

I am a 41 year old mother of two who has been fortunate enough to never have had any encounter with the police or DPP in my life until last year.

On March 18th 2022, after a night out with girlfriends, I was raped in my own home by a man that I did not know.

It was reported to the police the next morning and my life has not been the same since. The entire day was a blur of police, CIB, Crime Scene Investigators, Forensic Hospital exams, sexual assault support organisations... a world I never thought I'd find myself in, yet here I was.

My experience with Police, CIB, support services and hospital staff was outstanding, and I felt supported and heard which was my biggest fear in coming forward. I wanted to be part of standing up and holding people to account. I wanted to prove that by coming forward, you will be heard, and justice will prevail, how wrong I was.

I was told throughout the process that I was believed and there was no reason this should not go to trial. Every contact police had with me only cemented their belief in my situation. All evidence and CC TV footage was adding up to exactly everything I said it would. I felt heard, until the DPP became involved. When I questioned Police on what a "proofing" meeting was with the DPP I was told it was a formality and that the charges would not be dropped as we had a very strong case.

Once it got to DPP the narrative flipped completely, it would seem that ordering uber eats at 4am and not remembering could mean I may have given consent without memory. There was no consideration to the fact that I had suffered a major trauma, would have still been intoxicated and trying to come to terms with that had happened to me.

Also, the fact I didn't push this man (a stranger) off me or ask him to stop, whilst he was already perpetrating a violent crime could be considered consent? Although all professionals state this is a very normal trauma response this is the very thing that has been used as an excuse against me.

I was unconscious when the rape commenced but didn't ask him to stop once I woke. Are you kidding?? I had to consider what he thought and that my silence could be taken as consent?? This is not, nor has it ever been the conversation around consent!

I felt judged for decisions I had made, although I had been honest from the very beginning of this entire process. What does a "normal" rape look like? I sometimes wonder how any cases even make it trail.

I was told "well he was arrested in front of his wife so that is something, it hasn't been smooth sailing for him" I don't care! He raped me!

"Its probably for the best that you are not put through the trauma of a trial", I can tell you from experience that there is just as much trauma in being silenced.

“We believe you but... these kinds of cases can be hard to prosecute” I can’t tell you how many times I heard this phrase! There should never be a but. These kinds of cases are also known as rape. Which last time I checked was a crime.

When you read all of this it is almost unbelievable to think that these words were said to a rape victim. I wouldn’t believe it myself unless it was me in that room having to process this information that was being given to me.

Every time I had to go in and re read my statement and be re traumatised only for somebody to decide it would be better for me not to go to trial is something that will be with me forever.

I must live with the fact that this man will never get to hear a victim impact statement and how this has affected every part of my life. From my security camera out the front of my house, my scan of cars when I walk outside to take my kids to school and that constant fear of running into him again.. what would he do/what would I do?

In my naivety, I thought if someone broke the law they were punished.. only to find out the hard way rape convictions are almost non-existent.

This person was arrested and charged within 12 hours of me reporting it to police, which should be an indication of how strong my case was.

I will be addressing the below terms of reference in the remainder of my letter, having covered c. Any other relevant matters in the first half.

The terms of reference I will be addressing in this letter are

- a. How consent laws impact survivor experience of the justice system
- b. Impact of consent laws on consent education
- c. Any other relevant matters

a. *How consent laws impact survivor experience of the justice system*

Consent laws in general are relatively straight forward,

Criminal Law Consolidation act 1935 – Sect 46 Consent to Sexual Activity states

A person is taken not to freely and voluntarily agree to sexual activity if:

- *The activity occurs while the person is asleep or unconscious; or*
- *The activity occurs while the person is intoxicated (whether by alcohol or any other substance or combination of substances) to the point of being incapable of freely and voluntarily agreeing to this activity*

For reference I have only included the 2 points which refer to my specific situation, however any reasonable person reading this would understand it to mean someone heavily intoxicated by either drugs or alcohol or both and is asleep or unconscious cannot consent to sexual activity.

However, in practice these are the things that were used against me by the DPP to argue that I could have consented without memory. These things are in direct contradiction! I was unconscious, however when I woke did not ask this person to stop or push them away. Which is a very normal trauma response, magnified by the fact I was alone in my home with a stranger who was already perpetrating a violent crime, I had no way of knowing if me doing this could result in further harm.

I was very heavily intoxicated when the rape took place, as would be the common in many rape cases. I was told that I was “credible not reliable” due to intoxication. I was also told that due to me being on antidepressants and mixing them with alcohol that this is also cause for unreliability as it can cause gaps in memory. Again, this is in direct contradiction to dot point 2.

With approximately only 1 in 10 women reporting a rape and then of that number only a very small percentage actually making it to trial, should indicate there is something very wrong with the current system and urgent reform is needed. At the very least some type of rehabilitation or education for those charged (not necessarily convicted) of rape would go a long way to holding people accountable.

Survivor experience within the justice system is traumatic, humiliating, condescending and very much focussed on the victim’s behaviour. I understand there is a burden of proof, and that the accused are presumed innocent, however in a crime of sexual nature there should be more onus on the accused proving that consent was given. This is generally a crime of opportunity and power and the victim blaming that happens only perpetuates that imbalance. I don’t know any women in her right mind that would put herself through the trauma of reporting a rape if no crime had taken place. Once things move from Police to DPP surely there has been some weight given to the credibility of the survivor?

a. Impact of consent laws on consent education

In terms of consent laws on consent education this one is a big one. I am sure everyone has seen the cup of tea you tube video (inserted for reference [\(24\) Tea Consent - YouTube](#)), this is a great educational tool, clear, concise and easy to understand. From watching this a person is very clear on what consent is and what is not. There is a ground swell now for women to come forward with Grace Tame, Brittany Higgins and the “me too” movement, women have found their voice and are standing up and being encouraged to come forward and hold men accountable.

However, the sad fact is that if they do, they are unlikely to get a conviction or even make it to trial. So much work has been done to inform and educate and the legal system has not kept up. Once you hit the legal system the narrative very quickly changes, and you are required to defend every move, action and decision on that night. It was not about consent; it was about proving that I didn’t consent. Given that the accused is presumed innocent until proven guilty why is it that the victim is not given the same courtesy of the presumption of not consenting being the standard. I was questioned on my hazy memory, being intoxicated, which way I was lying on the floor, how he penetrated me, for how long, down to every minute detail when all he had to say was it was consensual. At no point did he have to prove that I consented or defend his actions. In what other crime does the victim get put on trial to the aggressive and intrusive degree that a sexual assault survivor does?

How can it be so clear what consent is in education and then so unclear when it is put into practice in the legal system? Circumstances before and after whilst can be important are blurring the fact that an actual crime took place. It shouldn’t matter how intoxicated a woman was or what her trauma response was, it does not take away from the crime!

More needs to be done to educate the legal system and the public opinion or perception of what rape/consent is. I also think there is a very large gap in education for middle aged men. As much as we don’t like to admit it, there is an underlying culture in Australia of misogyny and privileged white

men who think they can take what they want without consequence. When are we going to start holding these men responsible to show consequence for actions and start to shift the narrative. What is the point in educating/empowering women to come forward and be part of the solution when they are met with the same old outdated legal system that doesn't support them.

What does it actually take to get to trial. When all parties around you are telling you they know this happened and they are sorry you had to go through this but cannot proceed to trial, something is wrong.

I don't have all the answers on how to fix this, all I know is that I want to be part of the solution to ensure more women including my daughter don't have to go through the trauma that I have been through. The hardest part for me is this person will never get to hear directly from me on how his choice has impacted and changed my life forever. He never has to look me in the eye and hear all the uncomfortable details of what I've had to live with every day. He gets to go back to his life and forget the last 12 months as there is no lasting effect for him. Nothing recorded. My only hope is that this experience will make him think twice if in a similar situation again, however I don't hold out hope. The statistics speak for themselves, we need change, and we need it now. Tap into the resources of the survivors, speak to the people impacted and move to change an archaic outdated legal system. There are so many people and resources willing to help and now is the time to bring them all together to come up with a solution that supports and empowers survivors.

I have gone over and over the contents of this letter more times that I care to admit. For me this is likely my last chance to be heard. The silencing I have endured at every turn has had a lasting impact, but I won't give up fighting for something that needs to change. I can't reconcile that I have had to go through this trauma for nothing. I need my voice to be heard to help all the women that don't have one.