

# **Achieving Justice For Victim/survivors of Sexual Assault**

**Marg D'Arcy, CASA House**

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This paper will discuss the Sexual Assault Code of Practice that has operated in Victoria since 1991 and discuss its effectiveness in guiding the relationship between centres against sexual assault, police and adult victim/survivors of sexual assault. The paper generally refers to victim/survivors as women in recognition of the reality that victim/survivors of adult sexual assault are primarily women and offenders are predominantly men.

## *Background*

The Victorian Code of Practice aims to:

- provide a coordinated approach to the handling of sexual assault cases (regardless of age or gender of the victim), by police, Centres Against Sexual Assault (CASA) and other victim assistance programs.
- increase the confidence of sexual assault victims and the public in police management of sexual assault cases so as to increase reporting of sexual offences
- increase the apprehension of offenders
- maximise successful prosecutions
- minimise trauma experienced by sexual assault victims during the investigative process

The code was developed in part in recognition of the potential conflict between the police role of investigation and applying the law and the support needs of victim/survivors of sexual assault.

The code applies generally to all reports of sexual assault, whether recent or past, but is most commonly referred to for victim/survivors of recent sexual assault.

Centres Against Sexual Assault

There are fifteen Centres Against Sexual Assault in Victoria, 10 of which offer crisis care to victim/survivors of recent sexual assault. The definition of 'recent' can include within the last 24 hours or up to two weeks, depending on the individual CASA.

CASA House has two roles in relation to the code of practice.

The first is the operation of the State-wide After Hours Telephone Service which coordinates the crisis response across the state. The way that works in practice is that police contact the After Hours Service through an emergency line and arrange to bring the victim/survivor who has contacted the police to the nearest Crisis Care Unit and for a counsellor/advocate to attend. The After Hours service contacts the counsellor/advocate and the hospital to inform them of the situation and then notifies police of the ETA of the counsellor/advocate. Most Crisis Care Units are located in hospitals.

The second role of CASA House is to provide a regional service that includes 24 hour crisis care to victim/survivors of sexual assault. This means having a counsellor/advocate on call who can be called in to the crisis care unit at any time of

the day or night to provide support and advocacy to a victim/survivor of sexual assault. The role of the counsellor/advocate is to provide support and information to the victim/survivor so she can make an informed choice about the action she wants to take and to advocate for her to exercise that choice. The c/a also coordinates the medical care when required and supports the woman through the medical examination.

### *Police*

The Code identifies three key police roles, that of the police who receive the initial report, the Community Policing Squad and the CIB. The police who receive the initial report are required to notify a CPS member.

The Community Policing Squad officers play a critical role in providing support and information to the victim/survivor, collecting evidence, conducting the interview and taking her statement. The Code requires that they are sensitive to the victim/survivor's immediate physical and emotional needs, provide her with information about medical care and support services and transport her to the nearest CASA or Crisis Care Unit within two hours of the initial report. The Code provides for a CPS officer of the same sex as the victim/survivor to conduct the interview with the victim/survivor and take her statement.

The CIB or officers conducting the investigation are required to liaise with the CPS regarding the statement, keep the victim/survivor informed of the progress of the investigation, advise her of the outcome of any bail applications and conditions of bail and advise her if there is no prosecution.

### *The effectiveness of a coordinated approach.*

In addressing this issue I will explore:

- How 'coordinated' and therefore predictable, the coordinated approach is
- The impact of the Code of Practice on increasing the confidence of the community and the sexual assault reporting rate.

An evaluation of the Code of Practice was conducted in 1993<sup>1</sup>. That evaluation identified coordination as a key aspect of the code and recommended a number of changes to improve the operation of the code. It recognised the constant balancing act that is played out within the operation of the code where the police role of investigation and documentation is juxtaposed with the counsellor/advocate's role of support.

Generally, the key players are aware of their roles and there are guidelines for resolving conflict, although sometimes there are problematic attitudes. In Victoria last year, there were around 450 after hours crisis care units attended by counsellor/advocates from centres against sexual assault and over half of those involved police. There are also crisis care units offered during business hours, around one third of CASA House' units were during business hours.

One of the factors that is beginning to impact on the coordination aspect is the restructuring that is taking place in Victoria Police. The Victoria Police, like all public service bodies in Victoria is undergoing a massive restructure with the amalgamation of specialist squads and the rationalisation of the number of community police available outside of business hours. One of the successful elements of the Code

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<sup>1</sup> Rape Law reform Evaluation Project *The Police Code of Practice for Sexual Assault Cases*, Department of Justice Victoria 1995

previously has been the availability of women CPS officers to conduct interviews and take statements, and to provide a woman's face at the time of the initial report. This is particularly important when one considers that in the majority of cases, the forensic medical officer will be male, as will be the CIB personnel, so the more women that are available, the less hostile the environment will seem.

However, in the last twelve months there has been a significant change. The cost cutting measures introduced by Victoria Police have heralded a marked increase in the number of all male officer squads attending the unit and a corresponding decrease in the degree of sensitivity to the needs of victim/survivors. It seems that the territory around the role of counsellor/advocates in providing support to the victim survivors and the role of police in conducting an investigation requires renegotiation almost with each crisis care unit. An example of the decrease in sensitivity was a recent unit where the police attending were two male officers who were wearing holsters and guns. In another case, a woman was threatened with being charged with possession if she would not make a statement.

CASA House, and all Victorian CASAs base crisis care for victim/survivors of sexual assault on a rights/advocacy framework. Within this framework, to be effective a counsellor/advocate must:

- Believe in the victim/survivor and the validity of her account of the experience.
- Acknowledge the victim/survivor's individual experience.
- Give constant affirmation of the victim/survivor's blamelessness.
- Give back control to the victim/survivor.
- Accept difference of opinion while remaining supportive.
- Be non-authoritarian.
- Be encouraging, open and honest.
- Show acceptance.
- Give accurate information.
- Use language that is not judgmental.
- Be willing to share common experiences with women.
- Be willing to explore the social context of sexual assault.

Such an approach will mean that the victim/survivor is able to recover from the trauma of her experience more quickly. She will understand that her responses are normal, will understand that sexual assault is not her fault and that she should not feel blame or guilt for the violation perpetrated against her.

It is clear that the above will be in direct contrast to the requirements of the investigative role which will mean that the victim/survivor's account of events will be constantly challenged and tested. The purpose of the Code of Practice is to attempt to provide a balance between the two and recognise that a higher degree of sensitivity and understanding will facilitate better communication between the investigator and the victim/survivor.

In identifying the need for statement takers and interviewers to be of the same sex as the victim/survivor, the Code of Practice recognises that sexual assault is a gendered crime. The police response is provided within the context of the inherently male culture that continues to dominate within Victoria Police. This was reinforced last year with the Sexual harassment case taken to the Equal Opportunity Commission by Narelle McKenna. In response to the findings of the Commission the Victoria Police did not consider their operational procedures and policies to remove opportunities for harassment nor did they consider education and training for police officers who had openly stated that women could not work on their own. Instead they appealed the decision and the appeal has yet to be heard. In the meantime, openly

sexist attitudes and more subtle elements of the male culture continue to thrive<sup>2</sup>. There are no women in Victoria Police above the rank of Chief Inspector and the ratio of women to men is the same on the verge of the millennium as it was a decade ago.

The second element of effectiveness is the measure to which the code has been successful in increasing the confidence of the community about reporting sexual assault to the police and increasing the reporting .

It must be said that there has been mixed success with this. In the first few years after the Code of Practice was introduced there was a significant increase in the number of reports of sexual offences to Victoria Police. However, since 1993/94 the reporting rate has been relatively static with only minor percentage variations (up and down) each year . Comparisons of estimates from Crime Victimization Surveys of the incidence of sexual assault against adults in the community indicate that the reporting rate is still as few as 11% of victim/survivors of sexual assault report the assault to the police<sup>3</sup>.

This should be of utmost concern to police throughout Australia. Practices that may continue to inhibit confidence in the reporting process include those identified above, such as gender of police officer, gender of forensic medical officer and the understanding of the support needs of the victim/survivor. In addition, there is a question of attitudes. It is uncommon to talk to police about sexual assault and still not get a question about the level of false reporting. Police will often warn women as a matter of course that they will be charged with false reporting if what the woman is saying is later found to be untrue. While some police may feel the need to spell this out, it is a statement which is unlikely to engender confidence in the victim/survivor and which gives her a clear message that she will not be believed. Perhaps we should ask how often victims of other crimes are given that warning when making a report? The fact that it is so often given to women reporting sexual assault indicates the strength of what Jocelyn Scut has identified as the image of the 'incredible' (i.e. unbelievable) woman.

Of course, the police response and degree of confidence in police reports is only one factor that may influence a woman's decision to report sexual assault. Her understanding of the court process , the experience of the forensic medical examination, including being able to choose a woman doctor, and the degree of support she has from family, friends and professionals will all have an impact. Until we can guarantee women that they will not be revictimised at any stage of the criminal justice system, it is unlikely that the reporting rate will increase substantially.

The degree of confidence in the criminal justice system is significantly undermined by the current defence practice of subpoenaing the notes of counsellors who have provided support and advocacy. While there have been some legislative attempts to protect sexual assault counsellor/advocate's notes from being disclosed in sexual assault trials, it still falls a long way short. This means that woman cannot be given a guarantee of confidentiality when they seek the support of centres against sexual assault..

In conclusion then, it is important to note the achievements of the Code of Practice. Its significance lies in the recognition of the importance of the response provided to

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<sup>2</sup> Nicholson D, *Police Responses to Crimes Against Women (Family Violence and Sexual Assault)*, 1997, also see article in *Women Against Violence, An Australian Feminist Journal*, July 1998

<sup>3</sup> D'Arcy M *Speaking the Unspeakable* CASA House 1999

victim/survivors of sexual assault at the time of the crisis. It is an acknowledgment by the key players – police, forensic medical officers and CASAs that much can be achieved if there is a coordinated and consistent response.

However, in times where the structure of the Victoria Police is undergoing significant change, it is important that cost cutting and 'effectiveness' measures do not detract from the objective of achieving justice for victim/survivors. What is important is that dialogue continues between police, CASAs and FMOs and that there is a genuine commitment to continue to work together to provide the best possible response for women.