

# Delays in reporting alleged rapes are common, but coming forward is important no matter the timing

March 2 2021, by Bri Lee, Jonathan Crowe and Rachael Burgin

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On Friday, an anonymous letter was sent to the prime minister's office [alleging](#) a current federal cabinet minister raped a woman in 1988.

This was followed two days later by an email [alleging](#) another "historical" [sexual assault](#) at the hands of a now-MP for Labor.

Both letters come in the wake of Brittany Higgins' allegations of rape in a minister's office at Parliament House. These disclosures have contributed to the discussion around the culture of sexual harassment and bullying in Australian politics.

The latest allegations have also raised questions about so-called "historical" cases of rape and sexual [assault](#) and the challenges of investigating them and pursuing justice after so many years have passed.

It is not uncommon for survivors of sexual violence to delay reporting to the police, or to family and friends. While there are certainly obstacles to bringing charges when there is a delay in reporting and investigating an alleged assault, there are still avenues for seeking justice.

## **Why survivors don't report**

There are many legitimate reasons why survivors of sexual violence may not immediately report to police. It may take time to process what has happened to them. [Many survivors](#) also do not immediately use the terms "rape" or "sexual assault" to describe their experiences.

There are often deep feelings of shame or guilt associated with sexual violence. The initial response of survivors may be to [avoid reliving the experience](#) and carry on with their everyday lives. This is a self-protection mechanism following serious trauma.

A further concern for many survivors is whether they will be believed and supported. They may fear being accused of lying or exaggerating. They may also believe they'll face hostile or skeptical questions about their behavior before or during the assault.

It is common for victims to experience a "[freeze response](#)" where they become immobilised when subjected to sexual violence. Another common reaction is the "[fawn response](#)" which involves placating the attacker to avoid escalating the situation.

The "freeze" and "fawn" responses are [well-studied physiological reactions](#) to traumatic situations. They are the body's attempts to protect itself from further injury. However, they may lead survivors to fear being judged for not "fighting off" an attacker.

Police responses to reports of sexual violence also [vary widely](#). Some police officers are supportive and competent when dealing with sexual assault reports, but others may be disinterested, overworked or even openly hostile.

As one of us has commented previously, survivors of sexual assault are [playing "Russian roulette"](#) when they report it to police, since they don't know what type of response they will get. This uncertainty further dissuades survivors from immediately reporting their experiences.

The system right now is Russian roulette for survivors—make a complaint and cross your fingers you get a cop who respects and believes you <https://t.co/YPC8p66xi9>

— Bri Lee (@bri\_lee\_writer) [January 27, 2020](#)

## **Justice delayed or denied?**

It is never too late to report a sex crime—either adult sexual assault or child [sexual abuse](#)—to the police. A person can, theoretically, be charged and convicted years or decades after the alleged acts.

But realistically, the longer the wait between the incident and the

investigation, the more challenges the complainant will face.

Physical evidence such as DNA or fingerprints are compelling to juries, and are rarely available when any significant amount of time has passed. CCTV or security footage may only be kept for a certain number of days or weeks.

Although it is rare for a complainant in a sexual abuse or assault case to have corresponding physical injuries, these, too, represent compelling evidence that can be "lost" with time.

Some survivors are also wary of being cross-examined at trial. Where there has been a delay between the alleged crime and the complaint, this is almost always used as an avenue for the defense to question the credibility and reliability of the witnesses, including the complainant.

It is common for barristers to spend hours going over and over small inconsistencies in a complainant's statement and testimony.

In recent years, the laws in different jurisdictions have seen [some improvements](#) to how historical sexual offenses are prosecuted. For example, if the complainant told a friend or relative of abuse around the time it occurred many years ago, that friend or relative can be called as a witness to recount the report.

In most other circumstances, the relaying of conversations about alleged criminal conduct is [considered "hearsay"](#) and is therefore inadmissible.

Another complicating factor with investigating and prosecuting "historical" cases is when a victim dies. In the rape allegation that surfaced last week about the current cabinet minister, for instance, the [victim has since died by suicide](#).

Even in cases where a victim is deceased, it is often still technically possible for a prosecution to proceed because it is the state, not the individual, bringing the case.

However, in practice, it is exceptionally rare for this to happen. The nature of sexual abuse and assault is that there are rarely other witnesses. Even more rare is the existence of any "hard evidence."

Without the complainant's testimony, it would be extremely difficult for the prosecution to make its case.

## **Greater awareness needed**

The decision to report a "historical" rape or sexual assault can be challenging and every case is different. Victims may feel the prospects of attaining justice are limited in the years or decades after the event.

However, police can still investigate sexual assaults and bring criminal charges no matter how much time has passed. Survivors who wish to bring their cases forward should feel empowered and supported to do so.

It is important to increase awareness and understanding of why sexual abuse survivors may not initially report. A delay in reporting, in itself, should not affect the credibility of the allegations.

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Provided by The Conversation

Citation: Delays in reporting alleged rapes are common, but coming forward is important no matter the timing (2021, March 2) retrieved 20 September 2024 from <https://phys.org/news/2021-03-alleged-rapes-common-important.html>

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