

Does Australia need dedicated sexual assault courts?

October 30 2023, by Vicki Lowik and Amanda-Jane George



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Victim/survivors of sexual assault have always faced an uphill battle in their pursuit of justice.

In being made to retell their assault story over and over, they can be [retraumatised](#) and made to [wait years](#) for their case to go to trial, delaying their opportunity to heal.

The public watched on as charges against Bruce Lehrmann for the alleged rape of Brittany Higgins (which he denies) were dropped because of concerns for Higgins' [mental health](#) after a mistrial in 2022.

So is it the case that sexual assault trials simply shouldn't be conducted in a general criminal [court](#)? Does Australia need dedicated facilities instead?

The harms of a combative court process

Cross-examination is a vital part of a regular criminal trial. But in sexual assault cases, it can be complicated.

It is the job of defense lawyers to create doubt in the minds of the jury about the victim/survivor and the assault.

This is often done by drawing on popular [rape myths](#), such as: why didn't you fight back? Was the attacker a stranger? Was a weapon used in the attack? Had you been drinking or taking drugs? What were you wearing?

Jurors can be influenced by this performance—a performance that reflects the attitudes of those in the community who doubt women's reports of [violence](#).

It can take a severe toll on victim/survivors.

In one Queensland case, it took [eight years](#) and two trials to resolve.

The first trial resulted in a hung jury, and the second in acquittal. The victim/survivor underwent cross-examination twice.

Such an extended court process can have a [massive impact](#) on a victim/survivor's life.

Many feel they must [delay](#) holiday, career or study plans while they await vital court dates.

It makes it more likely they will [withdraw](#) their complaint.

The layout of courthouses can also be an issue.

Victim/survivors can be forced to come face-to-face with their alleged attacker due to a lack of alternative entrances and waiting areas.

Reforms have helped, but not enough

Reforms over the past 50 years have achieved some improvements in the criminal justice process for victim/survivors.

[Research](#) shows that, in some Australian jurisdictions, procedural reforms such as giving evidence via CCTV and closed courtrooms are working.

However, these reforms are inconsistent across jurisdictions.

Core re-traumatizing features of trials, such as cross-examination without clear boundaries, remain part of the court experience where trauma-informed reforms have not been introduced.

Are dedicated courts the answer?

Some countries, such as South Africa, operate specialist sexual offenses courts. Scotland is setting up a pilot specialist court.

The benefit of these courts is that all court personnel are [trauma-informed](#) and can deal with complex social issues and laws.

One early [evaluation](#) in South Africa shows 94.9% of victim/survivors were satisfied with prosecutors, and 87.5% were satisfied with their preparation for trial.

Almost all felt totally or fairly safe at court.

Only 20% found the defense attorney intimidated them, and less than a third felt their personal dignity was insulted during cross-examination.

South Africa also implements "juryless" trials, heard by a judge and a two-person lay panel, which may be a factor in the favorable findings.

Specialists courts can also reduce [delays](#).

Yet there are risks to such a narrow approach.

It may lead to a gradual loss of more general legal skills and too narrow a focus, which may result in [biased](#) decision-making.

In fact, it may not be necessary to create a separate standalone court to get better outcomes.

[Research](#) has shown trauma-informed training is necessary for court personnel to understand and help prevent victim/[survivor](#) retraumatisation.

This can be achieved within the existing court system.

Regular courts can have a "specialist approach"—a different way of running proceedings for sexual assault cases that better meet the needs of victim/survivors.

This can be on specific days of the week around normal court

operations.

Significantly, having a separate specialist approach within the general criminal court system to deal exclusively with sexual assault cases may introduce positive [culture change](#).

[Studies](#) indicate a comprehensive specialist approach may be the missing link in reforming the adversarial system.

More to do to improve court experiences

Our [review](#) of international practice identified a range of things Australia could do to significantly improve victim/survivors' experiences in the criminal justice system.

These include:

- specialist trauma-informed training for all court personnel, including defense counsel
- measures to better inform victim/survivors about their case, and improve communication
- linking victim/survivors to support services and providing safe court facilities
- specialists (called "intermediaries") who can help victim/survivors understand court processes
- specialist case management, including ground rules hearings to address inappropriate questioning in cross-examination
- pre-recorded evidence.

Standalone sexual assault courts would be one way of implementing these measures, but it's not the only way.

Specialist approaches with trauma-informed legal staff would also put

these actions into place without the need for a dedicated court.

Introducing these measures wouldn't fix everything, but it's certainly a starting point to help reduce the harm that's too often compounded by court proceedings.

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