.*

- Some victims were prompted by media coverage of sexual violence issues:

*My main motivation [to go to the Police] was I'd had enough. I had seen so many cases on TV, on the news, about children being abused and a lot of times, the party getting away with it. And I thought, he's done this to me. I've had a hard life over the last 38 years. I've been an alcoholic, suicidal, the whole lot, and all because of one man. I wanted him to answer for what he had done and to face up to exactly what he had done.*

*[Victim] and I were just watching something on TV where sexual violence was mentioned and that just brought [victim] to a space where she should felt she could tell me what happened. (Parent of victim)*

- For some victims, their own children approaching a similar age to when offending against themselves had occurred was a prompt.
- A desire to achieve justice and hold the offender to account was a factor for some victims in deciding to make a Police complaint:

*You can't just ignore this type of thing [sexual violence]. If you suppress it, bundle it up and tuck it away somewhere, it doesn't solve the issue, it doesn't get rid of it. You need to bring it to light so you can get justice for what happened to you, so you can move forward.*

- For some victims, moving out or escaping from the offender and moving into a new, safer environment allowed them to be able to make a Police complaint.

Some victims in the research initially contacted the Police with the intention of having an informal conversation about the offending, to gain an understanding of whether a crime had been committed, the likelihood of it being investigated and potentially prosecuted, and to get information on what the process would be should they decide to make a formal complaint. For some of this group, how they perceived they were treated at the time of initial contact with Police influenced their decision to pursue a justice response to their experience of sexual violence.

*I just went into the suburban Police station and spoke to a constable there. I found him extremely helpful. He kept calling people until he got hold of someone who could help me, which I really appreciated. If he had perhaps just said, "Oh, well, we'll give you a call back," or something like that, I don't think I would have chased it up.*

### **Decision Taken Out of Their Hands**

For some participants, the decision to make a complaint had been taken out of their hands. For example, when they had disclosed the violence to someone else, that person (school counsellor, therapist, Child, Youth and Family social worker, another family member or friend<sup>22</sup>) had made the complaint to the Police. Some participants were initially very angry about the disclosure, particularly where they had specifically asked the person they had disclosed to not to tell anyone, but after the initial shock, most were relieved to have the matter 'out in the open' and being dealt with. This relief was particularly felt by those who were uncomfortable or embarrassed about having to initiate a discussion about a sexual act with strangers, often for cultural reasons.

*My intention was never to make a complaint to Police. I spent years trying to forget about the abuse and just try to go on with a normal life. But my sister is one of the [other] complainants.*

*It was done by school, it was out of our hands.*

*[By the time I had given my evidential statement] I was actually relieved, relieved that [family member] had spoken up. If [family member] had not gone to the Police, I would've held this forever. For her to make a bold move like going to the Police, it gave me that sense of mind "okay, I'm going to go ahead with this."*

*I was too scared to tell Mum what had happened, so I was glad that [CYFS social worker] told her. She communicated to Mum what I was too scared to say myself.*

### **Police Initiated**

In a very few of the cases we heard about, the Police proactively approached the victim with evidence of the sexual offending. In one instance, the Police contacted the victim to inform them of the criminal acts of the offender that the victim had been unaware of (photographs taken of the victim without their knowledge). The victim reported finding being approached this way very confronting:

*I was pretty shaky, tearful, I thought I was going to throw up. I was just so out of my realm of experience or expectation.*

Another victim had been aware that the offender had sexually explicit photos of her but had assumed that there was insufficient evidence for the Police to act on and so had decided not to report. Subsequently, she was approached by Police:

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<sup>22</sup> Note that some professionals are bound by a code of ethics or duty of care to disclose offending even when it is related in a context of confidentiality.

*I never initially complained but they took someone's phone, the person who did what he did to me, [the Police] took his phone and found everything on the phone. They came to me to ask if this is true and that there was a case happening and if I wanted to come in on that. It was a bit out of the blue. I can't remember if I had a phone call or not. But it was just kind of random, out of nowhere.*

Another research participant had reported a physical assault to Police. Through their discussion with her, the Police encouraged the woman to make a full disclosure of all aspects of the assault. Even though her intention had been to withhold information about the sexually-violent part of the attack, with Police support she also reported that aspect of the assault:

*I think [the Police] knew something else was going on, but it wasn't until the next day when they rang me up that I said that he had also done this to me.*

## 5.2 Complaint Process

The complaint process was generally found to be satisfactory by most victims and not too far from what they expected might have occurred.

### Expectations

Many victims said they had no idea at all what to expect in terms of going into a Police station to make a complaint about sexual violence. Many had never been into a Police station previously nor made a complaint of any nature to Police. Only one participant had accessed any form of published information about the process of making a complaint (via an internet search). Any information or preconceived ideas about what might transpire had been gleaned from anecdotal or media sources, including what they had seen on television:

*I really went in blind.*

### Location

Almost all participants' initial complaint to Police was made at a Police station. This seemed to be an expected and accepted part of the process and did not appear to give rise to discomfort in and of itself.

Auckland participants were appreciative of the fact that they could make their complaint at a local Police station rather than having to deal with the added stressors of traffic and finding parking to get into the city (some participants in Auckland said Police staff had been sent from the Auckland Central Police Station to meet with them at their local station).



A small group indicated that a Police officer had come to their home or another location in the community and this was felt to show a great deal of care and respect:

*When I first reported it, they did the most amazing thing out. They sent a Police officer in plain clothes over to my home where I felt safe, and they took the initial complaint.*

### Support Available

Some participants said they were accompanied by a friend or family member to make a complaint to Police, while others went alone. One participant had turned down the offer of bringing a support person as she was reluctant to tell anyone she knew about what had happened.

However, in hindsight she felt that, had she had a support person with her, she would have found making the complaint to be less “scary” and may have been better able to deal with having to relive the experience when recounting it to the Police.

Most participants recalled being offered support via a sexual violence agency, such as HELP or Rape Crisis, early in the process, once dealing with Police, often but not always at the time of the initial complaint. Having the support of a sexual violence NGO (non-government organisation) representative was valued by some:

*They always offered us support people. They were very quick to get in Rape Crisis which initially I found weird because I'd been in denial for so long. But in retrospect it was good.*

However, not all participants valued the involvement of agency support, with one participant indicating that they felt the presence of the NGO support agency staff member to be an intrusion on their privacy and pointed out that their permission had not be sought for this.

Having decided to make a Police complaint after many years of holding the information in can trigger strong, difficult emotions for victims, including experiencing a sense of revictimisation at having to recall traumatic events. One participant noted that the support they required was not available when they needed it after making their initial Police complaint, and that immediate support would have made a big difference.

*I found it really off-putting being put on a waiting list [to see a counsellor] because, after that interview, it's really fresh and you're still really going through the initial effect of it all. You're really left on your own. If the Police had a good support system for people initially coming out of an interview or even first bringing something up. Because it changes everything in your life, you know? You become a victim again, you feel vulnerable again. It just would've been very valuable to have a counsellor lined up for you to go to straightaway.*

## Other Victims

In cases where the offender was someone known to the participant and/or multiple offences had happened, participants often suspected that there were other victims. Participants expressed a range of emotions (frustration, anger, disappointment, sadness) when other victims who had been identified chose not to take part in the case, particularly if they were a family member.

*Unfortunately, one of the other victims buried his head in the sand, didn't want anything to do with it, didn't want to talk about it anymore. He just didn't want to face what had happened I think. He was no support.*

At least one participant felt that the Police could have worked harder to convince other victims to make a complaint and needed to be more accommodating in helping them do this:

*I talked to [other victim] about going to be the Police and he refused. He took a lot of convincing, but I eventually got him to agree to go to the Police and tell them what had happened. I booked the appointment and I waited in the car as [other victim] went into the station. He came out again about 10 minutes later. He said the Police detective was too busy to take a statement that day. I knew I would never be able to get him to go back again – and he didn't. I was so annoyed and upset.*

## Positive General Impressions of Complaint Process

Where participants had a positive experience with the complaint process, the Police were described as compassionate, empathetic, understanding, prompt in their initial dealings with the victim and treating the complaint with an appropriate level of seriousness. The benefits of making a complaint in these circumstances were both emotional (a sense of affirmation, relief and support) and practical (feeling protected, made aware of the process ahead).

*I just felt listened to. I felt believed. It was very respectful.*

*It was never going to be a nice environment to experience but I honestly felt that that part was the easiest part of what we went through. We were dealing with a group of people that told us what happened was 100% wrong – they reaffirmed that. That was the day that I actually realised how serious it actually was. (Parent of victim)*

*[The Police] were brilliant. [Police detective] was fantastic. He was kind, didn't treat me like I was guilty, didn't treat me like I was making it up. He knew how to talk to me. He was professional the whole way through. He had had a lot of training and it showed.*

*[The Police] were really nice to me. They made sure I was okay the whole time I was in the Police station. They kept checking up on me. They were helpful and they explained what was happening and what would happen next. They were professional and did all they could to make sure I was comfortable.*

The Police's view that the victim had 'done the right thing' in coming forward was very affirming, particularly to participants who had been hesitant to make a complaint.

*It was quite validating to hear. I remember him so clearly saying "yes, a crime was definitely committed against you."*

*I definitely had a lot more respect for the Police after this whole thing. After the interview, he was very reassuring that I'd done the right thing, and that people like this don't stop at one. And after hearing that, I felt a whole lot of self-confidence in knowing that I was doing the right thing.*

After having made a complaint to Police, participants reported feeling a sense of relief at being able to let out something that often had been held in for a long period of time.

*I felt like I'd achieved something, that I was partially a bit freer.*

In addition, being provided with clear information from Police about the process going forward was of value to victims.

*Police officers were good and articulate about the stages of everything.*

At a practical level, where required, prompt actions were taken to ensure the safety of the victim, including organising protection and trespass orders. The ease and comprehensiveness of this process was much appreciated by victims.

### **Negative General Impression of the Complaint Process**

In isolated cases, participants reported examples of Police showing a lack of empathy or concern or appearing to conduct themselves in a manner inconsistent with the gravity of the alleged offending:

*They handled it as if they were taking a school lunch order or something.*

For some victims, gaps in information provision meant that there was a lack of clarity around what their role in the justice process would be after having made a complaint to Police:

*I felt like I did my interview and that's all I needed to do, you know? I had no clue, I still don't know my role in it all.*

*More information around the actual Police process would have been good because I didn't realise I had to go back to give more evidence.*

### 5.3 Information Availability and Accessibility

Many participants did not actively seek out published information regarding the justice process. Some participants were not aware that they would need information as, at least initially, they perceived that the process was very straightforward (give evidence → Police investigation → trial → conviction) and would only require limited involvement from them once they had made their complaint. Others believed that those 'in charge' of the process, and particularly the Police, would provide them with everything they needed to know/would keep them adequately informed. Some participants were too traumatised to think about information they might need. Others who had had no previous contact with the justice system were unsure where to look for information, and indeed what information they should look for – “*You don't know what you don't know.*” For these victims, information sources were generally limited to the people with whom they came in contact through the justice process (Police, and later Victim Support staff, CVAs and prosecutors) and anecdotal information via friends and family.

For some victims, the language of the justice system made information inaccessible to them:

*He was bailed – and I was like, what does bail mean? I don't even know what that meant. (Parent of victim)*

*[Court Victims Advisor] did explain [the process] but it's complicated and it's all in court lingo. She tried to explain it as best she could but it's hard as we don't know anything about the court. She's so nice, she's a lovely lady but it's just so confusing when it's court words.*

Television (and movies) were an indirect information source for some. For some participants, their only previous exposure to the justice system was from what they had seen on-screen. In particular, television gave participants a false sense of how quickly cases move from complaint through to verdict.

A small group of participants, who had the necessary skills and resources to access information independently, undertook their own desk-top research on the justice process as a part of their preparation for the court process. Internet search were the main method of obtaining information.

## Ministry of Justice Information Sources

The Ministry of Justice has comprehensive information for victims published both online<sup>23</sup> and in a range of printed pamphlets and information sheets. This information covers all aspects of the justice process, from making an initial complaint to NZ Police, right through to court trial, including the role of a victim as a witness throughout the process. However, not all participants were aware of, or had accessed, this material. One victim, who had contact over four years with a CVA suggested that a leaflet on what to expect at court would be useful for victims. This indicates that the information published by the Ministry of Justice that may be of use to victims is not always available to them. It may not have been offered to them, or at least not at a time and/or in a way that they were ready to access or could recall:

*A lot more information...and not just over the phone. Like emails, letters. Give something that people can actually read, not just over the phone - where support is and the phone numbers that they can call for support as well. All that stuff. Because some people don't even have internet.*

## Provision of Information by Police

Victims are entitled to receive information about programmes, remedies and services available to them as soon as practicable after engaging with an agency (including the Police and the Ministry of Justice<sup>24</sup>). They are also entitled to receive information about the progress of the investigation, decision by the investigating officer to lay charges, or reason for not laying charges, and their role in the process as a witness in the prosecution of the offence<sup>25</sup>. In many cases, from the recount of participants, it seems that Police involved were aware of their obligations and generally provided updates on the progress of the investigation giving adequate information to victims in a timely way, although this did not always happen. It seems less common that participants recall being provided with any information or directed to sources of information (i.e. websites) that could provide any programme, remedies or services which may be helpful to them:

*The Police officer [was] always kept me informed every step of the way which was really, really, good I thought. If she couldn't get a hold of me she'd keep trying until she did.*

Information provided by the NZ Police was generally given verbally or via email. Participants were happy with this:

*[The] Police were regularly updating what they thought the process would be. It was all just verbal from the Police. They were pretty good at giving us that information. They talked us through the different options and, depending on what the perpetrator pleaded, how things could go.*

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<sup>23</sup> <http://www.victiminfo.govt.nz/>;

<sup>24</sup> Victims' Rights Act (2002), Part 2, Section 11

<sup>25</sup> Ibid, Part 2, Section 12

Accessing printed material or online material about the justice system was less common. Among those who were given pamphlets to read, views were mixed, some finding the information useful and/or reassuring, others finding the information to be inaccessible or incomprehensible:

*I was given a pamphlet. Written in 'legalese', it was quite hard to understand. Luckily my support person is a lawyer so she could simplify everything for me. I wouldn't consider myself to be uneducated but even I found it inaccessible, the language that it was written in and the process that they were talking about.*

The ability of victims in this research to process information was very sensitive to timing. Participants' ability to comprehend information was often limited in the early stages of the process due to their state of trauma, 'experience overload' (due to so many unfamiliar and often uncomfortable experiences occurring all at once), and time constraints due to trying to juggle a Police matter with continuing with their daily lives. For example, one victim noted that delaying any substantive information on the Police investigation process until a later date after the evidential video statement was effective:

*I wouldn't have taken it on board that day [of making the complaint], there would be no point. My head, I was done. My head felt like it was going to explode. It wouldn't have been a good time to do that. I believe what happened was they gave me a ring a couple of weeks later just to say what happened from then.*

Being able to ask the right questions to access the information required was difficult for those experiencing the justice system for the first time, as they were not always sure what they needed to know and therefore, what they might need to ask. Victims we spoke with commented that the proactive provision of information by NZ Police was (and should be) an important aspect of their role in dealing with complaints of sexual offending:

*Never having had to go through that before, I wasn't really sure myself what to ask. I think if I had to do it all over again and knowing what I know now, it would be completely different, the questions I would ask. (Parent of victim)*

## 5.4 Key Themes and Victims' Suggestions for Improvement

Participants were generally very satisfied with the process of making a complaint to the Police with some noting that this was the most straightforward, most affirming and least traumatic part of their journey.

Key themes which emerged included:

- Participants' motivations to make a complaint and reasons not to come forward were consistent with the literature<sup>26</sup>. Victims interviewed were more likely to come forward when they had experienced a change in circumstance (such as moving to a different location or 'growing up') and/or when they were concerned for other potential victims, and/or when their own children reached the age at which they were victimized, and/or through media coverage of similar cases.
- Considerations such as a suitable environment, the presence of professional support people, and the presence of whānau/friends were very important to the victim's experience of making a complaint. Different victims had different needs. When they were empowered to have choice, this was beneficial.
- Victims valued empathic Police who validated the victim's experience. (Victims may have been psychologically abused in a way that discredits their story, even to themselves. Child victims may have grown up encouraged to believe what was happening was 'normal').
- Information about the process and the significance of different elements in the process was very important to prepare victims, and to minimise a sense of disconnection/abandonment which can be retraumatising.
- Nevertheless, it was hard for victims in this research to access this information or to know what they need to know. Being without necessary information was in itself revictimising.

The following suggestions were made in relation to the provision of information.

### Information Provision

- Make a clear outline/overview of the justice process available to victims – from making a complaint to NZ Police to sentencing, including the range of different outcomes that might result, thereby minimising the likelihood of surprises as the process unfolds. It would be useful to include information on what aspects of the process victims can and can't influence or have a say in.
- Provide definitions of jargon used in the justice system to assist comprehension of information:

*Maybe not the MOJ writing it because I feel like, when you get a bureaucrat to write something like that, they often can speak in languages that aren't accessible to everyone. (Wellington V5)*

- Provide a checklist of things victims need to know and/or a set of frequently-asked questions:

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<sup>26</sup> Orth, U. (2002). Secondary Victimization of Crime Victims by Criminal Proceedings. *Social Justice Research*. Vol. 15, No.

*If you've never done it, you don't know what questions to ask. It doesn't occur to you because you've never been there before. Some sort of checklist would be good. If you've got five seconds between when you're going to work and doing something for the kids, you can just read this list and go, "oh, actually, I don't think I've done that. Maybe I should ask someone about that."*

*When everything is going on, you feel very flustered, overwhelmed and quite emotional so you don't always know what to ask. Having a list of frequently-asked questions would be nice – "I didn't actually consider asking that but thank you, that was quite helpful to know."*

- Make available compiling stories/video clips from other sexual violence victims who have been through the justice system, illustrating the reality of the process:

*I don't want sugar-coated stories. You need to see things like a defence lawyer cross-examining someone, so you know what to expect.*

- Accessible information about how to access support agencies and counsellors/therapists experienced in dealing with sexual violence issues.
- Care needs to be taken regarding the timing of information provision, ensuring that it is provided when victims are most receptive to it (so generally not immediately after they had made their complaint, particularly where the sexual assault is very recent) but also in a sufficiently timely way so that victims have the opportunity to be well-informed about 'next steps'.

*You need that information, but you need it when your heads not hurting, when it's not feeling like it will explode!*



# 6 Investigation

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## Key Findings:

- Victims in the research were disadvantaged when they did not clearly understand their role and the timeframes involved in the investigation.
- The evidential statement was traumatising for some victims. Those we spoke with generally felt disadvantaged, as they did not understand the process for and purpose of the evidential statement.
- Some participants felt they had not done themselves justice in giving their statement because of their lack of understanding about the process and its significance. Others were disadvantaged because they were unprepared for the duration, intensity and detail of the questioning.
- An acknowledgement that the gender of police interviewer may be important to victims' sense of safety, and where possible offering a choice promotes victim wellbeing.
- Being regularly and proactively kept informed by police of investigation progress, particularly key aspects (questioning of offender, arrest, charges being laid), was important to victims, even when the contact may be to explain that there is a delay and/or the reasons for the delay.
- Victims felt particularly vulnerable at the point of arrest or charging because the offender (and supporters) may have been at liberty during this time.

Prior to the investigation commencing, few participants had any awareness of what to expect or what would transpire. Information was generally limited to anecdotal sources or that gained via media or TV. Few were involved in any other aspects of the investigation process apart from giving an evidential statement, which was often traumatic for victims. Experiences of giving this statement varied as did levels of understanding around how it would be used and who would have access to it.

After giving their statement there was often a long period of time before any charges were laid. While Police were often good at keeping victims informed of the process of investigations, there were instances, particularly in very long investigations, where victims were left wondering whether the case was proceeding. Sometimes updates on the progress of investigations seemed to trail off when they went on for a long time.

## 6.1 Awareness of the Investigation Process

For many victims we interviewed, despite not necessarily accessing any specific information about what would occur during the Police investigation, this seemed to proceed as they might have expected it to, based on general accumulated knowledge, anecdotal accounts and from the media. However, one aspect that surprised participants was the length of time that often elapsed between a complaint and any subsequent charges being laid and court proceedings:

*I didn't think it would take two years, but everything else was pretty much like what I figured that they might have to do anyway. Video interview, then interview him and then set a date and investigate all the stuff. It's probably the length of time - I didn't think it would take that long.*

## 6.2 Evidential Statement

For most victims, the only aspect of the Police investigation in which they were actively involved was the collection of their evidential statement. Some participants said they waited weeks to be called in to provide their evidential statement while for others this happened very quickly.

Almost all victims we interviewed provided this evidential statement orally while being questioned in detail about events by a Police officer, with the interview being video recorded. Many victims were surprised by the length and level of detail required during the interview. Victims' experiences of providing the evidential statement varied, both in terms of the process itself and their level of understanding about the purpose and intended use of the video.

### Understanding of Giving the Evidential Statement

There was a great deal of variability in preparedness for giving an evidential statement among research participants. Some were well-informed about the process of giving their evidential statement, being briefed by Police about how the information would be used, the importance of full disclosure, who would be taking the statement and who else would be observing from outside the room, the fact that the statement would be recorded and that they could stop at any time. Because of the briefing, victims (and their support people) felt they were in a safe place. Victims also appreciated that the line of questioning taken by the Police prompted them to recall and say things that they wouldn't have necessarily thought to mention, but which proved to be important.

Conversely, when participants were not adequately informed about the purpose of, and process for, the evidential video recording, this was a cause for confusion and misunderstanding. There were a number of individual examples which demonstrate the range of implications for poor understanding or preparation for the evidential interview:

- It seemed teenage victims were not always aware that they would not be allowed a support person in the room during the interview. In at least two cases, finding this out just prior to going into the room had caused considerable distress, both for the victim and the support person.
- One participant wondered at the time whether they should have had/were entitled to have a lawyer present during the interview.

- One participant was very surprised that the offender would have the opportunity to view the evidential video. She had not been informed of who would have access to it at the time of the interview.
- For another victim, the presence of another person watching her evidential statement via monitor without her prior knowledge and without introduction, felt like a violation of her right to privacy. She felt strongly that correct protocol would have been to explain who would be observing her interview before it commenced.

*There was a [sexual violence support agency] support person who came along. It's my own stupid fault because I didn't say anything, but she sat in the room with the detective watching the interview, and I didn't feel comfortable with that whatsoever. I wasn't aware of it until I had my first break and I came out, and she said something. I felt very violated. This is stuff that I never told anybody at all. Having one person hear it was bad enough. I knew that [sexual violence support agency] were going to be there but I had no idea they were going to just invite themselves into the room and sit with the Police.*

- Another victim recounted that she felt the NZ Police decision not to prosecute was largely a result of her providing insufficient evidence during her interview. She felt, had she been aware of its purpose and importance, the case may have gone to trial.

*Looking back now, I can see why there wasn't enough evidence, because I really just gave one- word answers throughout the whole interview. Maybe if they'd explained [the purpose of it].*

### Understanding the Purpose of Video Evidence and Testimony

Victims who participated in the research didn't always feel that the full process going forward after providing an evidential statement was made clear to them. For example, it came as a surprise that use of the video evidence in court required an application to be made:

*It wasn't actually explained at that point that you actually had to get consent [to use video evidence in court]. I thought it was a done deal. It came as a complete surprise to me as we started going further down the court process.*

Another participant noted that, had they been aware that they would not be required to give evidence in person in court at an earlier time, it would have relieved them of much unnecessary stress and anxiety:

*I didn't realise that I probably wouldn't have been called to testify, that my DVD would have been played instead. And I guess I didn't really understand the purpose of giving the DVD.*

The parent of another victim was unaware at the time of the evidential statement that the video could or would be used as evidence in court and felt that, with this purpose in mind, the child could have been better prepared not only for the interview, but also for the potential for it to be played to the court:

*She could have been prepared a lot better. For example, I didn't know that they were going to be showing the video that they make. If it had gone to trial, I don't think XXXX would have been aware that that video was going to be played in court. I think that needs to be made clear to everybody involved because it's quite a horrific thing. If I'd have gone in there blindsided and had no idea ... (Parent of victim)*

### Physical Environment

There were a wide range of experiences of different environments and accommodations to victim needs. This seemed to reflect what was available at different locations. Where the physical environment had been made as comfortable as possible for victims, this helped to put them at ease during the evidence gathering process:

*It was actually better than I expected. They had made it as homely as possible in that room. It wasn't too sterile. I was quite pleasantly surprised with that whole environment.*

Parents of young children giving evidence were very positive about the environment at the Child Protection Unit where the interview took place:

*I think they've put a lot of thought into the set-up. It doesn't even look like a Police station. There's lots of kids' stuff there, it's fantastic. The room is very well equipped for them and it's not scary. It's nice for the kids and they were really comfortable and happy. I think that helps them feel more trusting in disclosing - and disclosing accurately. (Parent of victim)*

However, those giving evidence at the Police station often found the meeting room environment unwelcoming and uncomfortable, describing it as sterile, sparse and 'pokey'. The reason for the sterile, sparse, unwelcoming environment of the interview room was questioned, with these participants believing that a more comfortable environment may have helped put them at their ease:

*It was pretty much just two chairs and a little table with a camera set up in the corner. It was weird. It certainly wasn't friendly. It's quite scary [giving your evidential statement]. You're in the room with a complete stranger and the door has to be closed and they are asking you all these questions. Even if the room was a bit lighter, just friendlier.*

Support people accompanying the victim (particularly parents) appreciated being able to wait in a private space whilst the evidential statement was being given rather than waiting in the public waiting area.

### Interview Staff

The availability and involvement of an interviewer who had the requisite skills, experience, and demeanor helped allay victim's anxiety, and the process was therefore described as less daunting:

*They had a very experienced interviewer, and I felt very comfortable and put me in the right frame of mind to just think very clearly. I was told by them, by the interviewer and by the people in the recording room, that it was a very good interview. Very condoning, very fluid.*

*The Police were really good during [the evidential interview] process. They offered to pick me up from my house and drove us back...because they've done it before, aware of that it was actually quite a very intense process.*

### Gender of Interviewer

Being interviewed by a woman was important to most, but not all, female victims, helping put them at their ease:

*As soon as [the Police woman] came in, I just all of a sudden relaxed a bit more. I was a lot less tense. I just felt a lot better because there was a woman there.*

*It was important to have a female [Police officer] because of the nature of what I was talking about. I felt it would be more comfortable, easier to talk to a female because, you know, it's icky stuff. Speaking to a man about that stuff is a lot more daunting.*

Some participants who were interviewed by male officers felt that, in hindsight, they may have been more comfortable and open with the female officer:

*It would still have been an ordeal in a way, but if it had been a woman it would have been easier. I could have spoken exactly and more comfortably about [offender] having done this to me and that to me. But saying that to a man is harder...I'm not being disrespectful to Policemen, but I don't think they really can truly understand what a sexual assault is.*

*I tried to be as honest as I possibly could [with a male Police officer]. It just felt more uncomfortable. I don't think [having a female officer] would have changed the result but it would have made me feel more comfortable.*

In at least one case, no female officer had been immediately available, and the victim didn't want to inconvenience everyone by waiting for a female officer to arrive.

Some male victims also preferred being interviewed by a female:

*I requested that a female officer conducted the interview because it's just easier... I feel like sometimes when I talk to men about male-male sexual violence, they don't kind of get it.*

For some, the gender of the interviewer was not as relevant to their interview experience as the demeanor and skills of the individual:

*The case was closed and reopened. The second time round I had all male Police officers and it was actually much easier. Which really is bloody weird. It wasn't about the male-female thing, just how they handled it. (Rotorua V4)*

While, for other victims, being given a choice to opt for a female Police officer to speak with gave them some sense of control in the situation:

*[Police officer] was a male. He did mention that to me at the very beginning if I was comfortable with him being a male. And I was...at that point as well, I wasn't sensitive about it, I guess. I could imagine, if it was a very recent event or anything, or even if he somehow resembled this person, I would be uncomfortable with it. But I was really happy with them even saying that to me. And it, again it felt like that was a choice, I had a lot of choices.*

## Interview Process

Participants said evidential interviews took up to three hours or more and were emotionally exhausting. Some victims were surprised by the duration and depth of detail in the questioning during this process:

*I was a wee bit blindsided to be honest. I didn't realise the depth that they were going to go to. Like the real specific stuff that was going to be talked about, which I understand now because it's evidence and it needs to be specific. I didn't realise that I was going to be in there for three and a half, four hours. I don't know if I would have gone through with it at all knowing how confronting it would have been.*

*They make you go through everything, anything you can remember about what actually happened and everything. And you just feel like your head is going to burst for days [afterwards].*

Memory was an issue for more than one reason; recall of details arising after the interview was completed, or failure to recall enough detail of historical offending, gave victims a sense of let down and ‘poor performance’; detailed recall of events caused emotional upheaval.

At least one participant indicated that there were elements of their evidence that they would have liked to be able to expand on or amend, based on recall that occurred post the evidential video being recorded:

*There were parts where I realised, sorry, I forgot certain parts and I wanted to amend it. But I felt like there wasn't an opportunity for me to do.*

Those reporting historical offences occasionally found it difficult to recall some of the detail in relation to events. For others, the need to recall traumatic events in detail that may have been buried for many years, caused emotional distress:

*It did definitely bring up that part of my life that I really buried and didn't think I would ever have to extensively talk about it. And then, going to the video interview, that was two and a half hours long. I had a very big come-down after that one. Because it was really taking me back even to the point you could I could smell the smells. It was so sharp in my memory that I almost was surprised with what was still within me that I hadn't allowed to come out to the surface? And I think you are reliving it again.*

### Presence of Agency Support Person

Perspectives on having an agency support person available at the evidential statement were mixed. This seemed to reflect individual circumstances, which suggested that having an agency support person is not a ‘one size fits all’ solution.

- For one victim who had not disclosed the sexual violence to anyone, being able to access a support person from Victim Support was very much appreciated:

*The Victim Support person was there to support me, just to see if I was okay, give me a tissue if I needed it, that kind of thing. Just small things, like when the Police went out of the room, she would be right there saying “are you okay?”, telling me I can take my time – rather than me just sitting in that little room crying to myself. Just knowing that someone's there made me more comfortable, not so scared.*

- In contrast however, for other victims, the presence of a person from a support agency during their evidential interview felt intrusive and not necessarily helpful for them at that time:

*So, there was me, the Police officer, and then a support worker, who I probably would have preferred not to be there, just because I only met her like five seconds before going into the room.*

## 6.3 Other Aspects of Police investigation

### Medical Examination

Most victims interviewed had not been required to undertake a forensic medical examination due to the time lapse between offending and making a complaint to NZ Police. In the few instances it had occurred, victims felt that it was handled quickly and with care, compassion, and respect for their dignity:

*I knew about going to the doctor and what sort of stuff they'd do from what you see on TV. I didn't really want to do it. The doctor was lovely though and so was her nurse. They were really good. They made an uncomfortable situation a bit better.*

*I had to take my clothes off and everything. Once again, I felt scared, but I think because the support was there – from the doctors and the Police – it was okay. And they asked for my permission for everything, like could they take photos?*

One participant spoke favourably of the Police decision to allow her to drive herself to the examination – “I was just trying to get over the fact that I have just reported something to the Police, so I needed time on my own” – by meeting her there, accompanying and supporting her during her stay.

### Property Taken as Evidence

Because their cases were reported well after the offending, few victims in our sample had personal items taken as evidence. Of those that did have items taken by NZ Police during the investigation, some said these were not returned in the expected timeframe, or not at all. Some were not concerned about this, as the clothes were perceived as potential trigger for recalling the sexual violence. Where compensation for the clothing taken was received, this was very much appreciated, both financially and as a sign of the NZ Police's compassion for the victim.

However, these victims did not always receive compensation for property taken as evidence. One victim said her phone was not returned after being taken to download texts that would be used as evidence:

*They took my phone away. My phone was a contract phone, so I was paying my phone bill for over five months. I still don't have my phone, so after five months I went and got a new phone ... why should I be punished?*



## Safety Concerns

Some victims had experienced high anxiety and fear when advised that the offender has either been interviewed by Police or arrested and charged. A key concern was how the offender would react and whether they would try to contact the victim:

*[The Police] contacted me once he was charged and arrested after my first interview. I had to ask quite a lot [of questions] like, am I safe, is he going to contact me? That is huge, for victims. As soon as they find out, are we safe, you know? We're still living in the same house and so if he wanted to.*

## 6.4 Timeframe of Investigation

In all cases, once victims made a complaint to NZ Police, which may have taken years to be able to do, there was a strong desire for action to be taken expediently. When there was a delay in hearing of any investigation being initiated, participants were sometimes left wondering if their complaint had validity or was taken seriously:

*The delay between making the report and then having a detective actually speak to me, it felt like quite some time. It would have been about a month and a half. It's not actually that long, but it felt like it. I didn't know what was going on, there was just no information. Even if I was to get a phone call just giving me some information to know where I stand, that would have been helpful, rather than just being in limbo.*

## 6.5 Communication from Police

Having a direct contact for someone within the NZ Police, for example the investigating officer, was reassuring and made victims feel that they could have any questions answered effectively and in a timely manner:

*[The officer in charge] was brilliant. He's always been absolutely up front. We've got his personal cell phone number, we can call him whenever we've got a question.*

In addition, this victim described how the officer was sensitive to how the process might be affecting her and was mindful of this when providing information:

*He was really careful about what he says and how much he tells you because he doesn't want to overload you with information that you don't need to worry about at the time. He was really good at trying to protect us from things that he didn't feel were necessary to tell us.*

Whilst most participants had been informed by the NZ Police when the offender was arrested, many (although not all) told of receiving little or no information proactively from Police during the rest of the investigation and were typically frustrated and disappointed at having to do their own follow-ups. Their frustration was often compounded by a lack of understanding of the processes underway and therefore uncertainty about what they should be asking about or keeping track of. Being inadequately updated on the progress of an investigation left some victims feeling disempowered and as if the complaint that they made was not important to Police:

*I had to follow up a lot. I said to the Police "I don't know the process. This is new to me. This is something you deal with all the time, but you need to tell me what's happening and what we should be doing because I don't know." (Parent of victim)*

*I would say the Police were reasonable [at keeping me informed]. They started off well – they reported back when they arrested him – and everything steamed ahead quite well, but then there was a bit of a lull and I heard very little.*

*Just the amount of time it took to get answers back from anywhere as to how the case was proceeding. So, a lot of the time I had to contact the Police to find out what's going on with everything.*

*The confidence and the strength that you have to have to initially go in for the interview. And then you're just left in silence for months and months, not knowing what's happening.*

*[If Police had updated regularly] I think there would be a sense of relief knowing that there's still something happening. There were definitely times I felt like it was all in vain. Why'd I bother doing this, if it's not someone's priority?*

The fact that Police staff don't necessarily work a 'typical' working week can make communication frustrating for victims:

*[Police detective] told me he would talk to his senior officer about something for me. I waited a week and there was nothing. So, I rang him, and he said, "I've been on my days off." and he was quite terse with me.*

Participants were also frustrated when Police staff went on leave particularly because, in these cases, it seemed that the time taken to assign a new Police member to the case was considerable (if indeed anyone else was reassigned).

This left them with no-one to communicate with, and a perception that no progress was being made. Similarly, when Police staff resigned or changed roles, it often took longer than victims expected to have another staff member assigned to the case – and often information was lost when cases were reassigned to new staff:

*It took four months to meet the [replacement] officer in charge. When we finally met him, he told us he got married and took some time off. (Parent of victim)*

*I felt completely hopeless that something so important [sexual violence complaint] was in the hands of people who didn't seem to know what they were doing. Every time the case changed hands, information was lost along the way. [Detective number three] didn't know about [offender] still having children in his care even though I had made this very clear to the Police from the start.*

The lack of information was also frustrating and stressful for support people who felt helpless and disempowered by the lack of information:

*I had [victim daughter] asking me what was happening, and I didn't have any answers for her. I felt, as a mum, mums always have the answers – but I didn't, so I felt like I was letting [her] down. I had a mobile number for the detective and I was saying to him "Can you tell me what's happening?" and he would just say "Nothing new. I'll keep you updated." I am not actually sure if anything was happening. (Parent of victim)*

*It was 18 months and I probably had a total of five calls in that 18 months telling me what was happening - which was quite a long wait. One phone call would be "yep, we got the date set" then you're waiting and waiting and waiting and no one keeps you up to date with actually what's happening.*

Ironically, one participant said that their best source of information during the NZ Police investigation process was from the offender (via another family member).

## 6.6 Decision on Prosecution

### Decision to Prosecute

The decision to pursue a prosecution was communicated to most participants by a telephone call from Police. For some, this came as somewhat 'out of the blue', when there had been a lengthy time lapse from the initial complaint and subsequent evidential statement. For others, this seemed like a natural progression in the process, and not something that they had ever doubted would occur.

A small group of victims included in the research felt that the Police officer(s) investigating their complaint had suggested that they should not proceed:

*[The Police were] asking me “are you sure you want to go through with this because it's not very often that we get a guilty verdict?” They definitely coached me, and I think that's why I was not holding out for a guilty.*

Some participants were surprised at the perceived ‘lightness’ of the charges laid – ‘indecent assault’ and ‘unlawful contact with a minor’ seeming insufficient to describe the aggressive and sexual nature of the violence against them and initially felt that the Police were not acknowledging the seriousness of the crime. However, it was later explained to one victim that the charge had been lessened slightly to ensure the prosecution would get a conviction. Whilst the victim acknowledged this on a practical level, she still felt the justice system was playing down the seriousness of the crimes, which she found very disempowering.

### Decision Not to Prosecute

In cases where NZ Police determined that the evidential bar for referral to prosecution had not been reached, hearing this news was often devastating for complainants. Sometimes this information was passed on by phone, rather than in a face-to-face conversation, and in situations where the complainant had no support present. Furthermore, victims did not always feel they were clearly told about the reasons a prosecution could not go ahead:

*They took all the statements and everything like that. And then I think it was maybe a year or two later that it was decided there wasn't enough evidence. I was absolutely furious, really disappointed. Really just felt quite defeated.*

## 6.7 Key Themes and Victims’ Suggestions for Improvement

Key themes that emerged about the Police investigation process include:

- Preparation for all aspects of the investigation was a significant influence on the quality of victim experiences. This included:
  - understanding the evidential statement process; what would happen, where, who would be present and the purpose of the video;
  - the possible time frames involved;
  - when and by who they would be contacted, or who they could contact during the investigation.
- Being kept in touch with the status of the investigation, whether or not there was ‘progress’, had considerable influence on the victim’s state of mind.
- In a few circumstances where there was a change of staff on the Police team, this was disruptive and left victims with a sense of abandonment.

- Gender of the Police member taking a complaint or evidential statement can be important to some victims. Where this was acknowledged by a Police member at the beginning of the discussion and an option provided, victims felt reassured (regardless of the gender combination) and empowered.
- Uncertainty around timeframes and concerns about what the offender might do when arrested were highly unsettling for victims, exacerbating a sense of feeling unsafe or at risk.

Participants made the following suggestions about how the NZ Police investigation process could be improved for victims of sexual violence:

- They would like to be able to decide for themselves who is the most appropriate person to support them during their evidential interview, or whether they have a supporter at all. In some cases, they would like a friend or family member rather than a worker from a sexual violence support agency. Despite their professional experience and expertise in the area, not all victims were comfortable with a stranger being present.

*I didn't want to be rude. It didn't bother me to the point where I wouldn't be able to do the interview, but I probably would have preferred to just be with the Police officer. I think I asked to bring my husband and they said that you're not allowed. I feel like it would have been easier to get through.*

- An improvement suggested would be regular 'check ins' by a Police member during the investigation process, even if it was to report that there were no further updates. This would provide both reassurance and the opportunity to ask questions that might have arisen:

*The detective in charge is an amazing woman...but she's very black and white, she was very well "If there's nothing to report, there's nothing to report." And it wasn't until we said to her, "Listen, even if it's just a phone call to say that there's nothing to report, that helps us to understand where everything is at."*

- Face-to-face meetings with Police would be welcomed by some victims who preferred this mode of communication over phone calls or emails. Advantages include being able to have questions prepared in advance and being able to receive clearer information:

*I would have been happy to go in and meet with them, and all of us sit down and have a good discussion about it. When you're thinking about it you can think of questions to ask, but then when they call, if you were already side-tracked with something else, that just slips your mind. (Parent of victim)*

## 7 Going to Court

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### Key Findings:

- Long timeframes and delays to proceedings caused considerable distress for victims in this research – prioritised scheduling would support their wellbeing.
- More preparation for court, including greater access to information on what to expect, multiple opportunities to visit court, and more time with prosecutors, would help to alleviate anxiety around the process.
- Victims’ rights need to be upheld, including the right to input into bail conditions and name suppression for offenders.
- Support by a dedicated liaison person throughout the process from initial complaint would be of benefit.

A range of factors contributed to the experience of participants during the lead up to the trial. It can be a difficult and stressful time, which continues for several months or years. Victims were often in contact with many people through this phase of the justice process, including multiple Police staff members, an NGO support agency person, Victim Support, CVA, and prosecution. For some this felt overwhelming and confusing:

*There were too many different people. That makes it harder, especially when so many of them have your phone number and are contacting you.*

Other key aspects that impacted on victims are outlined in the following sections.

### 7.1 Timeframes

Although they may accept that the investigation and preparation of a prosecution for a sexual violence case will take time, victims unanimously found the timeframes from making a complaint to New Zealand Police to any subsequent court trial to be too long. This had considerable impact on their emotional and mental wellbeing, and ability to begin to ‘move on’ with their lives:

*It was 16 months from when I went to the Police initially until it went to court. It was a long wait. For me, it was horrible. For the whole family that was too long. We wanted to get it done.*

*It was about 18 months between making the complaint and when it went to court. It dragged on for quite a while. It was hard having that hanging over me, hard emotionally. I just wanted to get it out of the way, get it done.*

*I was told that there was an ongoing homicide investigation that was taking priority over my case and that I would have to wait some more before they could go ahead and approach [offender] for an interview. Five months in and they still hadn't spoken to [offender]. I was just utterly flabbergasted by the process. I was starting to realise that the process is not what I thought it was. It's not like you go and tell the Police something has happened then someone gets arrested and put in jail.*

*I spent two years of my life carrying the knowledge around that I was going to have to go back and give testimony in a court case on the other side of the world, where I knew no one. And that it was going to be really difficult. It just had a huge impact on my mental health, had a huge impact on my professional life.*

*It was hanging over my head. It was absolutely horrible. You're just stuck there, just stuck in time, you're just completely focused on it. And then you have all the memories, and things you have to deal with. It's a nightmare, it's a complete nightmare.*

Being unfamiliar with the court process, some victims anticipated that they would get a court date relatively quickly and so the actual timeframe came as a surprise. The complexities of scheduling for potentially lengthy trials appeared to be little understood by participants, or at least not of concern to them when faced with the situation in which they found themselves.

## **7.2 Delays and Impact of Rescheduling and Adjournments**

Victims generally desired to have offenders proceed through the justice system within as short a timeframe as possible and to reach a conclusion. Sometimes the desire for an outcome and to get completion of the process was so strong, it felt more important to the participant than whether the offender was found guilty. Many were aware that the process would be lengthy and that gathering evidence and organising all parties needs time. There was often a sense, nevertheless, that timeframes to reach a conclusion were unreasonably drawn out; given the serious nature of the crimes alleged and the emotional toll that the process often has on victims.

Almost all participants had experienced delays or reschedules to the original trial date. Delays, particularly in changes to court appearance dates, were difficult for victims. This was exacerbated when there was a lack of clarity around the reason for any rescheduling of court dates. Participants described a process of preparing themselves physically, mentally and emotionally for a trial to go ahead, which could cause them to experience high levels of stress and anxiety, which then felt like it was 'in vain' when the trial did not go ahead as scheduled.

*They flew me up five times I think, because it was about to go to trial. And then it would be put off because I think either [the defendant was] sick or they'd reached some understanding or something. So, I probably spent over month and a half in about over a year and a half waiting in hotel rooms to be called.*

*The court dates were set and then knocked back and set and then knocked back. That was a really difficult process to go through. You build yourself up to deal with what's going on. And then the next thing you know you're not going to court that date. It is soul-destroying.*

In some instances, victims were advised on the day that the trial was scheduled that it would not go ahead:

*We finally got to the court day and I was literally on my way to the courthouse and the detective rang to say that the judge had called in sick. So, we had to wait for a new court date. They were going to make it August or September but then they decided to postpone it until later because the judge didn't have enough time to review all the information or whatever nonsense they came up with. In January, the next year we finally went to court – and the whole thing was done and dusted in a day and a half.*

When delays in the process were caused by perceived incompetence by the system, this was an added source of frustration for victims and contributed to a sense that the system does not take due consideration for their wellbeing in terms of how delays might affect them:

*The defendant had got served a notice to come to court, but he hadn't answered. And so, he didn't turn up. And between that time and the next time, nobody had tracked him down. So, he didn't turn up another time. That was just totally incompetent and unacceptable.*

*Someone scheduling that case, someone in the court system, didn't do their job properly. We were very disadvantaged and that made me angry.*

*The date that he had been asked to come back to court was the wrong date. Someone from the Crown who was supposed to be there couldn't be there that day, it wasn't their day in court. So, it was reset again. There were just silly little things. Someone just missed the details.*

For some participants, these delays had a direct financial impact on them in terms of time taken off work to be available for giving evidence, particularly when the trial was taking place in a location other than where they were residing:



*We were given an honorary in return but nowhere close to the amount of lost earnings that I had. And then also for my support person as well who came with me those times - who received even less than I think I did. So that made it difficult as well.*

*I think we went through about five changes, and each time I had to try and ask for time off work and try to organise transportation. And then it would be cancelled, and I've have to cancel the transport and have to call work and ask if I could come back in. In the end I had to open up to my manager and explain what the situation was. That was a bit hard.*

For young victims, constant delays meant reduced attendance at school – which placed additional stress on school work.

*It's been an awful experience and it's going on. It has been such a disruption to [victim's] schooling. She's missed three or four days for hearings that didn't happen. (Parent of victim)*

Some participants felt that defence counsel made tactical delays, to maximise the timeframe from prosecution to court trial:

*[The case took] about three years from going to the Police station to finally facing him in court on the final day, three years. It was a very up and down process, very emotional, very emotional – and the hardest thing was getting dates then finding it was cancelled because of his lawyer. Lawyers being lawyers, they take their own sweet time and I suppose they make more money doing that too.*

*They were just stringing it out, you know? Which is part of what makes it feel like victimisation again. They hadn't filed for something that they knew they had to file for. It had been two months between the last case and it didn't get filed, so they had to put it off.*

For some victims, the impact of repeated delays in the trial going ahead, and lack of clear explanation as to why this had occurred, left them feeling that they were being poorly treated by the justice system. Some victims, particularly younger people, had effectively put their lives on hold while awaiting a justice resolution to their complaint:

*Some high-profile cases to push through faster just made me feel forgotten about all over again, like it was being swept under the rug, like it didn't matter, that it was never actually going to get to court because it had been so long anyway. Just really felt like living in limbo, waiting for anything to happen. Mentally it was pretty rough. I couldn't do all the things that I wanted to do when I was a teenager, like all my friends going away and travelling the world...*

Delays in the justice process had an impact on some victims' ability to feel a sense of closure and to be able to move on with their lives. Participants described their whole lives essentially being 'put on hold' while court proceedings are pending or underway. Some participants reported putting travel plans on hold, including intended overseas moves, due to repeated and/or extended delays in having the trial conducted:

*It's been really, really hard mentally preparing yourself that you're going to go on the stand and you're going to have to talk in front of a jury and all the rest of it. And then two weeks out, and I think the closest one was like 10 days out, getting told that, it's been adjourned again. It's been absolutely horrific. So, my mental health suffered hugely...this shit consumes me.*

Victims we interviewed described the process of preparing for an upcoming trial date only to find out that the trial would not go ahead as rescheduled as being extremely difficult to challenging, with at least one feeling retraumatised by this:

*Everything kept getting changed all the time. Constantly my adrenalin would be building up, I've got to go for this court case, here's my chance, you know? [It's] retraumatising because you can't get sleep that night before. And then all of a sudden, you get ready for court, oh it's not happening today, and then you'd end up crashing mentally and emotionally again. And it was just huge emotional and mental rollercoasters for the last three years.*

For one case which involved historical offending, the offender at the time of complaint to Police was elderly and there was a genuine concern for the victim and family that repeated delays in court proceedings may mean that the opportunity to bring them to justice could be diminishing:

*Just wanted to get it on with. The perpetrator is sort of elderly and it was that he might die before he actually has to deal with the consequences of what he did. It was just hard to deal with the delay. It was like "let's get this over with and move on". Know what's happening, know if he's going to jail and get him there. Or if he's going to be let off, just to know how we're going to deal with that as a family.*

One of the major impacts of court trials not proceeding expediently was the emotional toll of needing to keep the events surrounding the offending top of mind to be able to give effective evidence:

*We're talking a year and a half after it happened, and the children have to remember again that they were sexually abused. You have to keep reminding them – "by the way, this happened to you." And they have to watch the evidential video again and that brings it all up too. That affects the kids quite a lot because we had to keep rehashing it. (Parent of victim)*

*It was almost two years since it happened by the time I actually went to court. It hard to remember information from that long ago. I couldn't remember some things, like the detail of the room.*

At least one participant considered discontinuing due to the protracted timeframe of the justice process:

*So many times, I just wanted to withdraw my complaint and not proceed, it just went on too long.*

### 7.3 Input into Bail Conditions and Name Suppression

Although victims have the right to have the court hear their views on name suppression<sup>27</sup> and bail conditions for offenders<sup>28</sup>, many participants could not recall being asked for their views on either of these by prosecution lawyers or being invited to attend these hearings:

*I never had any input other than being advised that I had automatic name suppression and that he'd applied for it and was given it.*

*We knew there was an application for bail, but we weren't given any option to speak against it or anything like that.*

*We knew that there was a bail hearing, we knew it was on, but we didn't know that we could go to it. I would have liked to have gone, just to see what was happening. We'd never been in the court system ever so we had no idea how it worked. (Parent of victim)*

For some participants, the offender being released on bail and/or the conditions of bail give rise to safety concerns for victims and their whānau/family and had a negative impact on their mental health, recovery process, and overall wellbeing:

*There [were] no binding conditions. I think anyone in that position would want to know that this man cannot contact you - and if he does, he'll get arrested straightaway, you know? I think that was one kind of failure against a victim, against me. If I could've, I would've liked to have put something forward to make that a legal. It would have made all the difference if there was something in writing saying this man cannot contact you or your family.*

*We live in a town of 4,000 people so the fact that he was allowed to reside in the same town as two of the victims, that he's actually allowed to live and work here, I found to be insulting almost. We have felt incredibly unsafe throughout this process.*

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<sup>27</sup> Victims' Rights Act (2002), Part 2, Section (28)

<sup>28</sup> Ibid, Part 3, Section (30)

*I was absolutely terrified that I might see him. Knowing that he was free to roam around, it made any kind of recovery impossible. I was living in absolute fear. I was having nightmares. I couldn't even step outside into my garden I had such a fear that he might appear out of nowhere and attack me again. I actually went downhill, down and down. Some days I used to get so distressed by it all. There were times I got to the stage I was suicidal. I didn't think that I could go on anymore. Those bail conditions made things so hard for me. I actually tried to get the bail conditions changed - to ask if he could be returned to jail or have home detention - but it was like hitting my head on a wall.*

Some victims in the research felt let down by the system when they were not advised, despite their rights to this information, that bail conditions had changed:

*We were never asked what his bail conditions should be. They were just decided. When they were removed we weren't even told, so the only reason that we'd actually find out is when we would ring to make a complaint that he'd breached his bail. And then we'd be told that actually that wasn't a condition any more.*

Some expressed views that bail conditions were too lenient and gave the defendant too many rights during the time of waiting for trial to proceed:

*He was on home arrest (sic) but he broke it heaps of times. He was caught out drinking. It wasn't my friends who told me, it was the Police. They would tell me every time he got caught. I think he did it three or four times. It made me so angry because he shouldn't have been allowed out.*

In two cases, victims had been astounded to learn that the offender was granted permission by the court to travel overseas.

### **Being Consulted on Name Suppression**

Most participants could not recall having been consulted in issues around name suppression. However, where a participant was consulted by the Crown Prosecutor on the offender getting name suppression, they found it a very empowering experience. They appreciated the time the prosecutor had taken to explain the benefits and downsides of the automatic name suppression being lifted. The participant valued that their views were considered in the decision that was made.

## 7.4 Preparation for Court

The sense of being prepared for court varied widely for victims, both specifically relating to giving evidence and preparedness to be present in the court itself. Some who had felt themselves to be reasonably well prepared, noted in hindsight they had not been very well prepared at all. Those who were not well prepared were subsequently shocked at what transpired, for example the lines of questioning used by defence counsel in cross-examination.

*I can't remember who it was, whether it was the Police or [Court Victims' Advisor] or friends that we told, but they said, "This is going to be huge. It's going to be hard, and it's going to be hard on [victim daughter]. It's going to be hard on your family" – and it was even harder than we thought, a million times harder. (Parent of victim)*

A variety of means had been used to prepare for court including accessing information from both the Police and prosecution team and from other professionals. For some, preparation came from anecdotal information from the prior experiences of friends and/or family. Few people we spoke with had accessed material published by the Ministry by way of preparation for court. (See Section 5.3: Information Availability)

### Lack of Preparation for Evidential Statement to be Played in Court

Where they were given the opportunity, victims appreciated being able to watch their video evidence prior to the trial. For most, it was several months since they had given the evidential statement, so it was a useful refresher, and it was also able to de-sensitise them a little, so they didn't break down in court:

*I was so glad I got to watch it before I had to watch it in front of everyone in court because it was hard. That was good thinking on [Crown Prosecutor's] part.*

However, at least one victim did not feel adequately informed at the time of giving the evidential statement that this could, or would, be played as evidence in court. It wasn't until the participant was called to give evidence that it became apparent that the video would be played:

*I didn't know it would be played in court. It wasn't until it went to trial that I knew. Having to watch yourself as well as listen to what you said, it's just reliving it all again. They gave me the transcript and I thought that was just what they gave the judge and jury. I didn't know they were going to actually watch it with me there.*

## Preparation for Court

Some victims felt well prepared by the Police, the prosecution, or the CVA (or a combination) for what to expect in court. These victims felt that this preparation meant that they could give clearer, better evidence, not be so 'put off' by defence questioning and remain in a calmer mental state throughout the process:

*Unless someone can come up with a way where victims of sexual violence don't have to testify, there's always going to be a degree of re-trauma and revictimising. You can't take that away from them, but there are things that perhaps can make it easier and that is absolute preparation of what you're actually going to be going through.*

*The Police officer that dealt with the case, who investigated the case, was really real about what she said was going to happen at court. The victim support people were really real about what was going to happen at court. So, we were very well prepared and understood that it was just part of the process. For me it was traumatic, and it was the hardest thing I've ever done in my life, but I was really well prepared for it.*

Some participants said that the Police and Prosecution are limited in the amount of preparation for questioning in court that they can reasonably provide to the victim, without potential for appearing to be "coaching" the witness, which could risk a mistrial:

*They're not allowed by law to do a lot because the Police can't be seen to be coaching you in any way because, if they're seen to be coaching you or doing anything like that, then it can be a mistrial because the defence can argue that you've been told what to do and say by the Police. So, the law doesn't really allow the prosecution or the Police to really do very much with you to prepare you for trial.*

Most victims had been offered a tour of the court by their Court Victims Advisor before they were due to provide evidence. This was said to be very helpful preparation, particularly for those who had no previous experience of being in a courtroom. These victims felt more educated about who would be there and where they would be located. This provided better knowledge and reduced mental stress. Participants could picture the process in more realistic terms and to actually experience 'sitting in the chair', for example:

*It simplified it a lot for me and removed some of the myth around the whole thing and it made it feel a lot more real.*

*It made it easier on the day just that feeling of it just being familiar, not being such a shock. It was very good to actually just be there and experience it because it mentally prepares you a bit for the day.*

*I think the victim advisors did a good job of preparing me as best they could. I mean I really appreciated being shown around the court rooms, sitting in the witness chair, with a screen, so I could envision what it was going to be like. So, I found that really helpful, it helped me prepare.*

### **Benefits of Solid Preparation**

The few victims who felt themselves well prepared to give evidence had a much greater sense of control and this alleviated some of the stress of the process:

*I was treated like the enemy. But I knew what was coming so that made a big difference. I felt like I was treated like shit from the defence attorneys, but because I was prepared for it, it made things so much easier.*

The witness quoted below was told by both the Police investigating officer and the Crown Prosecution that she was the best witness they had seen giving evidence in a sexual violence case. Prior to the trial she had actively prepared by engaging in role-plays of the cross-examination with her psychiatrist. Although the experience in court was still not easy for her, the preparation strengthened her coping capacity. She said that, without the preparation, it would have been vastly more difficult:

*I actually went to a psychiatrist and we did a mock cross examination on a number of occasions. I told her I need to be prepared for how badly this could go. So that's the only way that I was prepared - because I went through that kind of pretend process. If I hadn't got into that seat and I hadn't gone to a psychiatrist, then I wouldn't have been prepared for the fact that somebody could ask me the same question in 25 different ways over the course of 15 minutes.*

## **7.5 Court Victim Advisors**

Most participants met with and had received information and guidance from, a CVA appointed by the court prior to the day of the trial. For many, but not all, this was a specialist, trained in working with victims of sexual violence in the court context. Generally, victims appreciated the availability of the CVA and that the role they played helped them to cope with the experience, both in terms of undertaking administrative functions and also providing tangible benefits to them in terms of alleviating some of the anxiety and distress associated with having to give evidence as a victim of sexual violence.

Aspects of the role that victims we interviewed found to be helpful were:

- Providing information about the court process, rules and regulations:

*[VA told me] that they'd be a curtain pulled beside me and that I could have [wife] beside me when I gave my testimony. She explained everything that I could and couldn't do. [VA] explained the whole lot to us so it was crystal clear. We walked away knowing how it was going to happen and that's good.*

- Having a touch point' within the court – know who to contact to have questions answered or to be kept updated on court proceedings.
- Keeping victims informed of all court appearances of the offender and the outcomes of these attendances:

*A lot of the time [Court Victims' Advisor] would tell me things about [offender] being at the court and I didn't really know what it meant to be honest, but she was a voice on the other end of the phone. It made me feel that our family mattered.*

- Reminding the victim of their court appearance date and location (and sentencing date of the offender if relevant) and keeping them informed of changes in dates and times:

*She always sends me a reminder email about the hearings – the courtroom, the date and time. She does that every time we talk just to make sure that I know. And if changes happen – which they do – she lets me know that too. (Parent of victim)*

- Keeping the victim safe from the offender:

*[Court Victim Advisor] was really good. She kept us down one end of the corridor because we saw [offender] turn up with his friend down the other end. She kept us separate.*

*[Court Victim Advisor] rang when she got the sentencing date to see if I wanted to be there and if I wanted to be in the whānau room and see the sentencing by video link.*

- Providing a waiting environment – and waiting experience – that is as positive as possible for the victim and their supporters just prior to the victim giving their evidence:



*[Court Victim Advisor] had booked out the family room for us so we could be there together before we actually went into court. [Court Victim Advisor] even made muffins. And she and [detective] kept us updated – “The jury selection’s done”, “They’re just waiting for this to happen”, that sort of thing, so we knew where the entire process was at. She’s so adorable. I love her. She’s so awesome. She’s so in the right job.*

*Our Victim Advisor was beautiful at showing compassion. She brought the tissues in, she calmed me down. She was just really calming. She acknowledged what had happened and she didn’t devalue what I was saying. It’s little things, making us feel welcome, being really thoughtful.*

- Keeping the victim as calm as possible whilst in the court environment. For example, in the Tauranga District Court, victims have access to a ‘therapy dog’ who can provide comfort and reassurance to the victim whilst on the stand. Other CVAs offered victims stress balls to hold whilst on the stand.

*I had someone to talk to when I was unsure about something. She’s a different person, different from the court and from the Police. She’s a safe person you can talk to and discuss stuff with if you are unsure, or just someone to talk to about random stuff if that’s what you need. She was like my ‘chill person’, just there when I needed someone to talk to.*

- Being available to talk through the days’ court proceedings:

*[The VA] would always wait ‘til the end of the day, call me last so that we can talk for hours. You know, she’s a f\*\*\*ing ninja at taking the pressure out of it. She’s really is incredible.*

- Assist victims and their supporters to link up with support services such as counselling.
- Keeping the victim informed of the offender’s whereabouts, particularly when they move:

*One time [Court Victim’s Advisor] rang and asked me if I was okay with [offender] being bailed to a certain address because it was quite close to where I was living. I was kept well informed.*

Participants said their needs were met to varying degrees. A small group had a less favourable service experience from a CVA, including the following individual examples:

- In one case a CVA wrongly advised the victim that the case had been discharged without conviction on the grounds of mental health issues, resulting in considerable stress on the victim.

*I kept saying to [the Court Victim Advisor] that it couldn't be possible, they wouldn't do that. But he said no, they definitely have. I was so devastated, I went down so low. At the time I think I could have committed suicide. But when I finally phoned the Police about two weeks later, they said "no, they can't apply for that when it's sexual assault."*

- When a Court Victims Advisor was unavailable for family reasons, no alternative Advisor was assigned.
- One participant expressed a preference for more personal phone calls keeping them updated on their case rather than emails.
- Lack of interest in the victim and a lack of engagement with them:

*Ignored, not really listened to. She'd do this annoying thing where she'd always send emails at 4.55, every time, so if I had questions or anything, obviously it would have to wait till the next day because she left at five. And not having any idea how the legal system worked it was just infuriating. It also infuriated me that she got my name wrong pretty much every single email she sent me.*

Poor communication between CVAs from different regions was a source of frustration for one victim when they travelled to a different court for a trial. This victim also reported not being made aware in time that the trial was proceeding on a particular day and therefore risked not being present and available when being called for evidence. On another occasion, this victim reportedly was not advised prior by the CVA which courtroom the hearing was to take place in, which caused confusion for him on arrival at an unfamiliar courthouse and which he described as "sheer incompetence".

*[CVA] was meant to get in touch with me to tell me where to meet her but she never did. So, I missed the first hearing that actually happened. But managed to catch them in the Victim Advisor area which was good. She didn't even realise that there was another victim. She was like "what are you doing here?" And I was like "that's one victim, I'm the other". You know? So that was really difficult; it was infuriating.*

Some participants indicated a level of disappointment in the role of CVA and found that the Victim Support person was more able to provide for them both the practical and emotional support that they needed throughout the trial process and beyond.

## 7.6 The Prosecution

One of the most significant challenges for victims and their supporters was comprehending their role in the case as that of a witness; a role with very little empowerment and much lesser significance than they anticipated as the person who had been the victim of (an alleged) sexual crime:

*We've learned that we don't have a voice in the court. I thought it was us against him but it's not. It's the Crown against him. I was like, "Hey, when do we get to have our say?" We were told "You don't. It's not your case. You guys are just the witnesses. It's not about you." (Parent of victim)*

Most participants whose case went to trial said they met with the Crown Prosecutor for the first time only days (and in some cases only hours) before the trial. Because they perceived the Crown Prosecutor as 'their lawyer', some were surprised, and others concerned, that contact was not made earlier – to give a chance to build rapport, allow the Crown Prosecutor to meet the victim (and their whanau/family) in person (to put a face to the details of the case – “and to see what type of people we really are.”), and for the victim to ask questions about the trial:

*We met [Crown Prosecutor] the evening before we went to court. I thought, "He doesn't know us, he doesn't know me, he doesn't know my husband". I was hoping to get to know him a bit more, build a relationship so he can know [victim] and help her. But you can't do that in one meeting. You can read a bit of paper, you can look at a photo, you can watch a video, but [prosecutors] need to get a feeling for how we are feeling, where we're coming from, to listen to our story in our own words. And it was a very formal meeting, it was very straight-to-the-point. I found it a bit 'in your face'. As a result, I didn't really trust him. I had no idea what was going to come out of his mouth. I didn't really feel comfortable with [Crown Prosecutor]. (Parent of victim)*

*It was all very rushed. I was annoyed that I hadn't been given more notice [to meet the Crown Prosecutor]. I'd actually packed my bags and I'd wanted to come earlier, but they kept saying "no, don't come, don't come. We'll let you know." Then they only gave me four hours' notice to be in [city 2.5 hours away] and be ready to give evidence. That wasn't enough time to really go over things.*

*I felt like there was no relationship at all with the prosecutor, I understand they have to keep professional boundaries and all of that stuff. But at the same time, this is something extremely personal and you kind of want to foster the kind of same relationship you would have with [the] detective. I had no contact with the prosecutor at all... going through the justice system you feel you're just another victim. And you know, I'm not just what happened to me, I'm more than that, and it would have been nice if I had gotten to know the prosecutor a little bit beforehand.*

*[The prosecutor] doesn't want to know you. Once they speak to you, you become real to them, so they want to keep you out of the system completely. I never got to meet them. They didn't want to speak to me.*

Having the opportunity to meet the prosecutor prior to the day of the trial was important for those victims that had this chance. It helped them to feel not so 'alone' in the courtroom on the day and better prepared for the situation:

*I think just meeting the person who's actually going to be questioning you in court on the morning of the trial would be quite stressful. So at least I knew the face and I knew that I felt comfortable with him prior to the trial, so that it was almost like another familiar face in the courtroom.*

Numerous participants referred to the prosecution as "their lawyers" and it seems that, for some, it can be difficult to draw a clear distinction between the prosecution acting on behalf of the Crown in representing the community, rather than representing them as an individual in court. For this reason, having limited time to discuss matters with the prosecution can be a cause for concern or distress:

*I said, "Can we not talk to the lawyers?", and they said, "Well, we don't normally do this." And I'm going, "So you're telling me I can't see my lawyers. We don't normally do this?" But they did actually see us, but they basically told me that "You're very lucky, we're making a special circumstance for you. This is out of the ordinary and that you're very lucky" - which made me feel like I was being unreasonable.*

Other participants initially expressed surprise and some frustration that they were not able to choose the prosecutor. These participants had the perspective that they were disadvantaged, while offenders were able to choose a lawyer that they had researched, might be a good personal fit, and could possibly get them the outcome they sought.

Some participants expressed concern at the prosecutor's apparent lack of training in how to deal appropriately with victims of sexual violence, in particular a lack of compassion shown for the victim and what they were going through:

*[Prosecutor] was good but not a lot of compassion. She was there to do one thing and that was it. She didn't seem worried about how I was going, what I was going through.*

Disappointment with the Crown Prosecutor was often in relation to ‘plea bargaining’, where a guilty plea to lesser charges was negotiated in exchange for ‘dropping’ additional, usually more serious, charges. Participants felt that this decision on the part of the Crown Prosecutor was a clear illustration of how the victim is excluded from the justice process as victims were not consulted about the decision to plea bargain or what impact this would have on them:

*The Crown prosecutor accepted a discharge without conviction following a guilty plea, without following due process. And one of the charges was kidnap. I felt like the Crown prosecutor made a decision on what was easier for him rather than for what was the right thing to do for a just outcome.*

*The prosecutor never contacted me in any way to ask what I thought. They just went in and accepted that good behavior bond. The prosecutor just did the deal. They never thought about how that might affect me. I was never given the opportunity to say.*

Where Crown Prosecutors provided information about the trial – what was going to happen, and particularly how to deal with the defence lawyer – victims found this useful and whilst it often didn’t calm their nerves in relation to the trial itself, they were more comfortable with the process. In some instances, the prosecuting lawyer was a valuable source of information regarding aspects of the legal process:

*I was quite lucky that I had one of the top crime Prosecutors on my case. When I met with her she managed to explain everything so much better than the Police or Ministry of Justice could.*

In contrast, where Crown Prosecutors had not provided any advice or information about the court process, some victims felt let down as they hadn’t been able to put forward their strongest case:

*I had had no contact with the [Crown Prosecutor] who asked me to answer questions on the day. It would have been useful to have met him before, so I could have given him all the information to make the strongest case. Also, he could have given me an idea as to what to expect from the defence in particular. That would have been really helpful actually.*

*I know that the person that did this to me and my son, he got a long time to have consultation with his lawyer. They need to do the same thing for [victims] to have a better picture of things overall, rather than just what’s written. At least it will get them all prepared for when they go to court. [The defence lawyer] had a bigger knowledge of the background of things*

*I would have liked to have known the process of what's happening. If you're informed about people and their roles, you're more comfortable. You're more comfortable in an uncomfortable situation if you've met the person, you've met the prosecutor beforehand, you know what he's going to ask – and he lets you know what to expect from the defence. That's what I would have liked.*

For female victims we interviewed, having a male prosecutor could be empowering:

*Personally, I liked having a [male prosecutor]. I think it is very powerful when a man stands up and shows me respect [as a victim] and says to the courtroom "This is wrong. What happened to [victim] is wrong." Rather than a female [prosecutor], which could come across as a little bit feminist – "look at us poor women".*

Others were disappointed at the impersonal – and in some cases, flippant – way in which the prosecutor approached the case and a perceived lack of preparation which made the participant feel that the justice system considered their case unimportant:

*[The prosecutor] really frustrated me. You'd see them in the courtroom on their breaks giggling and laughing, all the lawyers together. And yet they can't even be bothered looking at my notes. You would think they would at least scan over it. But no, they just tell the judge that they are not familiar with my case. I feel they get paid a lot of money to do nothing.*

Particularly in cases where there were multiple victims, participants reported having little or no contact with the prosecution. As a result, when giving evidence, these participants had no idea who was asking them questions. or whether the person asking the questions was on the victims' or offender's 'side':

*It would be ideal to know who is asking the questions. When I came in [to the courtroom], sat down and I had a person asking questions, I didn't know who it was. Then another lawyer got up and asked me questions and I put the pieces together – okay, so the good guy asked the questions first and the bad guy asked the second. I had no idea who anyone was.*

*This was the first time I had been in the court. I don't know who anyone is. I don't know their roles or what they're doing. That would have been nice, that would have helped prepare me.*

*It was a case of 'walk in the door, sit down and get hammered with questions' and not really knowing who's on your side. That was a bit odd. I think just understanding who was on my side would have been nice, so you can prepare yourself.*

One victim was not aware that there even was a prosecutor until they attended the sentencing hearing:

*I didn't know [that there was a prosecutor]. I thought [offender] was the only one that was meant to have a lawyer. I was like "oh, do I get one too?"*

## 7.7 Key Themes and Victims' Suggestions for Improvement

Key themes that emerged around going to court for victims we spoke with were as follows:

- The timeframe from charges being laid to going to court is often difficult for victims as this can span many months or years, and requires them to effectively put their lives on hold and to retain the details of the offence in their minds;
- A lack of detailed information, or knowing where to access the information necessary to help prepare them for court;
- Little time with the prosecutor, which underpinned a sense of feeling unprepared;
- Preparation in general for court was too limited and occurred too close to the trial date; and
- No input into bail and name suppression; and bail conditions that make victims feel vulnerable.

Participants made a wide range of suggestions about how the court process, and preparation for it, could be improved. Some of these mirror recommendations made in the Law Commission Report<sup>29</sup>.

- Prioritised scheduling for sexual violence cases to reduce the negative impact of the process on victims.

*In the court schedule the Criminal Procedures Act should dictate special scheduling priority for these offences because waiting 13 months is not cool.*

*Rape victims should take higher priority than things like robberies and break-ins. Rape cases should be prioritised because it's harder for the victims.*

- Appointment of a 'liaison' person who works alongside the victim throughout the entire process, from the time of initial complaint through the investigation and court process, and to provide post-sentencing support as required. Some participants suggested that this role be modelled on the current Court Victims Advisor role but cover the entire justice journey:

*It would be nice to have someone to help, to address some of those other concerns for me, someone to bounce some ideas around with. You need some sort of support, help that doesn't stop once the sentence is read out. The role is almost like a case manager - although I don't like that term though.*

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<sup>29</sup> Law Commission Te Aka Matua O Te Ture (2015). The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes. Wellington.

*For me I would have been better to deal with one person only. I've forgotten how many different people called me. It would have been better to have one person to take care of your file from the beginning to the end. That would have made a big difference for me because I have trust issues. So, if I pour out my heart to one person and then next minute someone else is calling me ...*

*If you could have a person, one contact person to deal with throughout, that would be amazing. In a way that would be the single most [effective] thing because you wouldn't feel lost in the system then.*

- Research participants believed that if they had more time with prosecution lawyer, the lawyer would gain a full understanding of the background and therefore have a better opportunity to put a successful case in court. It was also seen as important to take more time to help prepare victims for their role as witness in the case, including the types of questions that might be asked both by the prosecution and the defence lawyer:

*At least talk to the client, sit down with them and talk to them about what's going to happen, more than 20 minutes. Get a back story of the whole situation if there is one.*

- Meeting the prosecution lawyer to be able to talk about the kinds of questions that might be asked during cross-examination and strategies for dealing with repeated questions and other 'tactics' would be useful to happen some weeks prior to the trial commencing, rather than immediately before. This would allow victims time to process the information and become more mentally prepared:

*It was handy [speaking to the prosecutor] just before the trial, but also that was the first time I heard about it all. So, it just would've made all the difference if I had that deeper understanding on even how they will ask you a question to maybe trip you up, or anything like that. Just to really, really think about it over even a few weeks or a month before going in.*

- Have all those involved with cases, including prosecutors and judges, trained specifically or to be specialists in matters of sexual violence:

*They need to select prosecutors and judges who are trained in sexual abuse, not just an every-day judge or an every-day prosecutor. There needs to be specialist people that do it – that know what the [victim] is going through. If it's happened to themselves that would be great because they know what the victim is going through. But at least be trained, at least hear the victim's story first then take it to court.*



- Victims interviewed sometimes felt that it was too overwhelming to take in all the relevant information in one court visit prior to the trial. It was suggested, as a way of alleviating stress and promoting good preparation for giving evidence, that the option for more than one opportunity to view the courtroom or at least a follow-up meeting with a CVA would be advantageous. A follow up visit might also allow for questions arising after a first visit to be addressed, or for different parts of the process or environment to be a focus:

*[If] you were offered to come back in within that week. But even a month before, and then again. So, you can actually sit in a different room, being talked to about all the roles of the people, and then go into the courtroom – because I felt going into the courtroom was overwhelming enough. A lot of the information was too much to take on at the same time as being in a courtroom for the first time. I reckon it would've been nice to really just sit down and take time to go through each person in the room.*

- Clear information on what is allowed and not allowed in the court environment itself – for example, the role and responsibilities of support people and interactions between victims/witnesses in the same case.

# 8 The Trial

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## Key Findings:

- Cross-examination by defence lawyers was the most traumatic aspect of the justice process for most of the victims interviewed, and a cause of revictimisation.
- Understanding of the role of complainant witness at trial was often misunderstood by victims and was found to be a cause for considerable distress and retraumatisation.
- Greater access to information about the role of witness and other aspects of processes during the trial would benefit victims.
- Private waiting spaces and being able to avoid any contact with offenders and their supporters in and around the court supports victims' wellbeing.
- Having choices about and contact with support people during cross-examination would help victims.

The court trial is an aspect of the justice process that was completely unfamiliar to most victims included in the research and one which many found to be the most difficult. As discussed in the previous section, preparedness for what to expect alleviated some anxiety around having to attend court and improved the overall experience for victims. In general, victims found that court staff treated them well. In some cases, judges showed courtesy and compassion toward victims, while in other cases there was little acknowledgement. Being kept away from the offender while waiting to give evidence helped to victims to be less anxious and to be in a better frame of mind of giving evidence. Almost without exception, the hardest part of the trial process for victims was the cross-examination by defence lawyers.

## 8.1 General Impressions of the Trial

To varying degrees, all participants felt powerless within the court system – and this replicated and reinforced the powerlessness they felt being victims of sexual violence.

Being called to give evidence at trial resulted in a wide range of negative emotions among victims. Many said that they had an expectation that it would be difficult, but that in fact it was much more arduous than anticipated. Some victims we interviewed described feeling as if they were the person 'on trial', that their credibility and character was being examined and judged:

*Really nerve wracking. [It] felt like being thrown into the lion's den, like the Coliseum, like everyone was staring at you. It made you feel like you're the offender in some way. Just knowing that there are all these strange people there judging you, quite scary.*

*When you're in that witness stand and you're being cross examined, you're the one that's on trial. Because, based on what you say, the jury will make a judgment of whether they believe you or not and that's what it comes down to.*

Some victims felt that the system perpetuated power dynamics in relation to gender, age, ethnicity or class. Some victims commented on what they perceived as an 'old boys' network' operating with the court process:

*The court system to me is like an Old Boys Club. They look after their own. For example, the judge saw this old white guy [offender] sitting there looking so frail and all this garbage and felt sorry for him I think. So, the whole thing was taken away from the victim – who was the one to feel sorry for – and taken to the offender, who was treated like he was some fantastic bloke because supposedly he hadn't offended for so many years after offending against myself and two other victims.*

*It's a very western environment. It's a whole heap of white people as the goodies and a whole heap of brown people [including us, the victims] as the baddies. (Parent of victim)*

### **Perceived Imbalance Between Prosecution and Defence**

For some victims, there was a perception that there is an imbalance within the justice system between the prosecution's means and resources by which to seek a conviction and defence counsels' means and resources to defend the accused, and that this was manifest in a range of ways.

One aspect of the system that was perceived to be imbalanced was the evidence that can be used in court and the requirement for disclosure of evidence by the prosecution:

*My side had to disclose or give all the names of witnesses and pretty much lay everything out on the table for everyone to see, but his side didn't. Not knowing what witnesses are going to be called, how many or anything like that.*

*You start off on the back foot. All of your evidence needs to be submitted for the defence. All of their evidence does not need to be submitted to the Police. So, you start off on the back foot not knowing where they're going with their defence packet - but they know exactly where you're going with yours. And that's just incredibly unfair in my opinion. Everybody deserves a fair trial, but what about the victims that deserve their fair trial? Doesn't [the victim] deserve a fair chance at justice?*

There was also a perception of imbalance in the ways that defence and prosecution counsels could frame their questioning to witnesses:

*That's the biggest part of what I found really in it being so warped...I found it a very one-sided experience. I felt like I was a victim in a case, but I felt like I was the one doing wrong, you know? I did not like that a defence lawyer could ask closed questions, when a prosecutor is not allowed to, you know? Just things like that, I just really didn't understand.*

*If the accused takes the stand, the Crown Prosecution, it's illegal for them to accuse him of lying. Yet the victim can be accused of lying, so that's again, that's just another situation where the playing field is not even once you're in court. It's the law that is letting the victims down. It's weighted in advantage of the accused.*

In addition, there was a perception that the amount of time that the defendant, in most cases, had spent with their lawyer in preparation for the trial (perceived as several visits over many months), in comparison with the amount of time that victims spent with the prosecutor (typically one visit the day before the trial begins) seemed to support this perceived 'unlevel playing field'. This further underpins the perception that many victims had of the Crown Prosecutor being 'their' lawyer, rather than a representative for the community:

*It felt like [offender] was a lot more supported by his lawyer, too, you know? Because over the two years, he had constant meetings with the lawyer, you know? I don't know if that was because he paid for him, but his relationship and rapport with his lawyer was a lot tighter. So, they would've premeditated a lot of things before going in. I felt like the defence is a lot more prepared in that sense.*

## 8.2 Travelling to the Trial

### Financial Support

Given there was often an extensive length of time between the act(s) of sexual violence and the trial commencement date, some participants were no longer living in the area where the trial was to be held. Where transport and accommodation costs to attend the trial were covered by the Ministry of Justice, this was very much appreciated by victims. Had this funding not been available, some would have been unable to attend the trial.

However, one participant pointed out that the daily allowance for victims and their support people was insufficient compensation for loss of earnings during any time away from work. This was compounded as multiple out-of-town trips were required due to last-minute postponements of the trial:

*We were given an honorary in return but nowhere close to the amount of lost earnings that I had. And then also for my support person as well who came with me those times. Who received even less than I think I did. So yeah, so that made it difficult as well.*

## Upholding Victim Privacy

One participant, who was one of two witnesses in the same trial, reported that on multiple occasions he was booked to travel on the same flight, in the same shuttle van, and into the same hotel as the other witness. He noted that it became apparent that this was unlikely to have been coincidental and he ‘figured out’ that the other passenger was another witness in the trial. In addition, on one occasion he was sent the travel itinerary for the other witness in error, which was described as a “*substantial breach of privacy*” and “*just really poorly thought out*”. To complicate matters, the witnesses had each been advised to not make contact the other witnesses in the trial:

*One time it was just me and my support person and the other victim and his support person in the shuttle. It was just us four, so we were just awkwardly sitting there afraid to talk to each other but knew who each other was.*

## 8.3 Court Environment

For most victims involved in the research the first time that they had ever been in a courtroom was for the court tour conducted by their CVA. Despite this preparation, it was not uncommon for victims to find the environment to be ‘outside their comfort zone’ on the day. This was predominantly a function of the formality and ritual of the situation, which was often outside anything they had experienced before:

*It was very formal. I wasn't expecting it to be so formal. It was a bit daunting really. There's 12 people sitting there just staring at you, and there's big Police officers with big vests on, the lawyers all in black, and the judge. It was very scary walking in and seeing all of that.*

*There is a real hierarchy thing. [The lawyers] are very well dressed, immaculately dressed...and they bow – that's weird in itself. And they say, “If it pleases the judge ...”. That's not normal stuff.*

## 8.4 Safety and Security

One of the main causes of anxiety around attending court for participants, was the possibility of encountering the offender and their supporters in or around the courthouse. Many said that they were able to avoid this and that there were sufficient processes in place, facilitated by CVAs, which ensured that they were kept separate and safe from offenders and their supporters. However, when victims did encounter offenders, this had a highly negatively impact. To some extent this reflected their expectations that, in a judicial setting, they would be protected. In some cases, this expectation was in marked contrast with the experience itself.

## Safety/Security in the Court Room

Participants generally felt safe from the offender when giving evidence, including those who gave evidence in person. The way in which the offender was managed by court staff and Police, the way the Judge managed proceedings and the layout of the court and its facilities all contributed to the sense of safety.

Having the offender behind glass and closely supervised by Police or security guards was reassuring for victims. In addition, many victims we spoke with said that judges had required the defendant to be held back in court for a period to allow the victim and their supporters to leave the courthouse and therefore minimised the risk of encountering each other:

*I was looked after really well from my side of the people...By the Police and my detective, and even my lawyer. I felt safe with them.*

Arrangement of the seating in the public gallery was an important contributor of victims' (and their supporters) sense of safety. Seating provided on either side of a central aisle allowed for a natural separation of the two 'sides' – and some participants noted that, for the announcing of the verdict and for sentencing, Police officers or security guards were positioned down the center aisle of the public gallery as an extra safety precaution. However, where there were no clear sections – and groups of supporters were forced to move past one another to get to and from their seats – conflict could easily arise:

*There were two long rows of seats with no walkway in the middle, so it was difficult to take sides. We took the front row and they took the back row, but they had to walk past us, and they would huff and puff every time they went past. [Offender's] daughter walked past me to get to her seat and her handbag smacked into the back of my head. I don't think that part of it was very well planned. (Parent of victim)*

Whilst having a 'closed court' during the victim's evidence was viewed positively as a way to uphold their right to privacy, one participant became aware as she was giving evidence that she was visible to the public walking past the courthouse through a window in the courtroom:

*Behind the jury was these big windows with no blinds on them, and I could actually see people walking past and that was really not okay with me. And I brought my husband round there to where the windows were and we could actually see directly into the windows to the TV that was screening my evidence. You could see the lawyers, you could see everything through those windows. I felt that that was really awful.*

## Safety/Security Whilst Waiting to Give Evidence

On the day they gave evidence, most victims and their supporters were kept in a secure area in the court house. This was typically a room connected to the Court Victims Advisors' area or a designated meeting room. Where this secure space was made available, it was very much appreciated by victims and helped to mitigate tension and anxiety around the experience of being at court:

*You have your own little room to wait in so you're not waiting in with the public. It was a nice calm room. I think you would be much more stressed if you were waiting in the public space. You feel calmer in yourself going in because it was a stressful situation anyway going into be questioned about something like this.*

In some court houses, this area had a separate entrance so there was no risk of the victim and offender (and/or supporters) meeting and this was perceived to be a practical way of supporting victims' wellbeing:

*We were led in a side door into the room, and we all felt safe. It was an acknowledgement by the court that we were the victims, that we hadn't done anything wrong. "This is your room. You're safe here. You don't have to see [offender]." (Parent of victim)*

In high public interest cases, where media might be present, victims involved in the research appreciated being protected from this by the availability of private waiting spaces:

*I was amazed at how we were kept out of the public eye.*

However, whilst on a practical level, participants appreciated being in a secure space, some noted the irony that, during the trial, they were essentially the ones who were 'locked up' whilst the offender was free to come and go as they pleased:

*When I did my statement, my parents went and got me some food and brought it to me [in the victims' area] because his family were out and about, in the court and at the shops. [Offender] was allowed to walk around at lunchtime then they would take him back [to court]. Because he was out and about, I wasn't allowed out. It was suggested it would be safer for me that way – so, in a way, I was the prisoner.*

*We were pretty much locked in this room the whole time. We weren't allowed to leave. They would get us drinks or anything we needed but it was a very long two days locked in that room with [my supporters].*

## Lack of Safety/Security in the Courthouse

In courthouses where separate facilities for victims had not been provided, or where inadequate processes for ensuring their safety were in place, this resulted in participant concerns for their personal safety, both from the offender themselves and the offender's supporters. In a number of instances, demonstrated by the quotations below, victims we spoke with had come into close contact with the offender or their supporters. Sometimes this had resulted in physical or verbal abuse.

*This was appalling. I ended up in the lift with the accused and his lawyer on the first day of the trial – which was definitely not cool. That should never have happened – for the accused's protection as well. If I was really pent up, I could have easily socked him one. I was in that lift fuming, absolutely fuming. That wasn't a great start to the first day!*

*If I did go to the bathroom in the first trial while I was waiting outside, I had a friend come with me, to make sure that they wouldn't follow me in there. But there was nothing ... there was no security guards outside.*

*We arrived and [offender] was walking around like he was free as a bird. And he was walking down into where we were. And then we saw, physically saw him go into court. So, he saw us. [Victim] was really teary, she was angry. Her dad was angry, I was bewildered... they were really sloppy. (Parent of victim)*

*At one point I was walking with my sister and [offender] was walking towards us. We were heading for the same door. My sister held on to me and pulled me back. She goes "Sis, that's him!" I turned around and he was right there.*

*I went to the café just to get a drink with my parents and [offender's] mum was there, and [she] was swearing at me. The security guards had to separate her away from my family. I was really upset and angry – why did the court let her come near me? Someone should have been watching where both our families were.*

Some participants were surprised – and in some cases shocked – that offenders, even after being found guilty, could walk out of the court room through the public entrance. They sometimes felt vulnerable or unsafe with this level of proximity to their offender:

*He was found guilty, but he just walked out. I don't know where he went but he walked out the public entrance, not through the Police part. [Offender's supporter] was leading him out of the court room and they literally walked right past us. That was horrible. (Parent of victim)*



## 8.5 Giving Evidence

A judge may direct, on application or on their own initiative, that victims give evidence from behind a screen in court should they opt to have this between themselves and the defendant. For child witnesses, a direction may be made for evidence to be given from another room via CCTV. Most, but not all, participants recalled being informed of these options and being provided with a choice.

### Evidence from Behind a Screen

Participants who opted to give evidence in court but from behind a screen felt that this was a good compromise as they didn't have to see the offender (and the offender couldn't see them in person or have any interaction with them) but felt that others in the court (particularly the judge and jury) would see them as a real person as opposed to 'just someone on the TV':

*The screen was good because I totally forgot he [the offender] was there when I was giving evidence.*

Some participants who gave evidence behind a screen felt strongly that being able to give evidence this way should be a right for victims of sexual violence, rather something that needs to be requested and permission granted by the court:

*To request a screen, the Crown Prosecution have to go through about 100 hoops, and the cost to the taxpayer just of the time and effort that goes in for the Crown Prosecution just to request a screen. The defence don't want you to have the screen because they want you to freeze as soon as you see the person that has assaulted you. So, the defence fight down to the skin of their teeth to not have that screen up. It took like six months of to-ing and fro-ing between the Crown Prosecution and the defence and the court to even get the screen agreed. Why should you have to fight to not face the person who assaulted you?*

For this victim, the need to request permission for the use of a screen in court felt like revictimisation due to the lack of choice:

*That's another thing they had to have a hearing about. We had to wait for them to decide and put in petitions and, so that's all part of what makes it longer. They were talking about going to trial. They said, "oh you can have a screen up, so you can't see them." But then we had to ask their permission. That just felt so like he has all the control still. It's just a real lack of control that he did this to us and I had to ask his permission to use a screen, you know?*

For some victims who opted and were granted permission by the court to give evidence from behind a screen, there was an assumption that this meant the offender would not be able to see them. When they discovered that this was the case, it was distressing:

*I didn't actually find out at the time about the screen. I found out weeks down the track just by accident that he could see me. I didn't realise I wouldn't be able to see him, but he could see me. And that was a huge surprise.*

For this victim, the fact that the offender would be able to see her give her evidence, regardless of a screen being present, felt intrusive:

*I opted to not have a screen because I needed to feel like I was in control of the situation. And I knew that if I did have a screen then there's a camera that they point at your face with a monitor in front of him. And I was like "nah, that's just not okay, I'm not okay with that". It was always a bit confronting knowing that he had a picture of my face speaking on the screen in front of him.*

### Evidence Via CCTV

All child victims in our sample gave their evidence and were cross-examined via CCTV from a separate room. Primarily, this mode of giving evidence was preferred as there would be no risk of seeing the offender. Participants who gave evidence this way also said there were fewer distractions and that they were able to focus on the person asking questions:

*To me it just felt more comfortable. I couldn't see anyone apart from whoever was talking to me, so I could focus much better. I even chose not to have someone in the room with me as I would get too distracted by them being there. And there was no pressure from [offender]. He can't stare at you.*

*If I had actually been in the court, [defence lawyer] would have approached me and tried to get in my face. But with the camera you can't do that. A lot of the emotion goes [away] with a camera.*

*The only person I could see was the judge – and the defence lawyer. Even though I knew there was a whole lot of people looking at me, I only had to focus on those two people. I wasn't distracted by the jury or the idea of [offender]. Even though I knew he could see me on video, I couldn't see him looking at me and that made a really big difference.*

## Evidence in Person

Some victims we interviewed declined the option to give evidence in court from behind a screen as they felt empowered by facing their offender and/or did not want to give the offender the impression that they were intimidated by proximity to them:

*This journey for me was about facing him. I wasn't going to put a screen in front of my face.*

*I think I had this ideal of being a strong woman, so chose not to do the screen or the video link. I felt like I had nothing to hide and I didn't want him to think that he'd got into me or something - which he did, but I wasn't going to tell him that.*

*I wanted to stare the accused in the eye. I didn't want a screen. I had nothing to hide. I was stronger than him at that point. I didn't feel any need for hiding behind a screen. I actually think that might have given him more power to see me hiding from him.*

## Views on Offender Not Giving Evidence

One of the main reasons participants had reported sexual violence was to hold the offender accountable for what they have done. Participants found it frustrating that offenders were not required to take the stand. Some said that, had they had been able to meet with the prosecutor earlier/have more input into the prosecutor's argument, they would have pushed hard to have the offender take the stand – and either be forced to confess through relentless cross-examination from the prosecution (similar to what they received from the defence lawyer) or at least reveal their 'true personalities' to the judge and jury:

*[Offender] didn't speak once in court. I wanted him to get up there and talk. Then at least the jury could hear from him and hopefully catch him out. But the prosecution never called him, and we weren't consulted. We were just told that this was how it was going to be. (Parent of victim)*

## 8.6 The Jury

Speaking aloud about the experience of sexual violence was often traumatic for victims, in that they needed to recall in detail the events that had occurred and describe these to a room of people in a clear, concise way. Often victims felt acutely that they were under scrutiny by the jury and this was a difficult aspect of the justice process. Some described feeling stressed by the potential to come across as not genuine or truthful to the jury, while for others the challenge was to not "break down" emotionally while on the stand.

*It made me nervous because it just felt like they were scrutinising me the whole time you know, which made me nervous. It was really complex emotion. Even though I wasn't lying, I didn't want to say anything that made it appear like I was lying. It would have been easier if they weren't watching me, if I didn't know they were watching me.*

*You've got to convince a jury of your truth. And a lot of that's not about what you say or how you say it, it's about your body language and how they perceive you as a person. I stressed about that.*

One victim described intentionally not taking steps to “neutralise” her memories of the offending prior to giving evidence in court due to the risk of appearing not believable to the jury. In effect, she felt this delayed her ability to take steps toward healing and recovery:

*I don't want there to not be emotion attached to it because you want the jury to see your emotions. You don't want them to [see] your evidence as emotionless either because there is theatrics in court you know. You do have to be believable, and so I haven't felt comfortable trying to remove memories or to try and neutralise them because I've known that I would eventually need to give evidence.*

## 8.7 Cross Examination

Being cross-examined by defence lawyers was almost unanimously described as one of the most difficult aspects of the justice process, with many saying that they were completely unprepared for how traumatic this process was. This aspect of the justice process appeared to be a key point of revictimisation for many participants:

*Traumatised... really, really victimised and you feel like, even though you're saying the truth, you almost feel like you're not saying the truth, you know? Because these people don't believe me, you know, because this defence lawyer doesn't believe you.*

*For a few hours he was just telling me that I'm a liar, telling me that all I wanted was attention. He kept trying to trip me up, he kept trying to trick me. He was like a bulldog with me. It is hard for a 17-year-old to go through that for hours. I was shaking and crying. It was quite traumatising actually, and as a result, to this day I am quite terrified of the court.*

*[I felt] like a piece of dirt, like scum. Like I wasn't nothing but a liar.*

Many victims said they were questioned for hours by defence counsel and described tactics and strategies that were used in what they perceived as attempts at discrediting them and undermining their evidence by tricking them into inadvertently contradicting themselves:

*They'd been asking me the same question, but worded differently over and over again, which was basically insinuating that I was lying again, but you know, the wording it differently and trying to trip me up. The defence, they were just trying to discredit me and make me look like a bad person, so the jury didn't believe me. That was the only objective.*

*The most injustice I felt was just the cross-examination. It just felt like pure evil.*

*She was purposely trying to make me slip up which I didn't. She'd ask me the same question, but several different ways. I could tell that she was trying to catch me out lying. And then she'd just say things like "but it didn't happen because you're lying." And it's just really horrible to do that. She was just trying to demonise me, basically trying to make me out to look like a liar or like I had some sort of ulterior motive, which is just, is just really horrible.*

*The first thing he said to me was "I heard your Dad's just died, sorry to hear about that." He was just pushing me to break. I just felt like it was another trick to try and make this girl break. If you wanted to say sorry about my dad, see me in the hallway, you know? It really put me on the spot. And it was this big flood of, like, a mind blank after that. It was nothing to do with the trial or anything. But it was the first thing he said to me, you know? I guess they're meant to be insensitive.*

Some victims described being questioned at length by defence lawyers on aspects of their behaviour and character that appeared to have no bearing or relevance on the alleged events or charges that were being defended:

*He was allowed to ask questions about my personal life. And my family, which had nothing to do with the trial, you know? Like painting a picture of who me and my family are to the jury. I just found it very bizarre that he was allowed to talk about all this irrelevant stuff.*

One participant recalled the cross-examination specifically excluded any questions pertaining to the sexual violence that was central to the trial:

*The defence didn't even question me about the assault. They wanted to talk about anything else they could that would make me be mistrusted by the jury. They were asking me did I hate men? Did I have a history of hating men? How many times have I made things like this up? None of the questioning was about the assault.*

The retraumatising effect of certain lines of questioning implemented by defense lawyers could be profound for victims, particularly when their own reaction to the offending was called into question in a way that reinforces commonly held rape myths:

*Consent was never an issue because I was a child, but she said, “Why did you never stamp your foot, or make some noise, or, you know, you could have stopped it”. I completely broke down and I had to be carried out of court. It preys on all your deepest insecurities about what you should have done and what you shouldn’t have done.*

In the two cases where children were required to take the stand, the parents were outraged at how their children were treated during cross-examination. They described serious emotional impacts on themselves and the children and expressed grave surprise that this kind of treatment of children was allowed in the judicial system:

*They confused him [son]. They confused him on purpose. The lawyer for the defence was telling him that he was wrong, that what he was saying was not true. He was so sacred. He said to me afterwards “I didn’t know what to say because I just wanted him to stop. I wanted them to stop talking to me and to stop telling me that I’m lying.” And with my daughter they were suggesting things to her, saying that she hadn’t even been there. It seemed like the case came down to being able to successfully confuse the children enough to get a pedophile off a charge. That part was absolutely traumatizing for all of us. I was hysterical for days. I was just a mess. How can a justice system be just if this is the way it treats children? It becomes not about justice, it becomes a game. I don’t know why children have to be brutally cross-examined, bringing their credibility into question. (Parent of victim)*

*[Step father of child victims] watched the cross-examination and he wanted to be sick after it. He said it was disgusting, absolutely disgusting. He said it was just appalling watching someone gas-lighting the children like that. I wasn’t prepared for how hard they would go after the kids. I don’t think the children should have had to go through all that. (Parent of victim)*

## 8.8 The Judge

Most research participants were satisfied with how they were treated by judges during the trial, and in some cases appreciative of judges intervening on lines of questioning during cross-examination by defence counsel.

Note however, in cases where there was a guilty plea or verdict, the severity of the sentence handed down had a significant impact on how participants felt about the judge overall with victims generally disappointed in judges for handing down sentences they perceived to be too lenient and/or for “discounting” sentences. This is discussed further in Section 9.6: Perspectives on the Sentence.

### General Impressions of the Judge

Most participants found the judges who presided over the trial they attended to be considerate and courteous toward them, albeit with a relatively low level of interaction occurring. Some victims appreciated that judges had ‘stepped in’ when they perceived that defence lawyers’ modes of questioning were inappropriate or unacceptable. Being treated respectfully by the judge had a positive impact on how the trial process was perceived overall:

*A couple of other times [the judge] just stepped in because [defence lawyer] would say something, but then look at me as if she’d asked a question and just stare at me, like staring me out almost. And he would jump in, because I think he was getting annoyed.*

*[Judge] was great. In fact, he stood up for me a couple of times quite nicely during the cross-examination which was really good. The lawyer was getting quite cheeky and tricky and the judge actually spoke on my behalf.*

*The judge I thought was extremely empathetic. He definitely stopped inappropriate questioning and he was very firm with the defence lawyer. So that was good. I felt like I could ask for breaks.*

*The first judge, he was awesome. He really listened and he was interested. Just from some of his comments you could tell he was genuinely interested in the wellbeing of the victims. (Parent of victim)*

In one case, the judge had provided the opportunity for two victims to address any questions they might have regarding court processes directly to him. They felt that this was respectful and made them feel their input into the justice process was valued:

*The Judge the whole way through was excellent in most respects. One, our last time in Auckland he allowed the other victim and I to ask him questions. So, we were allowed to go into the actual floor of the court room and just ask him questions if we had any, which was good.*

However, not all victims in our sample felt that they were treated with courtesy and respect by judges. Some felt that judges needed to make a greater effort to acknowledge victims’ input into the process, show them respect, and demonstrate some awareness of how difficult the process was for them:

*You want to be acknowledged for you being there. “Thank you for bringing this to our attention”, or something, you know? Or just some kind of acknowledgement that you’re there. The whole time he had his head down. It was a total disregard of morals. I felt he gave more respect to the perpetrator than he did to the victims.*

*The judge didn’t even really look at me. That’s another thing that kind of annoyed me. He acknowledged the Policeman as a victim, and the other guy as a victim. And I was like standing over there, I was just standing in front of you, mate, reading out my life. Did you even look at who I was?*

Among those victims where the offender had pled guilty and therefore no trial was required, in some cases the judges came across as being in a hurry and wanting to get through the hearing as quickly as possible. This dismissive attitude gave victims the impression that their case was not important, that they were just another name on a long list of hearings that needed to be ‘got through’:

*The second judge just seemed to be in a big hurry – “next one, next one, we’ve got a full schedule, come on hurry up ...” (Parent of victim)*

## 8.9 Other Court Staff

Most victims interviewed expressed they were treated respectfully and with courtesy by staff that they encountered at court, although interaction with staff other than Victims Advisors tended to be limited.

Court registry staff were considered to be attentive and thoughtful towards them, demonstrated by filling up their water glass or ensuring that tissues were available when required. These small acts of kindness were felt to have helped to add some humanity into what often described as an extremely alien and difficult experience for victims:

*In the court they’ve got this person that literally looks after the victim, I’m not quite sure what his role is. He got water for everybody and stuff like that. That helped...But again with compassion, he was really nice.*

## 8.10 Support

### Support in the Courtroom

Most, but not all, participants were aware that they were able to have a support person with them when giving evidence. Those who were not aware felt that it would have been good to have had the choice of having a support person present:



*I was going into a room where I didn't know anyone, and I didn't know who was on my side. Having just one person there who I knew was definitely there for me would've been nice.*

One participant said that their request to have a support person with them had been (incorrectly) denied on the basis of it being a closed court.

Most participants aware of the ability to have a support person present whilst giving evidence had chosen to do so. Some had nominated a family member (typically an extended rather than immediate family member either because they felt the experience would be too traumatic for an immediate family member or immediate family members were also being called as witnesses and therefore not eligible), others chose supporters from Victims' Support or other support agencies who they had established a rapport with. Participants who opted not to have a support person present were often aware of the limitations of the support person's role (discussed below) and therefore questioned its value, and/or wanted to be seen by the offender (and others in the court) as being strong enough - and unaffected enough - to take the stand on their own.

For some victims, the value of having the support person was negated because of limitations on what they could do – for example the support person not being able to sit within sight of the victim, or not being allowed to offer physical support or comfort:

*It made no difference at all [having a support person present] because you can't turn to her. She literally just sat, and I couldn't even see her. It's a closed court when we were giving evidence and we were allowed to take that one person in with us. We're up high so she sat right down low and you couldn't see her. I wasn't allowed to look at her, I wasn't allowed to reach for her or anything. She couldn't even hold my hand if I got upset. If you're going to have a support person in there, let the victim see them. Let them be able to see that person.*

In addition, where participants had chosen to have a personal support person with them, they noted that their giving evidence, and particularly the cross-examination, has been extremely traumatic on their support person:

*I've never seen [support person] cry like that before. She was almost as bad as me. She was distraught by the end of it. I think she's been scarred from it.*

However, participants who had been supported through the court process by a person from Victim Support or another support agency spoke highly of this service and said that it was helpful to have them there. Some commented that having a professional support person, as opposed to a friend or family member offering support, made it easier as there was no emotional involvement:

*She was just incredibly easy to talk to and she was not judgmental. You could feel like she wasn't judging you, that she was like on your side. Just really easy to talk to. It was really good.*

*Yeah Victim Support. She's been really, really good. Sometimes I'll have her on the phone for an hour just talking through. She's fairly well experienced in sitting through [hearings], supporting people on the stand and things. It was just good to really get from her exactly what to expect, what she can and can't do, even just breathing things and stuff like that, and just her reassuring me - I don't have to be quick to answer. I can think about my answer, I can stall and take a drink, things like that.*

## 8.11 Being Kept Informed

Victims in the research had a strong desire to be kept informed of proceedings in court as regularly and quickly as practical when appearances occurred and, particularly, during the trial. Some victims came to rely on their CVA for information to keep them updated, rather than the Police, as they found this timelier:

*The Police were getting back to me, but because they're so busy, they often got back to me a little bit later. So, I actually came to rely on the court's victim advisor. I understand [the Police] are just under so much pressure, there's not enough time. But they usually would get back to me within three, two or three days, but if I wanted to know before that.*

Although not common, instances where victims had not been advised of the outcome of a court appearance, or of a trial, in a timely manner, were identified:

*I had a Skype call with my support person [VA], and during that call, she was checking the file, and she found that he'd been discharged without conviction, and just had to tell me that over the phone. That put her in a difficult position because she wasn't able to prepare to give me that news, and she was just as shocked as I was.*

## 8.12 The Verdict

Not all participants wanted to be in court when the verdict was read, but all agreed that the option should be given for those who do wish to be present. For those who chose not to be present this was primarily due to concern over how they might react to hearing a verdict of 'not guilty'.

One victim was very unhappy that their specific request to be able to be present when the verdict was read out was ignored. They felt that this showed a lack of courtesy on the part of the court staff (a lack of willingness to wait just a few minutes) and a prime opportunity to move personally towards closure was lost:

*The trial wrapped up mid-afternoon and we were told we could go home. The detective said he would phone us [once the jury had made a decision]. So, we got the phone call, we flew out the door and arrived at the court at the same time as the detective. The security guard let us in as it was after hours, but by the time we got to the court room, we had missed [the verdict being announced]. We are talking a matter of a minute or two. I think that was really horrible. We'd been through all of this, we had specifically asked to be there [for the verdict] and our wishes were just ignored. I was gutted, absolutely gutted that we were not there for the verdict. (Parent of victim)*

For some participants, having their offender appear in court, regardless of the outcome of the trial, in and of itself provided a sense of achievement. In some cases, victims had been advised by Police and prosecutors to not expect a guilty verdict as the evidential bar required to convince a jury of guilt without reasonable doubt is deemed to be extremely high:

*The fact that we got to court was the win for me, because I had been so prepared by the Police that, even although we've got all this evidence, it's irrelevant to the law. Everyone prepared me for [a not guilty verdict] - the Crown Prosecution, the Police, the victim's advisor at the court, all prepared me for the fact that in more cases than not it's 'not guilty'. (No verdict)*

In contrast, some participants said that, in hindsight, they had been very unprepared for a 'not guilty' verdict. They had been informed during the investigation period that the Police will only take cases to court if they think they can win them – and consequently the victim had assumed that a guilty verdict was almost a foregone conclusion:

*There was so much hope implied. We knew we had a really strong case, the evidence was really good, we knew the Police don't take cases to court if they don't think we can win them. But they should also prepare people for the fact that a conviction is not the easiest thing in the world to secure under the current system. I thought a conviction was pretty much a definite. I wasn't prepared enough for the possibility of losing the trial and having [offender] just walk away. I know you don't want to put people off coming forward, but I think some realistic statistics about conviction rates might have helped. (Parent of victim)*

Some victims we interviewed were not aware of what would occur for the offender immediately after the verdict, if found guilty. Some victims were surprised that, after this occurred, the offender was free to leave the court and allowed to return home.

## 8.13 Key Themes and Victims' Suggestions for Improvement

Key themes around participant needs in relation to the trial process relate to:

- victims understanding of their role as a witness;
- court processes and management, including model used in determining guilt in sexual violence cases;
- giving of evidence;
- cross-examination;
- access to information; and
- cultural inclusiveness.

### Be Briefed as a Witness

Participants suffered when they did not understand their role in the adversarial justice process. Several victims would have benefited from a better understanding of the role of the Crown and the implications for expectations of them as a witness, rather than a victim, in the justice process. A part of this would be to gain a better understanding of the function of the prosecution. Victims interviewed felt grateful and relieved to have a lawyer 'on their side' and to be able to spend time speaking with a prosecutor. Nevertheless, they would have benefited from a better understanding of why they did not have 'their own' lawyer, and in some cases more time with the prosecutor before trial.

### Court Processes and Management

- Some victims expressed that the adversarial nature of the court system in criminal justice is an inappropriate mechanism for dealing with cases of sexual violence and that an 'expert panel' model would be serve justice purposes better:

*The theme of all of this has been my powerlessness on a deep, deep, deep level. This process should've been empowering. If we could make the justice process more of that - not let the victim stand up and run the thing, but that roundtable thing where all the stakeholders have a say and that is visible and clear. So, I can walk in as the victim, sit at that roundtable and see the prosecution, the psychological people, the probation people, the bailiffs, the judge, all of them, all looking at each other, including each other.*

- Some victims thought that 'judge alone' trials, conducted by those with specific expert knowledge, would be a more appropriate way of dealing with cases of sexual violence, given that often witnesses were limited to the offender and the victim:

*Shouldn't there be like experts that make the decision not just like everyday people? That's probably the first time they've seen that kind of trial and they would have heard his evidence. They might not have a clue when someone's lying to them, like blatantly lying. Whereas like a judge for instance sees it all the time so he probably would have been able to see that that guy was lying right away. Like they're giving such a massive decision to people that like don't really know what they're doing. And that would be the same for me if I was in a jury you know.*

- Participants who had had more than one judge preside over their case (due to rescheduling issues, judges being sick etc.) suggested that having all court proceedings relating to the same case handled by the same judge would be advantageous for consistency.
- Set definitive timeframes for defence lawyers to be able to collect evidence, thereby eliminating last minute adjournments:

*There should be some sort of timeframe that they're allowed to. If they had an amount of time that they were allowed to collect all of the evidence, it's their responsibility to collect their evidence. If they don't collect all of that evidence from that certain timeframe, that's not our fault you know. So, there's that. And I just think more protection for, for the victims.*

- Some victims were advised that they were permitted to observe other people giving evidence in the trial from the public gallery, including the defendant, if they chose to do so. None of the participants that we spoke to opted to observe evidence, however it was suggested by one participant that if this was possible via CCTV from another room, they would have liked to have heard the evidence of other witnesses:

*I didn't want to be in the room. But I did want to know what was going on. So even if could've been in another room with the camera watching his part of it all. If I could've sat in a separate room and been able to watch him give evidence. It probably would've been better.*

- Have the support person while giving evidence in a position where they can be seen by the victim, in order to provide tangible support.

### **Cross-Examination**

- Ensuring all victims are briefed on the cross-examination process, given some 'Best Practice' technique to use, and ideally given the opportunity to rehearse (in the same way that offenders are able to practice with the defence counsel).

- Development of a set of guidelines for the way in which defence counsel are allowed to question witnesses. Improvements would include preventing repeated questioning on the same point and eliminating questioning that victims feel is directed at their character or morality. In particular, clear guidelines were requested in relation to the questioning of children and those with special needs:

*I think they could definitely provide evidence without being nasty you know. There was a lot of personal attacks. If you're a good lawyer, you should be able to provide your evidence without saying mean things.*

### Giving Evidence

- Offer victims the option of giving evidence off-site via CCTV. Participants who opted to give evidence via CCTV asked why they needed to be at the courthouse where they risked been seen by the offender or the offenders' supporters when coming and going. Those who gave evidence at the Manukau Court suggested that they could, for example, have had the option of giving evidence at the Manukau Police station – which is in very close proximity but in a separate building with its own carpark.

### Information

- Provision of a greater level of guidance and information on aspects of the legal system:

*Legal guidance, that needs to be available because it's a system you don't know how to navigate unless you've got millions or thousands of dollars to pay for somebody that knows how to do that. Because at the end of the day, you don't know. Like a lawyer could say actually in fact you're entitled to this, and we can go about it like this, just like the defendant has.*

- Having written summaries available after each court appearance to clearly outline what had occurred, the outcomes and 'next steps' in relation to the case.

### Cultural Inclusiveness

- One participant suggested that acknowledging Tikanga Māori in the court process by opening and closing hearings with a karakia would make the system more culturally inclusive.
- The provision of art work from other cultures in the courtroom was also suggested as assisting with making the environment more culturally-inclusive.

# 9 Sentencing

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## Key Findings:

- Delays and rescheduling caused distress for victims we spoke with.
- Some victims felt unsafe in and around the court due to the presence of offender and their supporters.
- Preparing a victim impact statement can be experienced as empowering or traumatising; appropriate and consistent guidance and support would be beneficial as would greater emphasis on meeting the victim's needs and allowing them to make their own choices.
- The option to read the victim impact statement from behind a screen or with a support person next to them would alleviate some victims' anxiety.
- Victims in the research were disappointed (and sometimes distraught) at 'light' sentences, particularly home detention, and 'discounting' of sentences.
- Victims wanted more 'follow-up' post-sentencing support, as this could be the time when they experienced significant emotional impingement but were 'left alone'.

For most participants, the sentencing hearing represented a final stage in the justice process and one at which they felt might provide some sense of closure. As with the trial process, delays to hearings causes distress for victims who have prepared themselves mentally and emotionally in anticipation of a particular date.

Having the option to be present at court for sentencing was important to victims, and most chose to do so. Difficulties included having to wait in common areas, often in proximity to the offender and/or their supporters prior to the case being called.

When sentences handed down were lighter than anticipated, or cases were discharged without conviction, there was often a sense of feeling let down by the system.

## 9.1 Impact of Rescheduling

In the same way that many participants had experienced delays in the trial start date, delays in sentencing were also very common – and very difficult for victims. Participants described preparing themselves physically, mentally and emotionally for sentencing (for example, organising time off work, arranging to have support people present) and typically experienced high levels of stress, anxiety and frustration when the hearing was delayed. For many victims, sentencing was perceived as the end of a long and often painful journey. Delays in sentencing were experienced as barriers to allowing the victim to move forward, or to 'start fresh'. Victims we spoke with felt themselves to be in a kind of holding pattern until the sentencing

took place. At the time of the interviews, one participant was awaiting the sixth attempt at a date for sentencing hearing:

*When sentencing got postponed to February I was quite angry. I'm holding on to something. I'm waiting for sentencing to happen, waiting for results. I needed to let it go but it was all still here. I was saying "Why is this happening?" I just wanted to get it over and done with. Then they postponed it again until May and I got really pissed [off].*

*When we arrived [at court] there was all this delay and delay and the sentencing got moved to this main court [room] – which they call the 'cattle court'. It's for everyone that has been put away overnight. So, we were suddenly with a whole heap of other people, and the original judge who was meant to be seeing to the case was ill and the judge who had been given this 'cattle court' hadn't read anything about the case at all. So, he sets the sentencing for late January [one and a half months away]. In late January we go back and there's a pre-sentencing report that hasn't been done. It should have been ordered as soon as [offender] plead guilty at the beginning of December, but it still hasn't been done. We'd taken days off work and still nothing. This time there is an eight or nine week gap to wait because there is no space in the courts. It's late March before we go back – and it's a different judge again. This is the third or fourth judge – I'd lost count by now.*

*It's just an emotional roller-coaster. I can't relax until I have the answers I need. You're constantly thinking you've got this end date and then it doesn't happen. Until he is given his sentence, I can't move on properly.*

*It's almost a year since he was found guilty and we're still waiting for sentencing. I just want it to be over you know?*

Participants perceived delays in sentencing to be almost exclusively due to incompetence in the court administration process and felt that these administrative errors and over-sights could be – and should be – easily fixed. This perceived failure in process was considered a sign that the court places very low priority on the needs of sexual violence victims:

*The paperwork for [offender's] apartment hadn't been done. They had to do an assessment to make sure it was safe. That hadn't been completed so the judge sent them away to get that done. So, we're all sitting in the courtroom and the judge says "No, I haven't got what I need," so we all left. Surely that was someone's job to do the assessment? Why didn't they do it?*



## 9.2 Presence at Court

Victims in the research generally valued having the opportunity to choose whether to be present at court for sentencing or not. When this was not an option, for example when Ministry funding was unavailable for victims to travel, some felt that their role in the process was not as valued as it should be and impeded them obtaining a sense of closure from the process:

*[The Ministry of Justice] couldn't fund my trip to go up to the court for the sentencing...so we had to see it via audio-visual link in the courts down here...that made it really difficult to get a full sense of justice. It felt almost empty or hollow...Coz I literally was at work, went and took my lunchbreak, to the visual link and then came back to work straight after, so it didn't feel like an event, you know, kind of a nothingness of it... there wasn't a sense of closure about it.*

Some victims, particularly those who did not live near the court, opted not to attend sentencing. They felt they had received sufficient closure or that 'justice had been done' through the delivery of a guilty verdict. Others anticipated that the sentence would be light, so they would receive no further benefit from witnessing it being handed down:

*We didn't feel we needed to go to the sentencing. We knew he wasn't going to get much of a sentence. They just get slapped with a wet bus ticket in these bloody cases as far as I'm concerned. He might get a bracelet [home detention] but I doubt he'll get the prison time he deserves.*

The one participant who had been through the restorative justice process (see below) opted not to attend the sentencing, feeling that the process had given her the closure she needed:

*Anything else to be done was just between [offender] and the Ministry Justice. I'd done my part. I'd already forgiven him. I already had closure. I needed to let it go.*

## 9.3 Safety in the Court Room

In general, participants felt less safe at sentencing hearings than they had done during the trial itself where they were provided with a private waiting room before giving evidence. Many participants had waited in public areas immediately before going into court to hear sentencing, often with the offender's supporters in proximity:

*[Offender's] Mum posted on his Facebook page "His court is at blah blah time, everyone come show up in court to support him". She was trying to do it to intimidate me by getting as many people there as she could. He had lots of supporters there that day.*

Participants who attended sentencing were surprised that the offender was able to sit in the public gallery prior to the hearing. As the offender had already been found guilty it was assumed that they would be held in the cells and brought into the courtroom via a separate entrance. These participants reported being shocked, and in some cases, feared for their safety:

*When we went in for the sentencing, they didn't even have a good grace to make sure that the offender and his family were separate from us. We walked in and they were just sitting in the same place that we have to sit. That was quite a shock for me. I was thinking "They're right there. There's nothing dividing me from him."*

*The first time I went [to sentencing], [offender] was standing about as close to me as you are. He was in the row right in front to me. It was very, very close.*

*At the sentencing hearing when we were all waiting upstairs to go in, there was no separation between the [offender's] family and us. Even though we sat as far away as possible.*

In some cases, a Court Victim Advisor or Police detective had been proactive in arranging for security to be present in the courtroom during sentencing. This was made a positive difference to the experience of the sentencing and was appreciated by victims, both from a practical safety perspective but also as a demonstration of compassion for the victim:

*I didn't know what would happen – maybe his family might come and start gnashing at me. I think having a Police officer there [in the courtroom] was really helpful, knowing that I've got someone protecting us.*

*The detective ordered that there had to be [security] people there. We had security all the way down the courtroom. They were standing between the two families.*

## 9.4 Reading of Charges

Some participants who attended sentencing were surprised – and in some cases shocked – that all the charges the offender had been found guilty of were read out in full, to an open court. Some found this affronting whilst others reported feeling embarrassed having charges read out in detail to members of the public. Some queried whether this contradicted their right to privacy. Even though the victim's name was not specifically mentioned, victims felt it would have been obvious to those in the courtroom who the victim was. One participant said that, had she known the (15) charges were going to be read out in such a way, she would not have attended:

*The judge read out in-depth everything that had happened, the actual event. I was like “oh my gosh, why is he reading it out?” Maybe [court victim advisor] or the Police should have let me know in advance that he was going to read the statement thoroughly or at least given me a copy of what he was going to read. A ‘heads up’ would have been nice. I felt shocked that all these other people were hearing it. It wasn’t a closed court. There were other people there, people coming and going. My sister was bawling by the time he finished reading.*

## 9.5 Victim Impact Statement

### Preparing a Victim Impact Statement

For most participants, the opportunity to write and have a victim impact statement presented to the court was important and represented an opportunity for their voices to be heard, not only by their offender, but also by the judge and others present in court. Some found the process of writing the statement to be therapeutic or cathartic.

A smaller group of participants found making the statement to be retraumatizing. Revisiting the impact that the offending had on their lives was difficult, both because it required the victim to review the sexual violation itself, but also created a sense of pressure, based on the victim’s desire (and therefore pressure on themselves) to make sure everything was covered and said in a way that would have maximum impact on the offender.

### Police Support with Statement

Perceptions of the NZ Police’s involvement in helping victims to prepare their statements was mixed. For some, the assistance provided by NZ Police was well-received, both to help them understand the purpose of the statement, and also to suggest examples. However, for others, the input of Police was not so positively viewed. One participant stated that she felt that being contacted by NZ Police to provide a statement felt like them ‘wanting something from her’ – having had no contact for weeks post the offender’s guilty plea. She felt pressured to provide this within a short timeframe. Having just started to regain some ‘normality’ back in her life, the way this request was handled caused the re-emergence of traumatic feelings for her.

### Timing of Request for Statement

Writing a victim impact statement required some victims to recall and process aspects of how the offending has affected them that they may have been suppressing for years. For most victims, the Victim Impact Statement was prepared after a guilty plea or verdict. However, in one case this was done in anticipation of a guilty plea that did not eventuate and the victim felt unnecessarily retraumatized by the process.

*I was sort of ill-advised a few years ago by the victim support lady. She basically said you know, you need to start thinking about writing this victim impact statement because it's going to go to trial...that just put me on edge, that was obviously before it was adjourned one of the times. But honest, it just, it absolutely f\*\*\*ed with me, thinking about how it had affected you. It's not, it's not nice. And I actually wrote one...then it was adjourned, which made it so much harder knowing I probably wouldn't get to say it because it's got to be valid within a month I think of sentencing....I don't want to have to even think about the fact that I might need to write (another) one yet and then start going crazy about how it's affected me and all the rest of it and then a not guilty.*

## Content

For some, the clear structure about what can be included and what can't be, in a victim impact statement, made writing it easier. However, others expressed frustration at not being able to say everything they really wanted to. Some victims felt frustrated at the parameters around what they could include in their victim impact statement, with the content quite prescribed. In some cases, victims were advised they needed to remove parts of their statement before it could be presented to the court:

*There was a whole lot of rules about what you can't write about. Too many rules. I think there were four pages. If it's your statement, why can't you say what you feel?*

Some victims were upset when the offender's defence lawyer had input into inclusions in the statement:

*The defence had input into what [could be included], like there was a part in my victim impact statement that said that I felt that I needed to hold you accountable for what you did to me. His lawyer argued the fact that it's not me that should be holding him accountable it's the court. So, I wasn't allowed to actually say that, bit. I don't believe the defence attorney should have any say in what victims write. Those rules all need to go, I believe if the victim needs to say you f\*\*\*ed up my head, then they should be allowed to say [that].*

## Reading Statement in Court

Participants' perspectives and experience of reading their victim impact statement out loud to the court were mixed. Some found the experience of being able to address the offender directly to be empowering. The ability to be able to convey the impact of the sexual violence to the offender's family/supporters was particularly important to some (particularly where the supporters were close family members or friends who had 'sided' with the offender):

*It's important [to give victims the opportunity to read their Statement]. It's closure. It's the one last thing that you can say to [the offender]. I am not sure it has much impact on the offender to be honest – he just looked like he was a daydream – but it's important for the victim. And even if it doesn't go in his ears, it goes into the ears of others, like his family. (Parent of victim)*

In contrast, others found reading their statement to be an overwhelming experience. This was exacerbated by either not being informed of who would be present in court and what their roles were or having to read the statement in the presence of the offender's supporters:

*It is very overwhelming...just the fact that there's so many people in that court listening...They didn't introduce anybody...you go in there and you go, oh my god, I'm going to have to tell all this shit about my life is coming out in front of all these people that I have no idea about.*

*I was just so scared because his family – they were all right there and I was just sitting across from them.*

For one participant, the unexpected presence of the offender's family and supporters meant that, at the last minute, she decided not to read out her victim impact statement aloud to the court:

*I prepared a victim impact statement, and I intended on reading it, but when we got to court, his entire family was there, his kids were there, his partner, his partner's family and everything. They were just completely, just everywhere, and that completely threw me off.*

For victims who were offended against historically, particularly if this was during childhood, the fact that their offender could see how they currently looked as they read their statement and could therefore potentially recognise and identify them in future, felt like a breach of privacy:

*The video part should've been deleted or covered up, whatever. The audio file, that's fine. I wanted anonymity, you know? I would've expected my face to be blurred out, 'cos why should my privacy be breached by some sexual perpetrator? I still want my privacy, and I don't want my perpetrator to know who I am.*

Not all chose to read their statement to the court, with some opting for the prosecutor, Police detective or another person to read this on their behalf, and for others the judge paraphrased the content for the court:

*It's pretty hard stuff I guess to talk about. And we were very conscious, especially my husband, very conscious about, for his mother. Yeah that was probably our main reason for not reading it out.*

*I didn't read it out in court. I thought "I don't want to give this guy any more of my time. I just don't want to think about this anymore".*

For one participant who chose not to read it herself, the statement was read aloud in court by a male, which she felt was inappropriate and had less impact:

*I actually had a male read my victim impact statement out and it sounded weird – my female perspective coming from a male voice wasn't effective.*

In some instances, victims were not provided with the opportunity to read their victim impact statement out in court and this caused anger and frustration at being denied what they felt was their right to be heard:

*But this is the part that pissed me off...The judge only allowed two out of five of us to actually read [our victim impact statement] because the court was pressed for time. I believe that the victim impact statement should be read by the victims or, if not, then the victim's support person or the court support person if they can't do it themselves. I believe every one of those need to be heard. I feel that they were robbed of that opportunity and I do not think that was fair.*

Another participant said that the judge had summarised their victim impact statement to the court and was frustrated that many of what they considered the most salient and important points were not mentioned.

### **Not Invited to Submit a Victim Impact Statement**

All victims have the right to prepare a victim impact statement and have it submitted to the court to inform the court of their views on the offending and the impact it has had on them. Further, victims have the right to request that this be read aloud in court, either by themselves, or by someone else on their behalf. For most victims in our sample, this opportunity was provided to them and the majority chose to prepare a statement. However, in a small number of cases, victims were not informed about their right to prepare a statement, and this was perceived to be a gross oversight, a system failure, a disregard for victims' rights and the cause of retraumatisation.

*The officer in charge never collected a victim impact statement, and I know that one of those has to be collected. And so that wasn't able to inform sentencing, which is also like a transgression of the justice system, and a huge abdication of responsibility on their part. I just felt like it was obvious that the Police didn't care. Like it was obvious that the rules were just being ignored. I felt horrible, I felt like all of the control that had been taken away from me when I was kidnapped was still being taking away. It just felt like a horrible, and I was sad, and angry.*

*At the second hearing the judge asked for the victim impact statement and the prosecutor, who was a new one, was fluffing around in the file and couldn't find it. She couldn't find it because no-one had talked to us about it. We hadn't done a victim impact statement. I didn't even know what it was. We're the victims but we're not allowed to put our hand up and say, "There isn't one in the file because we were never asked to do one". (Parent of victim)*

In addition, it was noted by a victim whose offender who was sentenced in the Youth Court, that no opportunity exists for victims to express the impact on them within this forum.

### Scope of the Victim Impact Statement

Some participants expressed frustration at the extent of the pre-sentencing report that is prepared on behalf of the offender (which may include character references, medical reports, and psychological assessments) whilst the victim's voice is only able to be heard through the victim impact statement:

*Why don't they do a pre-sentencing report on me – talk to my doctor, talk to my family and friends who will tell you [about the impact of the offending]. I think there is a real imbalance in terms of the information the judge has.*

## 9.6 Perspectives on 'Light' Sentences

For many victims interviewed there was a sense of relief and elation at hearing a guilty plea or guilty verdict being returned by a jury - there was a sense that justice is being done at that point. Subsequently, victims were frequently disappointed at the apparent leniency of the sentence that was handed down.

Sentences perceived to be too light were a cause for concern not only because it felt to the victim that justice had not been served, but also that this sentence would set a precedent for other judges who may take this into consideration when sentencing for sexual violence offenders in future:

*No justice has been done, it's not justice as it should've been. No. Unbelievably, how can someone go from preventative detention to 11 months home detention? It's not even heard of. The problem with that is now, every other judge who's going up for sentencing of a sexual perpetrator can review my case and go, well, this guy in 2017 or, yeah, 17, he only got 11 months. Well, we can do that for you. 'Cos this is how the law works.*

In addition, participants expressed that what they felt to be a lenient sentence will not have a deterrent effect on potential offenders:

*You've got someone like that not in jail for what they've done. So what deterrent, what are you saying to other potential people out there that have desires to rape young kids? Are you saying, "Oh it's all right, you can go and rape people because you're only going to get 12 months, slap on the wrist? Sitting at home in your beautiful mansion, amongst all your home comforts and luxuries,"*

There was a perception that some judges were more lenient than others in sentencing offenders of sexual violence:

*The Police and the Crown told me that they were going for a harder judge at the time. They had applied, you know, for their preference. And he'd been assigned to it. And then, just at the last minute, he was taken off it and this other judge came rolling in.*

Some victims expressed frustration at the judge's apparent disregard for pre-sentencing reports in their sentencing decisions:

*He got an extremely lenient sentence, and I just think it was ridiculous. I mean he had a sentence halved because of his age of, at the time of the offending...it blew me away when he got a 50% discount for that. And it also frustrated me immensely that the judge actually disregarded the pre-sentence report which actually said that he was high risk.*

In addition, in cases where the offender pled guilty, participants were dissatisfied that they received a lesser sentence.

### **Home Detention**

Many offenders of the victims we spoke with, having either pled or been found guilty of sexual offending, were sentenced to periods of home detention. For most victims in these cases, this punishment was perceived as too light and incongruent with the gravity and on-going nature of the harm caused by the offending:

*That home detention is bullshit. Home detention is a mockery, you know? I had this happen to me. I dealt with it for so many years until I got enough confidence and gumption to hold him to account. Go through two and a half years of court system. He gets seven months [home detention].*

*I just felt like the judge didn't take into how much this had cost me mentally, emotionally and financially. It cost me huge, it almost cost me my life. I felt like the day that I got sexually assaulted or raped, whatever you want to put it - I died that day and I'm trying to build myself back up. And just constantly battered down.*



Victims in the research felt that home detention was insufficient punishment for the crimes committed, as they perceived it allowed the offender to carry on their life as normal. Many were also frustrated at the offender's breaches of home detention they had observed or became aware of (offenders been seen in bars, cafes, public libraries etc.):

*I walked away [from the sentencing] quite despondent. I told my wife "Why did I bother doing this? He got 12 months' [home detention] and he is still living his great little life."*

Also, the maximum length of home detention that can be given (12 months) was perceived to be too short. Some participants felt their judge had declined a custodial sentence due to the personal characteristics of the offender (most typically their age or health status) and consequently had had to default to a maximum 12-month home detention sentence.

One victim told of trying to appeal the home detention sentence, as they felt it was not severe enough given the number of charges the offender was found guilty of but was told by a lawyer that it was a pointless exercise as the Ministry of Justice would not even look at it.

### Sentencing Rationale

Participants sometimes experienced a sense of confusion and exasperation when hearing judges' sentencing rationale, including the reasons for discounting or reducing sentences from a starting point. Others felt that clearer explanation from the judge with regard to sentence reduction would have helped them to accept what was handed down to the offender:

*[Offender] got 12 months off for supposedly being a good father, and another 12 months off for being a good member of the community. So, he got 24 months off for good character, which the judge really just guessed on. I walked out of there very angry, very, very angry. I was treated like just another case that they had to get through, so they could get on to the next one. I didn't get any justice and I solely blame the judge for that.*

*We're in court and the judge is talking about a three-year jail sentence...then he starts discounting it, and it gets down to 21 months, ...And we're like, oh okay, 21 months home detention. So, we're letting that sink in and then all of a sudden it was sentenced at 10 months home detention. We're like, what just happened there? We're all a bit stunned...at that point we're all feeling like that's actually pretty light. He thinks he's gotten off and so we're sort of like, great. That's the way it is then...there was no really further explanation...he thinks he got off because he's just going home.*

In some instances, the sentencing discounts applied by judges were interpreted by victims as minimising the offending and harm caused by the offender:

*[Offender] is exemplary and this is very out of character, that he had been widowed (even though he was separated from her when she died) ...Oh aren't we feeling sorry for him now! There's letters from his boss that [offender] is the backbone of his business. He gave all these reasons why he didn't think what had happened was so bad.*

*The judge looked at [offender] and said, "I have no doubt that you did what you have been accused of, no doubt." But then he kept bringing the sentence down and down and down. He got to two years then it became 12 months' home detention. It was almost like he was making excuses for him – "given your good behaviour, given your age, given your health ..." I thought, "Just stop there, mate. Put yourself in my shoes. If [victim] was your daughter, you wouldn't do that." (Parent of victim)*

### Views on Custodial Sentences

For those victims whose offender had received a custodial sentence, this was perceived as appropriate. Some felt that the length of the custodial sentence was insufficient, particularly in cases where there were multiple victims.

### Views on Discharge Without Conviction

In instances where the offender was discharged without conviction, victims felt a strong sense of injustice and having been let down by the system:

*So, I had all that [violent sexual assault] done to me. I had that horrible ordeal for a year waiting for the trial and wondering if [offender] would just appear again and then that's what happened at the end [discharged on a good behaviour bond]. It's like you're nobody. There's the physical assault, then you feel degraded again through the process, and then degraded by the sentence.*

*I felt horrible. I felt like sad and depressed and that the New Zealand Justice System had strung me along for two years to basically give him a rap on the knuckles and send him on his way.*

## 9.7 Reparation

Few participants said they were aware of the potential for offenders to be sentenced to make reparation payments. Among those who had received reparation, there were mixed views, with some seeing this as an appropriate recognition of time and energy spent to help bring the offender to justice, while others found it inappropriate, or even insulting.

Some victims felt that, because of sexual violence, their educational or career prospects had been impeded, and that this would have an impact on their financial security going forward. Considering this, it was expressed by some victims that, when offenders have the financial means to pay a reparation to their victims as a way of compensation, this should be considered by judges in sentencing:

*As shallow as it's going to sound, if it was some sort of money that I could help use to build my life back up with therapies that I need. I'm trying to do everything I can to get help psychologically, mentally and emotionally with the lack of funds that I have from the lack of development.*

One participant felt that the reparation they received was a reasonable acknowledgement of the amount of time they had had to take off work to attend the trial and transport costs to attend:

*It was actually quite nice [to receive the reparation] because I had been saving up to try and go travelling and with everything that had been happening, I'd been having lots of time of work and going home early to get my head straight, so I'd had to dig into my savings a bit. So, all of a sudden, having that jump in savings, it was quite nice. It was like, yes, I've gone through this and yes, it was a hard thing, but I can now move forward and do what I want because of it.*

One participant was more proactive about reparation, having referred to some financial compensation in the victim impact statement. The participant knew the offender was wealthy and felt that reparation was a tangible way of taking something back from the offender:

*The decision to pay reparation? I explicitly asked for it. He was a wealthy man who made a reasonable amount of money. I'm not a greedy person but I just thought, 'Screw you man. I'm going to take some cash off you.' To me, that was actually more important, more important than the jail time – to feel like I was taking something back from him.*

Nevertheless, many participants indicated that, from their perspectives, it would not have been an appropriate element of sentence, in that no amount of money could reduce the harm that had been inflicted on them. The few that had received reparation typically viewed the payment in this light:

*I didn't come forward for any money. I didn't want any money, but we were given about [\$ amount] to help with suffering. That was garbage. I didn't care about money. All I wanted was justice and I never got it.*

In an example of disempowerment of victims within the justice system, in most cases where participants had received reparation, there had been no prior consultation with them as to whether they wanted financial compensation or how much this should be.

A participant whose offender had been sentenced to pay reparation to her of approximately \$700 was receiving a cheque for \$3 every week, which she described as “more hassle than it was worth” and would rather have been given the opportunity to redirect this to a charity organisation. Another participant noted that, four months after sentencing, they still hadn’t seen any sign of the money. The participant viewed this as an example of the justice system treating victims poorly:

*I emailed the detective [about the reparation payment] and he said “Sorry, it’s up to the courts.” I don’t have a contact number to call so I have been left high and dry. I don’t really care about the compensation. But it’s just weird, playing this waiting game yet again. This whole process has been about waiting and waiting and waiting.*

One participant found the payment (the amount of which was only a very small share of what she had had to spend on physical rehabilitation as a result of the attack) degrading and likened the payment to one made to a prostitute after a sex act:

*It was like “You have been sexually assaulted, here, have some money.” In a way I felt as if I was a prostitute, that they were just paying me off. It was really degrading. I felt so cheap. I haven’t cashed that cheque yet.*

One participant told that reparation was not followed up by the prosecutor:

*There wasn’t [any reparation] awarded and the judge didn’t even seem to think about it. And then I felt let down that the prosecutor, coz we had made it clear to the prosecutor that it’s something that we were looking at and he didn’t pursue it at all.*

## 9.8 Restorative Justice

### Awareness of Restorative Justice and Decision Process

Few participants recalled being offered the opportunity to participate in a restorative justice meeting with the offender, once there was a guilty plea or guilty verdict. Some were unaware of this process or that a judge could recommend it. When made aware (sometimes during our interview) this was seen to be (another) example of having choice taken away from them:

*Restorative justice. He said something about it I think in his closing statement, the judge. But he says, “I don’t think these guys are going to want to”. I would’ve liked to have the choice to [say] yes or no. I don’t want dufus up there to tell me what I want.*

Some participants declined to take part in a restorative justice meeting as they perceived the process to be predominantly about helping the offender 'make amends', feel less guilty or get forgiveness rather than being focused on the needs of the victim:

*When they asked if I would like to help [offender] in his case by him apologising to me, I felt like that was a little bit, like "No". I did deny that though, I didn't want to see him.*

Other reasons for turning down the offer of restorative justice included fear of having to see the offender/sit in the same room with them, and distrust of anything the offender says and/or a perception that any apology from the offender would be insincere and therefore worthless.

One participant expressed dissatisfaction at being 'grilled' by the judge for not agreeing to take part in the restorative justice process:

*[The judge] asked me if I'm going to do [restorative justice] and I said "No I'm not. I'm not ready." And the next minute I'm getting grilled by the judge as to why I'm not doing it. I said, "because I don't believe the offender is remorseful." It's not a case of being petty like the judge seemed to be implying. I just don't think any good can come of it and I worry that I would walk away more angry than when I went in. But I felt the judge condemned me for not doing it.*

### Perceptions of the Restorative Justice Process

Two participants were offered, and had opted to take part, in a restorative justice process. At the time of the interviews, one was still in the planning stages, one had completed the process. Both had nominated to take part in restorative justice in the hope of getting an explanation from the offender as to why they had committed the offence so that they could then move on towards recovery:

*I realised that I wasn't going to get over [the sexual violation] unless I tell him how I felt. This was my time to tell him.*

The one participant who had completed the restorative justice process felt the process was very well explained to them and they found the experience comfortable, safe, culturally-appropriate and very victim-centric. They commented on 'taking power back' by being able to read the victim impact statement directly to the victim and their supporters in an intimate environment:

*I wanted to read [my victim impact statement] because it was from me. When I read it, I cried of course. Then I looked at him and he was crying. I was surprised. I think he was crying asking himself "What did I do?". He was really shocked. And when he did his apology, I felt he was really remorseful. He was crying. For a really staunch man to cry, I knew it was real, genuine.*

The outcome of the restorative justice process was very positive with the victim feeling they (and their support person) had been able to fully express to the offender the impact the sexual violence had had on them and the offender had been genuinely remorseful and apologetic. The process assisted the participant in forgiving the offender and consequently being able to move forward towards recovery:

*At the end [of the session] I looked at him [offender], literally stared at him and I said to him "I felt how genuine you were about asking for forgiveness and I do forgive you." It felt good to have said what I needed to say and to tell him that I forgive him. It felt really good. I think, if I haven't gone ahead with [the restorative justice process], I wouldn't have felt forgiveness. That helped me a lot that procedure. It was definitely the right decision for me.*

## 9.9 The Appeal Process

Only two participants identified as having been through (or were able to go through) an appeal process. One participant spoke of the frustration, anger and sense of being let down by the justice system they had on finding out, ten days after the decision had been made, that the offender had appealed their sentence and the home detention period had been halved. Not only were they upset that the offender had received a considerably more lenient sentence than had first been decided, but they considered it insulting that they had not been consulted as part of the appeal or even been informed that the sentence was being appealed:

*This is where I really felt let down. Unbeknownst to us, behind the scenes [offender]'d been going to court and trying to get off the second half of his home detention. There was no consultation with us. We weren't even told that this was happening. Not the judge, not one person contacted us. When I found out, what came out of my mouth did not sound like me! I went through every emotion. I was so incredibly devastated. It was like the judge was just letting him off. (Parent of victim)*

Another victim who had just been informed that the sentence had been appealed was angry that she was still not able to put the case behind her and move forward:

*I'm angry as it's just another thing that I have to go through again. If the appeal goes through, then I have to go back to court. After [a sexual assault] happens to you, it takes up your whole life, it just keeps going. It never really ends, at least that's how I feel. So, I'm hopeful the appeal doesn't go through.*

## 9.10 Post-Sentencing

Immediately after the verdict and immediately after the sentence can be particularly difficult times for victims, regardless of the outcome of the trial. Complex emotions arose. Even in cases where an offender was found guilty/received a satisfactory sentence from the point of view of the victim, there could be a sudden 'come down' from the initial elation at hearing the verdict/sentence and trying to go back to 'normal life' with little or no follow-up support from anyone in the justice system.

Some comments suggest that a great deal of pent up emotion came up after the verdict and after the sentencing, which they were not well equipped to handle:

*There was no support, and you have that initial high of oh my god, I've been through all of this, and you're completely vindicated. But then I guess there comes the low, because regardless of him, you know, going to jail or whatever happens to him, you've still endured this horrific, horrific abuse.*

*After the trial, it's like a grief, you know? It's such a massive build-up to this one event. And then it just drops off, you know? And especially if it's not guilty - man, what are you doing now? This person's still out in society and you're just left with this very lost feeling.*

*[Despite the guilty verdict], I burst into tears. It was really weird. I was expecting to feel a lot happier but actually it was a really, really hard moment I think. It was a relief, a massive relief. But after all that time I just fell apart.*

Some participants felt abandoned after the sentencing. They generally had not received any further information from the courts or the Police and in most cases, had not been offered any additional support:

*You go through this process, your adrenalin's going, then suddenly everything's finished, he's been sentenced. And life goes back to normal, but there's no normal anymore. It's a different normal and I'm still struggling with it. [Police and courts] didn't give us any information, no numbers we can call. (Parent of victim)*

*They never checked up to see if I was all right. Who's to say I didn't end up hanging myself after the case because of the way I was feeling? They just never checked up. OK, I had my wife for support but not everybody has that.*

## Post-Sentencing Support

Perspectives on counselling were mixed, with some able to access funded counselling through ACC or a sexual violence NGO support agency. Some participants found counselling and/or psychotherapy to be extremely helpful for them in being able to deal with the justice process, and in their journey to recovery.

Other victims, who often described themselves as very private people, were extremely reluctant to participate in counselling as they did not want to have to recount their story to a stranger and be questioned about it. Some were very keen to 'move on' from what had happened to them and felt that they wouldn't be able to do this if they were being constantly made to think about what had happened to them in counselling sessions:

*[Victim daughter] got offered counselling but she didn't want it. She's getting sick of the counsellor bloody wanting her to talk to her, to talk about it all. She's over it. She doesn't want to have to keep talking about it.*

Parents of young victims of sexual violence commented that there was no funded therapy or counselling available to them.

A male victim felt that it was difficult to access the counselling support they wanted and highlighted what was perceived to be a service gap. (However, it may be that the participant was unaware of where to seek appropriate services):

*There's definitely a link missing between ACC and the Ministry of Justice in terms of therapeutic services provided. In terms of making it accessible and also perhaps I felt like it was, the whole way through in terms of the rehabilitative services offered were often catered towards women.*

## 9.11 Victim Notification Register

Among victims whose offender had pled guilty or been found guilty at trial, most were aware of and had been offered to be on the Victims' Notification Register. Many noted that this gave them some sense of peace of mind in that they would be made aware of matters pertaining to the offender that might affect them.

One participant noted that on the day of the verdict, being offered the form to complete for this purpose was "too much to take in" and that a more appropriate timing would be at a de-brief perhaps two or three weeks after the conclusion of the trial.



One participant declined to join the Victims' Notification Register as they didn't want to be constantly reminded of what had happened. It was felt that not joining the Register was an important part of 'letting go' of what had happened.

Even though it is a right of victims outlined in the Victims' Rights Act (2002), not all victims recalled this being discussed with them after court proceedings had concluded in either a guilty plea or a guilty verdict.

One participant said that their CVA had helped them to apply to be on the unpublished electoral role after the sentencing, for which they were grateful. This provided a sense that the offender would be less likely to be able to find them on release from sentence:

*A little bit of security. His house arrest ends in September, so I wanted to get it done before then. I admit there's a very low-level risk of him seeking vengeance or anything like that, but it was just a nice kind of safety barrier.*

## 9.12 Key Themes and Victims' Suggestions for Improvement

The key themes relating to victim needs around the sentencing were:

- Feeling ill prepared for the sentencing or process, which resulted in some 'nasty surprises' which were deleterious to the victim in some way; most notably;
  - Where the offender and supporters were in close physical proximity which resulted in a reduced sense of emotional/physical safety.
  - Being unprepared to hear all full charges read publicly.
  - Discounting of the sentencing, what starts off to be a longer sentence is whittled down by mitigating factors.
  - The 'lightness' of the sentencing, can seem incongruent with their experiences of sexual violence (particularly home detention).
  - Due to rescheduling or distance, the victim was not able to attend the sentencing.
- Being subject to decisions and actions of process or people involved in the sentencing that were based on assumptions about the victim's preferences and needs rather than a process which allowed them to make choices. This created revictimisation through disempowerment and the 'voicelessness' of the victim. For example, it being assumed that the victim did or did not wish to make a victim impact statement, or this not being offered at all to the victim; the limitations to content of the victim impact statement or editorial changes enforced by the defence team; it being assumed that the victim would or would not appreciate financial reparation; it being assumed that the victim would or would not or *should* participate in restorative justice; it being assumed that the victim would or would not like to be included on the victims notification register.

- A sense that at the completion of the justice process, the personal scale of what happened to the victim has not been 'met' by a system which, although adversarial in nature, necessitates that the victim takes a role as witness to their own sexual violation.
- Lack of support after sentencing can leave victims feeling alone. A sense of abandonment may exacerbate feelings of abandonment associated with the original trauma.
- As is demonstrated in some of the quotations in this section, this can be a point at which victims are subject to increased symptoms of depression and even to suicidal ideation.

A range of suggestions were made by victims, in terms of how the sentencing process could be improved for them, with the aim to reduce the risk of revictimisation and/or retraumatisation. The suggestions should not be considered an exhaustive list, they are outlined below:

### Option to be Present at Court

- Being given the option to be present at court for sentencing. For example, those who live away from the area could be given the choice.

### Reading the Victim Impact Statement

- Allowing every victim the opportunity to read, or have their victim impact statement read, aloud in court if they so choose to do so:

*I believe that the court should allow each and every victim who wants to read that or wants someone to read that out loud, they should be made to sit there and listen. If there's 18 victims, sit there and listen to what you did.*

- Being able to read a victim impact statement in anonymously if they choose (i.e. from behind a screen).
- Allowing a support person, for example a member of the NZ Police, to stand beside the victim as they read their victim impact statement:

*I felt way too vulnerable to just stand up there by myself. If the detective had stood up there with me I would have said my victim impact statement. But she said that she wasn't allowed to, and so I couldn't do it.*

- Allowing victims to more freely express themselves in their victim impact statement, with fewer restrictions on content:

*Some of the rules around those victim impact statements need to be changed too - what can be included and what can't be included. I believe that they should not be able to put any restrictions on any victim on what they want to say to their attacker, or their abuser, their rapist or whatever. They should be allowed to say what they want to say.*

### **Post-Sentencing Support**

Ways in which victims felt that they could be better supported post sentencing included the following:

- Informal phone calls from Police member(s) to check how the victim is going and to direct the victim to support as necessary.
- Post-sentencing support for the victim – for as long as they need. Some suggested that Court Victims' Advisors could undertake this role (particularly for more tangible challenges as such organising financial support or other practical support); others felt the role was better suited to a trained psychologist:

*After everything's finished, there needs to be check-ups to make sure [the victim] is okay – to see if they need guidance or support, if they have someone to be there for them. You have your family but sometimes you don't want to share stuff with your family.*

*There should be someone who contacts you after sentencing, to help you get money if you can't work, to help you deal with nightmares, tells you where to get support if your family can't support you, all those sorts of things.*

# 10 Reflections on the Experience of the Justice System

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## Key Findings:

- The justice process can cause revictimisation and retraumatisation for victims like those involved in this research.
- Victims described that their needs were not always considered by the justice system.
- Victims' rights were not always upheld through the justice system.

## 10.1 Victims as Witnesses

Most participants felt that the justice process they had experienced was in many ways not centred on the needs of victims. There was a sense that the system was more focussed on processing cases and the maintenance of defendants' rights. While most participants acknowledged the right of defendants to a fair trial, in many instances the rights of offenders appeared to overshadow their rights as victims, or of justice being served:

*Police and courts are about getting offenders through the system, not about impact on victims or providing necessary support. (Guilty plea)*

*Overall, I feel that victims are forgotten in the current justice system. So much focus is on the prosecutor and the defendant. It seems that our voice is lost. (Guilty plea)*

*I came up against lots of different parts of the justice system, and none of them seemed particularly good I think, in supporting me or making me feel like justice was actually being done. (Plea bargain; guilty plea on some charges)*

Some victims felt that they had become an element of the justice process, rather than being treated as an individual who had been through a traumatic experience:

*There's a big ability to become a number, you know? I understand that people deal with cases all the time. I know that people [who work in the justice system] have to depersonalise a little bit because of the content of what they're dealing with and stuff.*

*Throughout this process you're already relegated to not really a person through the system, you're kind of like a cog in the machine.*

*You have no idea until you get involved what it's like. You're made to feel like a nobody.*

Many participants felt that the offenders' rights took precedent over their rights throughout the process and this was experienced as a lack of control:

*The court process, I was feeling like I didn't have any control, and he had all the control. Even after he'd pled guilty, he still appeared to have all the rights. After pleading guilty, all of a sudden, it didn't turn from him being the focus to us being the focus. He was still the focus, you know? It's just so wrong.*

Participants often drew a distinction between the people who work within the justice system and the processes of the legal system. As this participant clearly described, she felt that the Police and prosecution team worked extremely hard to try to bring the defendant to justice, but that due to rules around the admissibility of evidence, he was found by a jury to be not guilty:

*The law totally let me down. The law in New Zealand totally let me down. The Police feel the law let me down, the prosecutor felt the law let me down, but their hands were tied because they had to work within the law. The law does not care about victims of sexual violence.*

Unfortunately, the experience of the justice system that some victims had had, led them to conclude that choosing not to make a complaint to NZ Police regarding sexual violence may have been a better option. For these participants, the negative impacts of revictimisation were particularly pressing:

*Overall it just sucks, it really f\*\*\*ing sucks and you don't feel like anyone believed you or wants to believe you. It's too much of a hassle. It takes too long. It was shit.*

*You don't want to discourage people from going to the Police. But it's so fricking hard, it's a lot of the time, it's actually causing more trauma and damage than anything else. I know a lot of people that just wouldn't do it because of the process of it all. It's so overwhelming and traumatising.*

In contrast, others said that even though they had endured a process difficult beyond their imagining, they would do so again if given the choice in hindsight.

## 10.2 Upholding Victims' Rights

The Victims' Rights Act (2002)<sup>30</sup> outlines the principles guiding how victims of crime should be treated, as well as the services that should be made available to them. In addition, it outlines the rights of victims through the justice system.

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<sup>30</sup> NZ Government; Victim's Rights Act (2002)

While most victims' experiences were consistent with the guiding principles and their rights under the Act, some participants highlighted aspects of their treatment that suggest that their rights were not upheld.

**Table 10.1: Victim’s Perceptions of Treatment by Guiding Principles and Rights Under the Victims’ Rights Act**

	<i>Police (including initial complaint and investigation process)</i>	<i>Courts (including prosecutors, court staff, Court Victim Advisors, and judges)</i>
<b>Guiding Principles: Victims Should...</b>		
Be treated with courtesy and compassion	<i>Almost always; few exceptions.</i>	<i>Almost always by VAs and other court staff; some indifference shown by judges; little interaction with prosecutors although generally treated well.</i>
Have their dignity and privacy respected	<i>Almost always; few exceptions.</i>	<i>Almost always; few exceptions.</i>
Have access to services as required (welfare, health, medical, counselling etc.)	<i>Sometimes; limited access to sexual violence-specific counselling; not always as timely as would have liked.</i>	<i>Usually not made available through courts. Post-sentencing needs not met.</i>
Have access to a restorative justice meeting	<i>Never mentioned by NZ Police.</i>	<i>Occasionally suggested by prosecutor.</i>
<b>Victims’ Rights: Victims should...</b>		
Receive information about programmes, remedies and services made available (as soon as practical); including restorative justice	<i>Referred to counselling frequently; other programmes, remedies or services infrequently.</i>	<i>Infrequently.</i>
Receive information about the progress of the investigation; charges laid or not laid and why; victims’ role as witness; victim name suppression; date and place of each event; outcome of each hearing	<i>Usually kept up to date by Police; however, communication not always proactive; long gaps in communication occurred. Victim usually, but not always, clear on role as witness.</i>	<i>VAs generally keep victims well informed; occasional gaps in information being provided.</i>
Prepare a Victim Impact Statement	<i>N/A</i>	<i>Prosecutor usually, but not always (esp. where there was no trial), informed victim re statement and collected for presentation to court.</i>
Have their view on name suppression for the offender heard by the court	<i>N/A</i>	<i>Occasionally</i>

Have their views on bail heard by the court	<i>N/A</i>	<i>Infrequently</i>
Be included in the Victim notification register	<i>N/A</i>	<i>Usually, but not always</i>
Have property taken as evidence returned.	<i>Not always – although compensation was generally provided.</i>	<i>N/A</i>
Have privacy maintained	<i>Usually; occasional breaches</i>	<i>Usually; occasional breaches</i>



# 11 Conclusions

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This study takes place in the context of the current and long-standing adversarial justice system in New Zealand. While it is important to bear in mind that the findings reported here represent a relatively small sub-set of victims of sexual violence, they are descriptive of the experiences of those victims who have experienced the justice system as witness complainants. Many of the participating victims' needs and suggestions for change indicated that a more victim-centric process would seem likely to cause less harm and reduce the risk of revictimisation and/or retraumatisation.

Victims interviewed needed to be able to have at least some level of trust in the justice system, to be well prepared for the experience, to have their input valued, for matters to proceed as quickly as possible, with an absolute minimum of delays and to be advised of reasons when they cannot.

## 11.1 Overall Perspective on Justice Process

The impacts of sexual violence on victims are well documented; they can be severe, with implications for all aspects of an individual's wellbeing<sup>31</sup>; psychological, physical, relational and financial. Effects of the offending often go beyond the victim themselves and involve whole families/whānau, sometimes over several generations<sup>32</sup>.

Participants' experiences of the justice system are complex and diverse, reflecting both the nature of sexual crime and also the process of justice. Participants identified aspects that worked well for them and also shortcomings in the justice process, including those that caused retraumatisation and revictimisation. Almost all participants found some aspects of their journey through the justice system to be difficult, and in many cases, they said it was much more difficult than they had anticipated.

The psychological risks to some participants were significant, a number of quotes gathered in this research referred to the potential for (at least) suicidal ideation as an outcome of the experience at the most painful points in the process.

Participants often drew a clear distinction between the people who work within the justice system and the justice system itself. Justice sector staff, including members of the Police, prosecutors, Court Victim Advisors, Victim Support staff and other court staff, were generally found to be courteous, helpful, compassionate, respectful and well-intentioned. Positive interactions with these people helped victims to navigate – and endure – the justice process.

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<sup>31</sup> Orth, U. (2002). Secondary Victimization of Crime Victims by Criminal Proceedings. *Social Justice Research*. Vol. 15, No. 4.

<sup>32</sup> Herman, J. (1992). *Trauma and Recovery*. Basic Books, New York.

Several key factors were identified in the research that constituted major 'pain points' for victims, which resulted in revictimisation. These are outlined below (Section 10.2). In addition to these there were other elements that were also challenging and may give rise to revictimisation, however they were generally more manageable or tolerable, given the expectation that some duress would be required to achieve a justice outcome.

The pain points identified are best contextualised within what we found to be substantial variability in victims' experiences of the justice process. Our evaluation of victim experiences against their rights under legislation (Section 10.2) demonstrated just some of the variation and inconsistency which takes place for victims like the ones we spoke with.

This lack of consistency did not seem to pertain to any single or specific group of factors but was a function of the nature of the complaint, the victim's and offender's circumstances, location, specific individuals involved with a victim and the outcome of various elements of the process. This variability in itself may reflect a kind of 'luck of the draw' reality for victims in the justice system. Inconsistency like this can be destabilising, particularly given that the group of victims have been subject to traumatic sexual violence and may be highly sensitised to anything unexpected, which may trigger traumatic responding<sup>33 34</sup>. When such variation exists, the possibility for revictimisation and retraumatisation may be much greater than in more consistent circumstances.

There is a difference, nevertheless, between offering consistency, where it is possible, and making assumptions about what victims do and do not want or need. There was no 'typical' victim. The victims in this research who fared best in the justice system were those who had their individual needs listened to and accommodated. An approach which helped them to be informed, kept them safe physically and from surprises, and gave them choices was the more empowering.

## 11.2 Pain Points for Victims

This research has identified five key pain points for victims of sexual violence journeying through the justice process. Some victims feel that their needs are not being met; that they have not been provided with sufficient information on all aspects of the justice process; lengthy timeframes and delays in processes reaching a conclusion; safety and security at court; cross-examination; and perceived leniency of sentences. Each of these is discussed further below.

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<sup>33</sup> Levine, P.A. (1997). *Waking the Tiger: Healing Trauma*. North Atlantic Books, California.

<sup>34</sup> Herman, J. (1992). *Trauma and Recovery*. Basic Books, New York.

### Lack of Information

For a range of reasons (including trauma, perceived lack of a need for information, being unsure about what they need to know and/or where to look), participants tended to not be active information seekers. Most participants relied on piecemeal information from a range of sources (both within the justice system and from outside, such as family, friends and the media) and tended to acquire knowledge as they went along – but often later than they needed.

There appeared to be widespread misunderstanding and gaps in the knowledge that victims had about various elements of the justice process and what their role in it will be. This was evident in participants not being aware of the purpose and potential use of their evidential statement, feeling unprepared for the number of court appearances and opportunities for plea that the offender would have, not fully understanding their role as witness for the Crown, not comprehending the role of the prosecutor as representing the community (rather than representing them), and being unprepared for judge's discounting of sentences. In addition, it appears that victims did not have a comprehensive grasp of what their rights are within the justice system, despite this being published in layperson's terms in multiple brochures produced by the Ministry on the Victims Info website<sup>35</sup>, further illustrating the general lack of information seeking that victims undertake.

### Implications for Revictimisation

The way information was not available to victims we interviewed, when it would have been of great use to them, may reflect the psychological circumstances of revictimisation. In the initial trauma the victim was unable to help themselves and was often unable to get help from others. The process which victims have undertaken through the justice system is overloaded with events and circumstances for which, with better information, the victim would have or could have been better prepared but instead, like some violent trauma, difficult parts of the process were experienced 'out of the blue', potentially triggering a trauma response. The participants in this research demonstrated a lack of awareness of what they needed to know, typical of any person entering a new system for the first time. They also seemed to have a lack of ability to seek information (or help). This inability to find help could psychologically reflect their experience as victims of sexual violence and is therefore consistent with revictimisation.

### Timeframe and Delays

Having made a complaint to NZ Police regarding sexual violence, many victims we spoke with described their lives essentially being put on hold as the justice system responds. There was a general understanding that any court proceedings that may eventuate would not occur quickly, particularly in the case of historical crimes.

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<sup>35</sup> [www.victimsinof.org.nz](http://www.victimsinof.org.nz); accessed 20.6.18

However, few participants were prepared for the length of time that the process would ultimately take to conclude. The lengthy timeframe for matters to come before a court is often exacerbated by delays and adjournments due to matters of law that need to be addressed prior to trial taking place and also to administrative errors. The rationale for these technicalities was often confusing or unknown to victims, so essentially it felt like a process over which they have no control and no way of knowing when it will conclude. This lack of certainty could impact on victims' recovery, particularly if they were required to retain very specific details of the violence that occurred.

### **Safety and Security at Court**

Not all courts are designed to allow for victims to be kept separate from defendants and supporters in and around court, including arriving and leaving the building. In addition, despite processes being implemented to minimise the likelihood of contact (such as guidance from Police or court staff), the potential to see their offender at court was a source of anxiety and stress for many victims. Although most were effectively able to avoid this occurring, when they did see the offender and/or supporters this made them feel extremely vulnerable and unsafe.

### **Cross-Examination**

For almost all victims involved in the research who were required to give evidence at court, the most difficult part of the justice process was being cross-examined by defence lawyers. The experience was described by victims as being traumatic and constituting revictimisation. At worst, these victims felt as if they were the ones on trial, with intense anxiety around how they would be perceived by the jury in the face of repeated questioning by defence lawyers aimed at trying to 'trip them up' and discredit their evidence.

### **Leniency of Sentence**

Victims interviewed described the sense of relief and elation at hearing a guilty verdict. This sense of achievement and pending closure was often overshadowed at sentencing when offenders were handed down what was perceived by victims to be an inadequate sentence in proportion to the enduring harm that had been caused to them. Participants were particularly unhappy about sentences being 'discounted' for a range of things which appeared to effectively minimise the offending, and even more so when charges were discharged without conviction. From a psychological point of view this may have triggered similar reactions to the sexual violence the victim experienced, whereby the crime was somehow minimised and the victim's experience diminished.

## **11.3 Aspects That Support Victims**

Whilst a journey through the justice system can be time-consuming, traumatic, frustrating and often demoralising, a number of aspects have been identified that contributed toward making it a more victim-centered and less traumatic process than it otherwise might be. These include:

### Being Treated Well

Victims in the research generally felt that they were treated well (with courtesy, compassion and respect for their privacy and dignity) by NZ Police. Perceptions of prosecutors were similar, albeit generally with little interaction taking place. Court Victim Advisors and other court staff were also generally deemed to be courteous and compassionate toward victims. Judges were also considered to be courteous and compassionate.

### Regular Proactive Communication Throughout the Process

When participants were kept regularly updated by Police on the progress of the investigation - including advising victims when the offender had been brought in for questioning, if and when they had been arrested and what charges had been laid - this helped to alleviate some anxiety around the process. It was valuable to participants to have Police check in with them regularly even when no further progress on the investigation had been made, thereby eliminating or at least mitigating for the feeling of being 'in limbo' for victims through a process that can take many months or even years. Once the case was being dealt with by the courts, participants were appreciative of court victims advisors' efforts to keep them updated on hearing dates, rescheduling etc.

Most victims we interviewed chose not to stay at court after having concluded their evidence and cross-examination. However, for all, it was important to know what was going on in the trial each day, whether there had been any delays or adjournments and the reasons for these; who had taken the stand to give evidence etc. When victims were well informed after each day's proceedings in court – either by the Police or the court victim advisor - they were more able to feel valued as part of the justice process. In addition, it was very important to victims to be advised of the verdict as soon as possible post its reading.

### Preparation for Court

Two key aspects for preparation were identified:

#### ***Court Tour***

Given that the court environment and court processes were unfamiliar to most victims, being well-prepared is a way that the risk of retraumatisation can be reduced. Most participants were invited to take part in a court education tour to find out about the various roles of people in court and to experience the court environment first hand. Victims in this research found this to be extremely valuable. Scheduling this visit as early as possible would allow them time to process the information and subsequently ask any questions that come to mind.

***Practicing Giving Evidence and Cross-examination***

The few participants who felt well prepared for giving evidence and being cross-examined said that this had made a huge difference to their experience and how they were able to deal with the challenges of being questioned at length in front of a jury. Good preparation included being aware of the types of questions that would be asked, how they would be asked, patterns of questions and strategies that might be used by defence counsel in attempts to undermine their evidence. Those who had prepared by engaging in role-play situations (for example, with a counsellor) had found this to be invaluable in enabling them to respond to challenging lines of questioning in a calm and direct manner.

**Private Waiting Space and Being Kept Away from the Offender**

The availability of a safe, secure, private and calming environment in which to wait during the trial was valued by victims. Being able to mentally and emotionally prepare for giving evidence, with the support of whanau/family and friends close by, and comfortable in the knowledge that they could avoid seeing the offender or any members of the offender's family, meant that they could enter the court as witnesses in a better overall state-of-mind than had they been waiting in public areas.

In addition, where the design of courthouses allowed for victims to be able to arrive and leave through entrances other than the public entrance, this was also highly valued as a way of helping them to feel safe. In the absence of a suitably designed building, victims said they felt safer when they were accompanied by Police or court officials.

# Appendix

Information Sheet

Participant Discussion Guide

Self-Completion Questionnaire



### Research on the Experiences of the Justice System for Victims of Sexual Violence

The Ministry of Justice is making changes to improve how victims of sexual violence experience the justice system (the Police and courts). Input from victims is needed to ensure that these changes are relevant, safe and make a difference for them. Gravitas Research and Strategy has been commissioned to collect this information.

If you, or your child, have been a victim of sexual violence and have experienced some aspect of the justice system in the last three years (this includes the Police and/or courts), we invite you to share what this was like for you. There are two ways you can do this:

- In a face-to-face interview of between 60 and 90 minutes, with an experienced researcher, at a time and location of your choice (for example, at the office of a support agency or at your home); or
- In a confidential questionnaire that can be sent to you through the post or by email.

All interviews and questionnaires will be conducted during April and May 2018. Participation in the research is **totally voluntary** – you do not have to be involved unless you choose to be. However, this is a great opportunity to contribute to real improvements being made to how victims of sexual violence experience the justice system.

All participation will be **totally confidential and anonymous**. This means we will carefully protect your name and personal details. Nothing you say will be reported in a way that identifies you, your family/ whānau, or anyone else.

The information collected will be written up in a report for the Ministry of Justice so that they can understand how the justice system is currently experienced by victims of sexual violence (e.g. what makes it difficult and what is helpful) and then assess what impact the changes to their systems have made.

A koha of gift vouchers will be offered to those who participate in an interview as a thank-you for their time.

If you would like to take part in the research, or just want to find out more, please contact Sue at Gravitas Research:



0508 RESEARCH



sue@gravitas.co.nz

**If you are experiencing trauma and would like to talk to someone for support, you can call Victim Support on 0800 842846 – they can refer you to a specialist support organisation in the area where you live.**



# Ministry of Justice: Improving the Justice Response to Victims of Sexual Violence

## *Interviewee Question/Topic Guide (Final)*

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### 1. Introduction and Context

- Overview of evaluation project and Gravitass role
- Purpose and aims of discussion; expected duration; roles of participants
- How the information will be used
- Confidentiality and anonymity
- Participant safety; support services (contact details available);
- Option to withdraw at any time, not answer any questions; request a break etc.
- Purpose and permission of audio recorder
- Opportunity for questions

***Reconfirm participant is happy to go ahead with interview. Check consent form explained and signed.***

### 2. Main Discussion

- We are wanting to understand your experience, in your own words, of dealing with Police and courts. We don't need to know about the event or events that led you to make a complaint to the Police. Our focus is on the **process of the justice system – so that's the Police and courts** - and what your experience of that was.
- If you have had more than one experience of the justice system in relation to sexual violence, we would like to hear about your most recent experience.

### 3. Main Discussion

***Please talk me through your experience of the justice system  
from when you reported sexual violence to the Police.***

**Probes:**

*Use as necessary on each of the following steps in the justice process – only use specific questions if no covered in participants ‘story-telling’.*

**Decision to Make Complaint/Report Incident to Police**

- What influenced your decision to make a complaint to the Police? Did you consider not making a complaint? Why?
- How long after the event took place did you report? *If delay* – why? What influenced your decision to contact Police when you did?
- Did you get advice or support from anyone to make this decision? (i.e. support agency, friends or family?)
- Before you made the complaint, what did you think the process of making the complaint to the Police would be like? Why?
- How did you think the Police would respond to your reporting of the crime?
- Did you have access to any information about sexual violence or the Police or court system prior to making the complaint? *If yes*: What? From where was it accessed? What difference did this information make? What other information would have been useful? *If no*: What information would have been useful at this point?

**Complaint Process with Police**

- Where did you make the complaint/report to the Police (i.e. was it at a Police station or elsewhere)? What was the environment like?
- Who was present? How many Police officers? What gender were they?
- What happened?
- How were you treated? ***Probe on courtesy, compassion, respect for dignity, respect for privacy.***
- How did you feel – before, during and after the Police complaint process? Why?
- How did the actual experience differ from what you might have expected? What, if anything, surprised you (either in a good way or a bad way)?
- What, if any, information were you provided with about the process going forward from making your complaint? By whom? At what stage was information provided to you?
- How did you use this information?
- Was this information adequate? In hindsight, what else would have been useful to know?
- Did you understand what your role would be in the justice process going forward from making the complaint? *If yes*: What helped you to understand?
- How would you describe this process overall?

### **Police Investigation Processes**

- Did you know what to expect during the gathering of evidence by the Police? *If yes:* How did you know?
- Describe what was involved.
- Were you kept informed of the investigation process while it was underway? How? Was this adequate?
- What questions did you have? Were you able to have any questions answered? By whom?
- How did you feel about the investigation process in general?
- How long did this process take? How did you feel about this timeframe? What impact did it have?
- Did you undergo a medical examination as part of evidence collection? *If yes:* How did this process impact you?
- Was any property taken as evidence? *If yes:* Was it returned to you? How did you feel about this process? What impact did this process have on you?

### **Police Decision to Prosecute**

- How were you informed of the Police decision to prosecute or not? How do you feel about this?
- ***If prosecuted:*** Were you provided with information as to what to expect to happen next? Who provided this information? Was the information adequate? How would you describe it?
- ***If not prosecuted:*** Were you provided with adequate information as to why this decision was made? How did this make you feel? What happened from here? What impact did this decision have on you?

### **Time Between Decision to Prosecute and Trial**

- Approximately what was the timeframe between the decision to prosecute and the trial?
- How did you feel about this timeframe?
- What impact did this timeframe have on you?
- What, if anything, changed during this period?
- What, if any, difficulties did you experience having to wait this length of time?

### ***If complaint resulted in court trial:***

#### **Going to Court**

##### **A. Preparation**

- Had you had any prior experience of a court process?
- How prepared did you feel for the court process before it began? Did you have an idea of what the court process would be like before the trial? *If yes:* Where did this information come from? What difference do you think it made?

- Did you understand the roles of the various people involved in the court process? (i.e. Judge, prosecutor(s), defence lawyer(s), jury, support person)? *If yes:* What sources of information did you use to help understand this? *If no:* What was the impact of not understanding these roles?
- Did you meet with the prosecutor before the trial began? *If yes:* When? Describe your experience. How did you feel after this meeting(s)? What difference did it make? *If no:* How do you feel about this? What difference would it have made if you could have meet beforehand?
- Were you involved in the bail process for the defendant? *If not:* Would you have liked to have been? What difference do you think this would be have made? *If yes:* Describe this process and how you found it.
- Were you involved in the process to get name suppression for either yourself or the defendant? *If not:* Would you have liked to have been? What difference do you think this would be have made? *If yes:* Describe this process and how you found it.

**B. The Trial Itself**

- Describe what happened at court
- Describe how you were treated at court by...
  - the judge
  - the prosecutor(s)
  - the defence lawyer(s)
  - the Police
  - court staff
  - supporters – your own and the defendant’s
- Describe the court environment. What impact did this have on you?
- How safe did you feel at court? *Probe to understand sense of safety in the courtroom itself, entering/leaving court building, whilst waiting etc.* Did you have a safe place to go to during adjournments at court if you needed it?
- Describe your experience of giving evidence to the court. *If not mentioned:* Were you offered a choice of ways to give evidence (either behind a screen or via CCTV)?
  - *If yes:* Did you use one of these ways? Why/why not?
  - *If no:* If you had been offered a choice of ways to give evidence, what would you have preferred? Why? What difference would it have made?
- Describe your experience of being questioned by defence lawyer(s). How did you feel?
- Describe what it was like to see the offender in court. How did you feel?
- Describe what it was like to see the Police in court. How did you feel?
- What was your experience of the Judge and/or the Jury?

- During the trial, were you kept up-to-date with what was happening? *If yes:* Who by? Was this adequate? What difference did these updates make? *If no:* How did you feel about this? What difference did it make?
- What was your experience of waiting for the verdict? (i.e. to hear whether the offender was guilty or not guilty)
- What was your experience like of hearing the verdict?

## *B. Provision of Support*

- Did you have your own support person/people at trial? Who was this? What difference did this support make?
- Were you provided with support before, during and/or after the court trial? Who provided support? What impact did it have on your experience?
- *If not mentioned:* Were you supported by a court victims' advisor? *If yes:* How would you describe the support that you received from them? What difference did this make? *If no:* Were you offered support from a court victims' advisor? Why did you not take up this offer?
- What type of support would you have liked to receive but didn't? By whom? How would this have helped? What difference would it have made?

## **After the Trial**

- How did you feel immediately after the court process was over? What about in the following weeks, months?
- Did you have any on-going support after the trial court process was over? *If yes:* What support did you have/from where? What difference did this make? *If no:* What difference could ongoing support have made to you?

## **If guilty verdict:**

### **Pre-Sentencing and Sentencing**

- Were you offered a restorative justice meeting? *If yes and took part in meeting:* What was the impact of this? *If yes, but didn't take part in meeting:* Why did you not take part in a meeting? How do you feel about this?
- Did you attend the sentencing? *If yes:* Describe your experience of this. *If not:* Why not?
- Did you write a victim impact statement? *If yes:* Did you read this out in court or someone else? *If read out:* Describe your experience of reading this out. *If someone else:* What influenced your decision to have someone else read this out in court?
- Was the offender sentenced to pay reparation to you? How did you feel about this decision? What impact did this have?

- Were you offered to register on the victims' notification register? *If not:* Would you have liked to have been? What difference do you think this would have made? *If yes:* Describe this process and what impact it had on you.

*If offender was imprisoned, ask:*

- If/when the offender comes up for parole, would you like to be involved in this process? If yes: In what way(s)? What difference do you think this will make? *If no:* Why not?

#### 4. In Conclusion

- Thinking about your experience of dealing with the Police and courts, would you say you were treated with courtesy? With compassion? With respect for your privacy and dignity? Why/why not?
- What, if anything, has been most helpful in your recovery? *Probe on the justice system experience if not mentioned*
- What, if anything, has hindered your recovery? *Probe on the justice system experience if not mentioned*
- If you found out that a friend or family member was in a similar situation to you regarding sexual violence, given the experience you have had, what would you advise them to do? Why?
- As a victim of crime, you have the right to be treated with courtesy, compassion and with respect for your privacy and dignity. Given the experience you have had, what do you think are the most important things that need to be changed to improve the experience of the justice system – so that's the Police and courts - for victims of sexual violence? ***Probe on each of courtesy, compassion, respect for dignity and respect for privacy as appropriate.***

# Helping to Improve Victims’ Experiences of the Justice System

The Ministry of Justice is making changes to improve the experience of victims of sexual violence when dealing with the Justice System (Police and courts).

Input from victims/survivors is important so that changes will be relevant and safe – and actually make a difference. Gravitas Research and Strategy is collecting this information. If you have dealt with the Police or courts in the last three years as a victim to a sexual violence complaint, you are invited to contribute by sharing the knowledge you have gained through your experience.

The questionnaire is voluntary and what you decide to share will be up to you. You can choose which questions you do or do not wish to answer and how much detail you want to provide. All responses are **confidential and anonymous**. None of the information you provide will be attributed to you or identify your family/whānau or friends. We will provide a written report for the Ministry of Justice so that they can understand what victims’ experiences of dealing with Police and courts is like – what things work okay, and what is difficult or unpleasant.

It is important that we hear from a wide range of sexual violence victims in the research, including young people. As an extra safeguard, participants **aged younger than 16 years** need to have the informed consent of a parent or guardian before completing this questionnaire. Please confirm that you are aged 16 years or over or have your parent/guardian sign to indicate their consent.

I am aged 16 years or over

OR

Signature of parent/guardian .....

If you are experiencing trauma and would like to talk to someone for support, you can call Victim Support on **0800 842846**. They can refer you to a specialist support organisation in the area where you live.





**Section 2: Access to Information**

**Q2.1** Before you decided to make a complaint to the Police, how much did you know about what would happen when dealing with Police and courts?

Please circle one answer

I knew a lot

I knew about some things  
but not about others

I knew a little

I didn't know anything  
at all

**Q2.2** Before you made a complaint to Police what, if any, information did you look for? What did you want to know about?

Information looked for	Were you able to find this information?
	YES/NO
	YES/NO
	YES/NO
	YES/NO
	YES/NO

Or: I didn't look for any information

**Q2.3** Throughout your experience with Police (and the court), how easy or difficult was it to access the information you needed?

Please circle one answer

Very  
easy

Quite  
easy

Quite  
difficult

Very  
difficult

Didn't really need to  
access any information

**Q2.4** Thinking back over your entire experience dealing with Police (and the court), what other information do you think would have been useful to have had – or would have made a difference if you had had it?

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Or: No other information necessary

➤ **If your complaint to Police about sexual violence didn't go to court, you can skip to Section 4.**

**Section 3: Your Experience at Court**

**Q3.1** Which court did the trial (court case) take place in? \_\_\_\_\_

**Q3.2** In what year did the trial take place?

**Please circle one answer**

2015                      2016                      2017                      2018                      Unsure

**Q3.3** What was the verdict of the trial?

**Please circle one answer**

Guilty on all sexual violence charges (including if only one charge)	Guilty on some sexual violence charges, not guilty on other charges	Not guilty on all sexual violence charges	No verdict	Unsure
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**Q3.4** Please provide any thoughts on your experience at court (other than those you have mentioned earlier) and any improvements that could be made, in relation to **dealing with court staff**:

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**Q3.5** Please provide any thoughts on your experience at court (other than those you have mentioned earlier) and any improvements that could be made, in relation to **your giving of evidence**:

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**Q3.6** Please provide any thoughts on your experience at court (other than those you have mentioned earlier) and any improvements that could be made, in relation to **anything else about the experience that impacted on you**:

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**Q3.7** How **safe or unsafe** did you feel while you were at court?

**Please circle one answer**

Very  
safe

Quite  
safe

It varied

Unsafe

Very  
unsafe

**Q3.8** What made you feel **safe**?

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**Q3.9** What made you feel **unsafe**?

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**Q3.10** Did you see or have **any contact with the defendant(s)** outside the court at any time during the trial?  
**Please circle one answer**

Yes

No

Unsure

What impact, if any, did this have on you?

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**Q3.11** Did you have access to **separate facilities** during the trial (bathrooms, tearoom etc.) than those used by the defendant or their friends/family/supporters?

**Please circle one answer**

Yes

No

Unsure

What impact, if any, did this have on you?

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**Q3.12** Please indicate how much you agree or disagree with each of the following statements about the court staff. Court staff includes all staff you had contact with at the court (security staff, Victims’ Advisers, courtroom staff, judge) – **EXCEPT THE DEFENDANT’S LAWYER(S)**.

**Please indicate one answer for each statement.**

Court staff treated me <b>politely</b> .	Strongly agree	Agree	Varied too much to say	Disagree	Strongly disagree
Court staff were <b>kind and caring</b> towards me.	Strongly agree	Agree	Varied too much to say	Disagree	Strongly disagree
Court staff treated me with <b>respect</b> .	Strongly agree	Agree	Varied too much to say	Disagree	Strongly disagree
Court staff respected <b>my privacy</b> .	Strongly agree	Agree	Varied too much to say	Disagree	Strongly disagree
Court staff showed they <b>understood my situation</b> .	Strongly agree	Agree	Varied too much to say	Disagree	Strongly disagree
Court staff were able to <b>answer any questions</b> I had.	Strongly agree	Agree	Varied too much to say	Disagree	Strongly disagree

**Q3.13** Did you meet with the prosecutor **before** the first day of the trial?

**Please circle one answer**

Yes

No

Unsure

What impact, if any, did this have on you?

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**Section 5: About You**

These final questions are to help us understand who has responded to the survey. Like all the information you have provided, this information will be kept confidential and will not be used in a way that could identify you.

**Q5.1** What is your age group?

**Please circle one answer**

13-24 years                      25-39 years                      40-64 years                      65 years or older                      Prefer not to say

**Q5.2** What gender do you identify with?

**Please circle one answer**

Female                      Male                      Gender diverse                      Prefer not to say

**Q5.3** Which main ethnic group(s) do you identify with?

**Please circle as many as apply**

Māori                      NZ European/Pakeha                      Pasifika                      Asian/Indian                      Other                      Prefer not to say

*Thank you for taking the time to share your thoughts.*

**Please fold the questionnaire as shown on the following page, tape it closed and post (no stamp is needed). All questionnaires should be posted by Monday 21<sup>st</sup> of May 2018.**

If you are experiencing trauma and would like to talk to someone for support, you can call Victim Support on **0800 842846**. They can refer you to a specialist support organisation in the area where you live.

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*(Fold here)*

**Freepost Gravitas  
PO Box 3802  
Shortland Street  
Auckland**

**Attn: Sue Allison**

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*(Fold here)*