

## Making Rights Reality

### Introduction

Making Rights Reality (MRR) is a pilot program run by the South Eastern Centre Against Sexual Assault, Springvale Monash Community Legal Centre and the Federation of Community Legal Services. This program started in February 2012 and is due to run until February 2014. It is being evaluated by La Trobe University.

The intention of the MRR pilot is to increase access to the justice system for people who have been sexually assaulted and have a cognitive impairment and/or communication difficulties. It started in 2002 as the Sexual Offences Project which was a response to long held concerns over the ability of victim/survivors with a disability to achieve justice (**Beyond Belief, Beyond Justice**, Disability Discrimination Legal Service, 2003). The nature of these concerns is apparent when you consider Caroline's situation. Caroline's story was one of the factors which led to the Project commencing.

Approximately 0.8 per cent of the population has an intellectual disability and some 2.2 per cent have serious psychiatric issues as found by Australian Institute of Health and Welfare, 2006 cited in Powell, Anastasia and Murray, Suellen (2008) **Sexual assault and adult with a disability: Enabling recognition, disclosure and a just response** (ACSSA).

These two groups do not present with sexual assault, either recent or past, at a rate that represents these incidences.

### Caroline's Story

*Caroline has cerebral palsy, is non-verbal, wheelchair bound, and totally dependent on carers for all personal and daily living activities. She attended mainstream high school with an integration aid. She was planning on completing secondary school, had started her VCE at 18 and hoped to go onto higher education. Caroline lives with her mother who is her primary carer. Her mother does not drive. Caroline travels to and from school by taxi.*

*Caroline was sexually assaulted by a taxi driver one morning on her way to school. He raped her after collecting her from home. He drove her to school afterwards. When she arrived at school her integration aid found her highly distressed and looking dishevelled.*

*The police were called. Presumably the taxi driver had thought that not being able to talk would prevent Caroline reporting the rape. He was almost correct. Caroline uses a communication book but her book did not have the vocabulary needed to describe what had happened. It did not have words such as 'penis', 'rape' or 'vagina'. The police would not allow these words to be added after the incident in case this was seen as their leading the witness. In addition, they were worried about the school staff and Caroline's family discussing the issue with her and being seen as leading her into making up a story which they believed would give the defence ammunition. The difficulty in this case was that these were the only people who understood Caroline at all.*

*The process for Caroline to communicate what happened to her was extremely difficult. She worked for several days with the co-ordinator of the school's special education unit. Caroline was very distressed by trying to tell her story. The teacher, who was not used to hearing such stories, also became upset.*

*The police eventually decided against laying charges due to insufficient evidence. The trauma of the assault Caroline struggled to describe was compounded by the trauma of the final outcome with no charges laid against the taxi driver.*

*Caroline withdrew from school . She became too frightened to leave the house. She had panic attacks. Some days she does not get out of bed.*

*When interviewed for the Sexual Offences Project Caroline hoped that her experience would lead to an improved system for people like her who had limited capacity to tell their story.*

## **Project**

If this happened to someone without English they would automatically have been provided with an interpreter. Generally there would have been past training for the various people involved in how to work with interpreters. The victim would also be able to seek support and counselling from family and mainstream services set up to support victims of sexual assault such as Centres Against Sexual Assault. This was not what happened for Caroline who was unable to explain what had happened to her due to the inadequacies of her communication book. She was unable to talk to family members due to possible evidence requirements. She was unable to utilise counselling due to her communication book and lack of training of professional staff to deal with the issue of communication difficulties. Caroline was trapped by her disability which she had, in the past, been able to overcome.

This Project was informed by stories like Caroline's. It was informed by a desire to improve the system so that people with a disability would have an equal access to the services available to other people. The Project had four stages:-

- Stage 1 was research and consultation culminating in the report **Beyond Belief – Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and accessing justice**. The recommendations from this report were incorporated into the **Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004)** which noted "It is clear that the criminal justice system offers people with a cognitive impairment very limited protection against sexual assault...However, with adequate assistance many people with a cognitive impairment can tell the police what has happened to them and can give evidence in court."
- Stage 2 was a focus on advocacy services for victim/survivors with cognitive impairment, the Office of the Public Advocate Independent Third Person Program and mandatory reporting for sexual offences in residential/accommodation services.
- Stage 3 focussed on non-legislative reforms and recommended the establishment of a 24 hour advocacy service for people with cognitive impairment reporting sexual assault to the police.
- Stage 4 was piloting the program Making Rights Reality.

Making Rights Reality was auspiced by the Federation of Community Legal Services and funded for two years starting February 2012. It had approximately \$400 000 funding from a number of philanthropic trusts and a small grant from the Victorian Department of Human Services. Prior to the commencement of the service delivery part of the Project it had contributed to policy and legislative change. Making Reality is about changes in direct service delivery.

## **Statistics**

Sexual assault is a crime that takes place in private and rarely has witnesses. A well know meta study by Fergusson and Mullen (1999) found that 1 in 3 female and 1 in 6 male children were sexually abuse by the age of 15. A later Australian Bureau of Statistics Safety Survey (2006) found that 1 in 5 adult females and 1 in 20 adult males were sexually assaulted during their adult life. The incidence of sexual assault is known to be under reported. The Victorian Sentencing Advisory Council in their **Recidivism of Sex Offenders Research Paper (2007)** found that only 12.6 per cent of all the

sex offences reported in victim surveys across Australia are recorded by police. Less than 1 per cent results in a finding of guilty by a court of a criminal offence.

The incidence of sexual assault committed against victims with a cognitive impairment is far higher than for the general population. The VLRC Report (2004) quoted before refers to research which found that "Women who live in institutions or group homes are three times more vulnerable to assault, and ten times more likely to be sexually assaulted than women without disabilities." Given the statistics for the general population it is clear that women, and men, with cognitive impairment are over represented as victims.

## **SECASA**

SECASA has always provided sexual assault counselling and advocacy to people with an intellectual disability. The first project aimed at improving service delivery to this group of victims started in 1997 with Family Planning Victoria. Since then we have tried to provide a responsive service. Making Rights Reality has improved our service delivery since it commenced. Prior to February 2012 we were not keeping statistics in relation to victims with a cognitive impairment which makes it difficult to argue increased demand or for additional resources. We were conscious that victims with a cognitive impairment were not reporting or were withdrawing from the judicial process after reporting at a higher rate than other victims.

## **Making Rights Reality Objectives**

The objectives of MMR were stated in the report as

- Building on existing infrastructure and skills of agencies already working with this group
- Providing ongoing advocacy and support during initial dealings with police to encourage reporting
- Providing ongoing support and advocacy through the whole process of reporting, investigation, prosecution and court processes
- Providing support to access criminal injuries compensation
- Providing skilled communication support services when required

## **How Does This Work In Practice?**

When a sexual assault victim with a cognitive impairment and/or communication difficulty reports a sexual assault to SECAS additional assistance can be provided. SECASA workers have all trained as Independent Third Persons and are able to stay with a victim while they make a statement to the police. There is brokerage money to provide a person to sit with a victim in court for the duration of a case. Transport can be provided to assist with attending appointments for counselling, to see the police or a lawyer.

There is a specialist lawyer available at Springvale Monash Community Legal Service who is able to spend time clearly explaining the legal system and what will happen at various times in the judicial process.

The project provides a specialist, comprehensive service to people with a cognitive impairment and communication difficulties who have been sexually assaulted. This new approach provides a better resourced, specialist service with

- Crisis care, counselling, advocacy and legal information
- Advice and support through the justice process
- Communication support, attendant care and transport to improve access
- Information sheets in easy to read English

If we look at Jean's situation it illustrates that the system is more responsive than it used to be.

*Jean is 19 years old. She has an intellectual disability and autism. Jean lives with her family whom provide some care. She has a case manager and a counsellor she has been seeing regularly. Jean has a history of childhood sexual assault. She used public transport and communicates clearly.*

*Jean was brought to the Crisis Care Unit by a Sexual Offences and Child Abuse Investigation Team (SOCIT) with a supporting family member following a disclosure that she had been sexually assaulted by an acquaintance the previous day. Jean was provided with information and support at the Crisis Care Unit. She had a forensic medical and took information away in the easy to read English format.*

*The next day SECASA was asked to attend at the police station and provide an Independent Third Person service whilst Jean made a recorded statement. The following day the SECASA counsellor met with Jean. It was decided in conjunction with Jean that SECASA would provide support and secondary consultation to her case manager and counsellor. Advice was provided about the availability of a specialist lawyer, compensation and brokerage to assist with transport and a support worker if needed during legal proceedings. The system was organised, collaborative and supportive.*

*The alleged offender has been charged. The case is listed for a hearing. Jean has requested support during the hearing. She has also requested the SECASA counsellor attend at the Magistrate's Court when Jean applied for an Intervention Order against the alleged offender.*

### **Outcomes of the Making Rights Reality Project**

1. SECASA counsellors have received additional training in working with people with communication difficulties who require the use of aids to make themselves understood.
2. An increase in the number of clients with a cognitive impairment and/or communication difficulties. SECASA has approximately 2 500 new clients a year. Prior to MRR we recorded 13 clients in 6 months who might have a cognitive impairment. We were not keeping exact data about this client group. Following the commencement of the project, we identified 28 clients over the same period who needed additional assistance.
3. The number of clients with a cognitive impairment seen after a recent assault increased from 2 to 4 in the 6 month period surveyed. This could be attributed to working with agencies in our region who provide services to people with a cognitive impairment. The agencies were meant to report sexual assaults but often minimise what has happened.
4. SECASA counsellors now provide a better service to clients, who may not wish to report but attend for counselling and have an intellectual disability.
5. SECASA has a set of on-line easy to read English information sheets.
6. SECASA was requested to provide training for Supported Residential Services across the state about sexual assault, reporting requirements and identifying issues.
7. SECASA is working closely with local police due to workers capacity to provide the Independent Third Person service.

### **Conclusion**

The implementation of the Making Rights Reality project has come at a time when services and supports for people with a disability are undergoing change through the National Disability Insurance Scheme. The MRR project is an example of how mainstream services can be made more responsive to the needs of this client group.

The project provides additional support for people with a cognitive impairment and/or communication difficulties. It has increased the number of referrals for both recent and past sexual assaults. It remains to be seen if this project will make a difference in terms of police reporting and

outcomes in court or whether there will need to be more and different supports to bring about what the United Nations Convention on the Rights of People with a Disability calls substantive equality.

## References

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