

Police Sexual Violence File Analysis Report

**WOMEN, RAPE AND
THE POLICE INVESTIGATION PROCESS**

Professor Jan Jordan

and

Dr Elaine Mossman

**Institute of Criminology
Victoria University of Wellington**

July 2019

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Acknowledgements

This research was funded by a Marsden research grant provided by the Royal Society of New Zealand. The researchers thank the New Zealand Police for granting access to the files and for their on-going support of this project.

Key findings

This study involves a systematic analysis of 110 police files resulting from reported sexual violation offences for three months of the calendar year of 2015, drawn from five selected Police Districts. The analysis was designed to replicate an earlier analysis of police rape files from 1997 (Jordan, 2004). File data were retrieved and reviewed in 2017. The three key questions guiding this research were:

- (i) What factors are associated with the progression of sexual violation cases through police investigation process?
- (ii) What factors are identifiable from police sexual violation files as influential in the decision to proceed, or not to proceed, to further investigation?
- (iii) How do these findings compare with those evident in the 1997 study of police sexual violation files?

A summary of key findings is listed below:

File overview

The 2015 files were characterised overall by significantly fuller investigation being undertaken of offences reported than was the norm in 1997. There appeared to have been a positive shift in the number of cases proceeding to further investigation.

- **Far fewer files coded K3 (no offence/false allegation)** – a finding from 1997 was the misuse of the K3 code (no offence/false allegation) where it was often used as a catch-all category when police determined no further investigation was warranted, including cases where it appeared likely sexual violation had indeed occurred. It is critical this code is used as intended, as the overall figure can be interpreted as indicative of the number of women making false allegations.
 - comparing the two files samples,¹ there was a 56% reduction in files coded K3 (21% of files reviewed in 2015 compared to 48% in 1997),² with it being apparent that this category is more likely now to be used for cases perceived as fabricated complaints. This is in line with guidance issued by New Zealand Police (NZP) around use of this category; and
 - there were, however, at least 8 cases where this code appeared to have been applied erroneously in contexts where the complaint was perceived as

¹ These figures are based on analysis that excluded K9 files (those proceeding to prosecution). K9 were not included in the 1997 sample, therefore for the purpose of comparing the relative proportion of K3s, the 2015 K9s were excluded from the analysis. For this reason, these percentages should not be used as an indication of national rates of files coded K3.

² This positive shift is in-line with national trends where 39% of all reported sexual violation offences were coded K3 in 1997 compared to 15% in 2015 (these national figures include files proceeding to prosecution (the K9 category)).

genuine. If these were coded correctly, the actual percentage of K3 files would have been reduced from a national estimate of 15% down to just 9%.

- **More cases being investigated** - the reduction in cases filed K3 was accompanied with an increase in the proportion coded K6 (57% nationally compared to 29% in 1997), suggesting a far greater proportion of victims were now having their case more fully investigated.
- **Less than a third of cases being prosecuted** - while most cases were more fully investigated than in 1997, a minority of the reported offences accepted as genuine proceed to the offender being charged. In fact, the proportion of reported offences proceeding to prosecution has actually dropped slightly from 30% in 1997 to 28% in 2015.
- **More intimate partner violence** – while the same number of rapes in 2015 and 1997 were conducted by people known to the victim (84%), a larger proportion of this group were now made up of intimate partners (37% in 2015 compared to 18% in 1997). This increase likely reflects growing community awareness around the prevalence of family violence, the impact of campaigns encouraging reporting, and enhanced Police training and responsiveness to violent acts perpetrated within partnerships.
- **Increased engagement in injurious rough sex** - while the 1997 files did not reference rough sex, this emerged as a known feature in 14 of the cases in the 2015 file sample. This finding is in line with growing concerns regarding the influence of aggressive pornography and has been linked also to increased male expectations regarding anal sex with women, with implications related to injury and consent.
- **Emergence of online dating** – since 1997 there has been a growing tendency for couples to use the internet as a means of forming connections and meeting new intimate and/or sexual partners. While many people negotiate this successfully and without apparent risk, as with any such development, they also carry the potential for misuse and abuse. In the 2015 sample there were 13 cases where the parties had initially met online. None of these saw any perpetrator prosecuted, although several resulted in police informally warning both parties about the risks possibly associated with such encounters. Collecting sufficient collaborating evidence of sexual violation in these cases appears a particular challenge.

Factors impacting on case progression

The 1997 study revealed that the decision to proceed with an investigation was often made early and influenced by judgements regarding the perceived credibility of the victim.

- Overall, judgements based on perceptions of the credibility of the victim seem far less likely to prevent case progression in 2015, but they do seem to still pose a significant barrier to achieving justice through a prosecution.

The top factors identified as key to police decision-making in relation to case progression of reported sexual violation offences were:

- no victim complaint/victim withdrawal (key to decision making in 28% of cases);
- victim unreliable testimony (key to decision making in 28% of cases); and
- mental health concerns identified for victim (key to decision making in 13% of cases).

These factors can all be linked to assessments of evidence sufficiency, and while this is clearly an appropriate focus, the small numbers proceeding suggest detectives still assess the majority of cases as failing to reach the evidential threshold for prosecution. Of particular concern was the likelihood of evidence supplied by those with mental health issues, intellectual impairment, or who had consumed excessive alcohol and/or drugs being assessed as failing to meet this threshold.

The assessments of Police that there is no reasonable likelihood of a conviction resulting from prosecution reflects the very real concerns currently being debated here and elsewhere regarding the limitations of the adversarial justice system. For victims, however, the message many take from such decision-making is that they are not believed or supported, despite some detectives providing verbal reassurances to the contrary. This has implications regarding the importance of on-going consultation with specialist agencies regarding how to improve access to justice for some of the most vulnerable members of our communities.

Positive aspects

The 1997 file analysis pre-dated the introduction of the first NZP policy to guide Adult Sexual Assault (ASA) Investigations, and there was widespread variation in how cases were investigated and recorded. The 2015 file analysis was conducted after significant changes were made, many prompted by the Commission of Inquiry into Police Conduct. Positive aspects noted that we saw evidence of in the files included:

- Impact of tiered and specialist training on levels of understanding and awareness.
- Victim interviews being delayed to enable initial recovery and conducted by specialist female interviewers.
- File reviewing and quality assurance processes emerged as significant in achieving more comprehensive investigations, including in cases with initial low victim credibility.
- Introduction of Case Investigation Plans, which when completed, appeared useful in providing a checklist to ensure a rigorous investigation with all relevant actions undertaken, victims' needs attended to etc, although thorough completion of these plans was not yet the norm in 2015.
- Requiring that complainants wishing to withdraw their allegation should sign a form and state their reasons can provide useful feedback and an opportunity for increased dialogue between them and police.
- Suggesting that where possible detectives should notify complainants in person about whether or not their case would result in charges being laid. However, as noted below, this guidance was not always followed. There was positive evidence on

the 2015 files of ways by which detectives sought to validate victims whose cases were not proceeding, as part of the notification process.

- Providing prevention advice to victims was more apparent in 2015, with good examples evident also regarding providing perpetrators with prevention advice and/or warnings aimed at reducing their risk of further sexual offending.

Opportunities for further improvement

While markedly improved since 1997, the 2015 file analysis raised issues of possible concern and highlighted areas where further improvements might be made. Our assessments are necessarily subjective and reflect a victim-centred approach. These include:

- Greater consideration regarding the high numbers of withdrawals (39% of weighted cases in 2015) and the need to understand further the reasons underlying these. In 1997 comments on file suggested police often interpreted complainant withdrawals as false complaints. The 2015 analysis identified a range of factors influencing the decision to withdraw, the four top ones being:
 - mental health issues/wanting to avoid extra stress = 14;
 - reluctant/ambivalent victim = 13;
 - has moved on, wants to forget = 12; and
 - fearful of perpetrator = 11.
- Delays in assigning cases to detectives, in some instances 6-8 months, meant victims were often left in limbo, whilst opportunities were missed to collect potential sources of evidence e.g., witness statements, CCTV footage, scene examinations. Such delays could also deter victims from proceeding with their sexual violation complaint.
- The 1997 analysis provided multiple examples of where a victim's vulnerability appeared to be confused with her lack of credibility in ways that foreclosed further investigation of her allegations. The 2015 analysis provided many examples indicating greater police recognition of vulnerability factors, but it was concerning to see how few charges were laid in cases involving victims with mental health issues or intellectual disability/learning difficulties.
- The lack of progression of cases involving persons with mental health issues and intellectual disabilities indicates a need for ensuring more appropriate training regarding engagement with these vulnerable populations, as well as supports appropriate to their impairment in order to enhance their access to justice.
- While a few files indicated some victims were told in person that their case would not proceed to prosecution and in contexts where specialist support was present, others were given this information over the phone or by letter, and in most cases this information was not specified on file.
- Instances were apparent of gaps in the awareness and understanding of some detectives regarding aspects of victim behaviour, relationship dynamics, issues of fear and control, and the role of alcohol and drugs in sexual assault cases. These have implications for consent issues by reducing the victim's sexual autonomy and

indicate the importance of on-going specialist training and awareness-raising with those engaging with ASA victims.

Challenge facing New Zealand Police

The improvements made, particularly since the impetus provided by the Commission of Inquiry into Police Conduct, are impressive. Being externally and regularly audited to ensure compliance with the Inquiry's recommendations has been effective in achieving greater prioritisation of ASA investigative procedures. The major challenge now is to deepen and extend the work begun in order to maximise the chances of these changes truly becoming embedded and enduring within police culture. This necessitates NZP making a commitment to provide increased and sustained resourcing for ASA training and investigations, including better than adequate staffing of specialist ASA squads, ideally nationally available, to provide consistent and optimal victim services. While there is no internationally standard resourcing model to adhere to, the need for additional, sustainable specialist staffing appears evident given such factors as the current length of delays that can occur in file assignment, the inability to keep complainants informed about case progress, and the difficulties associated with providing the levels of support and engagement many victim/survivors need to feel safe and confident in the aftermath of reporting rape.

Future research recommendation

Overall Police appear to be adhering to the policies introduced and the increased levels of supervision and review of ASAI files has improved file quality. This indicates the likelihood of increased victim satisfaction levels with Police's response but this is an area requiring research with victims and those supporting them to ascertain their experiences.

- We have recently undertaken key informant interviews with specialist support agency workers, forensic doctors and victim advocates who support victims/survivors to gain their views and a report of these findings will be available in 2019.
- We recommend an extensive qualitative study with victim/survivors be undertaken in the near future to ascertain first-hand their views regarding current police processes, with preferably the inclusion of participants who decided not to report or withdrew their allegations.

1. Introduction

This report presents findings from an analysis of a sample of New Zealand Police (NZP) sexual violation files from 2015, with the analysis itself undertaken in early 2017. The key aim of this file review is to identify the factors associated with the progression of sexual violation cases through the police investigative process. Specifically, it seeks to determine which factors affect police decision making concerning whether or not to proceed with an investigation and to compare these with findings from an earlier 1997 study (Jordan, 2001, 2004).

The current file review is one of four related projects awarded to the primary author through a Royal Society of New Zealand Marsden grant. The other studies focus on rape in different forms of media, with this being the only study with a specifically police focus.

1.1 Background

International research has for many years shown rape and sexual assault offences to be the least commonly reported to police (Du Mont et al, 2003; Horvath et al, 2011; Wolitzky-Taylor, 2011). It has also revealed that of those cases reported, only a minority continue through the criminal justice system to result in the conviction of an offender (Kelly et al, 2005; Stern, 2010). The result is unacceptably high attrition rates (Daly & Bouhours, 2010; Temkin & Krahe, 2008). Attrition rates in rape cases are significantly higher than for any other serious crime category.

These figures have been reflected in New Zealand research also, where sexual violence offences overall have been found to have a high attrition rate – a 2009 study found just 13% of all reported sexual violence offences resulted in a conviction (Triggs et al, 2009). This study also revealed that the majority of reported offences failed to proceed beyond the police investigations stage, a point similarly echoed in overseas studies (Daly & Bouhours, 2010; Kelly et al, 2005).

Concern over the police role in relation to these high rates of attrition has been an on-going focus of research. Understanding why relatively few cases proceed has been linked to possibly inflated levels of police belief in the incidence of false rape allegations (Fisher et al, 2003; Kelly et al, 2005; Lovett & Kelly, 2009). In particular, police have been criticised for the large numbers of cases filed as 'no offence disclosed' or 'no crime', with these resolutions often linked to high levels of disbelief regarding the genuineness of victims' allegations (Jordan, 2004a; McMillan and Thomas, 2009). Factors affecting perceptions of the genuineness of reported rape complaints have been identified as including assumptions around 'appropriate' victim behaviour as well as attitudes that are still influenced by stereotypical views and rape myths (Dhami, Lundrigan & Thomas, 2018; Hohl & Stanko, 2015; Sleath & Bull, 2017). Recent research in the United Kingdom suggests the ongoing salience of concerns regarding false rape allegations (Kelly, 2010; O'Keeffe et al 2009).

The aim of the earlier 1997 New Zealand file analysis was to identify the factors appearing to influence police decision-making processes in relation to rape and sexual assault investigations, focusing in particular on cases where the investigation was terminated prior to the arrest and prosecution of an offender. Perceived credibility of the victim emerged as key, with an overall culture of disbelief evident. The key factors significant in police officers considering claims to be false or possibly false were highly associated with perceived victim credibility and included:

- some concealment of facts by the victim;
- having a previous complaint of rape deemed false; and
- some level of psychiatric disturbance or intellectual impairment.

Other influential factors included delayed reporting, perceived victim immorality, victim experiencing previous rape/abuse, victim having had previous consensual sex with the accused, and the victim being drunk/drugged (Jordan, 2004).

Analysis of the 1997 sexual violation files suggested factors perceived as enhancing or undermining of victim credibility were often combined to produce an overall indication of whether or not to proceed further with a case. For example, being excessively drunk and having made previous rape allegations could be offset by a victim's prompt reporting combined with visible evidence of injury (Jordan, 2004). When these findings were supplemented later with interview material from police detectives, it became evident that there was a lack of knowledge regarding such significant aspects as victim/perpetrator relationship dynamics and the impacts of rape trauma on victims. This lack of awareness and understanding suggested an urgent need for much more extensive training and the development of a specialised response. Although New Zealand Police had introduced the Adult Sexual Assault Investigation Policy in 1998, knowledge of its existence was patchy and adherence to its prescriptions minimal.

Since the 1997 analysis scandalous cases, such as the Worboys case in the United Kingdom and the investigation of allegations made by Louise Nicholas in New Zealand, have prompted external reviews of the police from which recommendations for positive change have been formulated (Bazley, 2007; Stern, 2010). In New Zealand, the Commission of Inquiry into Police Conduct identified significant barriers impeding access to justice for victim/survivors of rape, including heightened levels of disbelief in response to reported sexual violence, inadequate levels of managerial oversight of case progression, and the dominance of a 'macho' culture within the organisation overall (Rowe & Macauley, 2018). Dame Margaret Bazley issued a clear and firm list of recommendations targeted at addressing these issues and significantly improving police responsiveness (Bazley, 2007). The resultant flurry of action within New Zealand Police has seen many initiatives introduced, with initial research examining the impacts of these producing generally favourable results (Rowe & Macauley, 2018). The scope of such research has been limited to date in being able to assess how these efforts translate into substantive changes in practice.

This is why, after almost two decades, it is timely to repeat the 1997 file analysis. Repeating this analysis provides one basis by which to ascertain the impact of the many changes introduced by the police within the context of broader shifts within both society and policing. As noted above, the particular focus of the earlier study involved issues surrounding victim credibility, and the current study assesses whether the previously noted culture of disbelief is becoming less evident and identifies the contemporary factors that influence the progression of reported sexual violation cases through police investigative processes.

1.2 Objectives

Similar to the 1997 study, the current file review aims to identify factors associated with the progression of sexual violation cases through the police investigative process, within the contemporary New Zealand policing context. A key difference from 1997 is that the current analysis is broader in scope and considers factors associated not only with those cases that fail to proceed but also those cases that do proceed right through to prosecution.

The three key questions guiding this research are:

- (i) What factors are associated with the progression of sexual violation cases through police investigation process?
- (ii) What factors are identifiable from police sexual violation files as influential in the decision to proceed, or not to proceed, to further investigation?
- (iii) How do these findings compare with those evident in the 1997 study of police sexual violation files?

1.3 Methodological approach

The methodological approach of the current study (the 2015 file review) was designed to replicate as far as possible that used in the 1997 file review. Details of the study design are described below with particular attention given to where methods have differed.

Ethical approval for the study was granted by Victoria University of Wellington's Human Ethics Committee (VUW 22886, 19 May 2016) and approved by the New Zealand Police Research Review and Access Committee (RRAC), in September 2016 (EV-12-382).

Overall study design

The study involved a systematic analysis of 110 police files resulting from reported sexual violation offences for three months of 2015, drawn from five selected Police Districts.³ The

³ Note: details of specific months reviewed are not included to reduce the possibility of cases discussed being identified.

analysis comprised both quantitative and qualitative dimensions in seeking to determine what factors are instrumental in police decision-making regarding case progression.

Data from the file review has since been supplemented by data collected through a small number of key informant interviews. In total 19 interviews were conducted in the three main study areas with persons identified as having specialist knowledge of how victim/survivors of sexual violation currently experienced police investigative practices. These included representatives from specialist sexual assault support agencies and family violence agencies, advocates working with sexual assault victim/survivors, and forensic medical clinicians. The sample also included senior police within the study districts who were identified as having specialist knowledge of key developments in adult sexual assault investigations, training, practice and initiatives. The interviews for this study were completed in early November 2018 and the results will be analysed and published separately.

File sample selection

As in 1997 eligibility criteria for file inclusion were defined and files requested through New Zealand Police. Despite increases in the use of electronic records, only the physical paper files were reviewed to be consistent with the 1997 study. However, some additional electronic material associated with files was supplied for cross-checking and to capture new auditing/reviewing processes. Electronic details supplied included occurrence details, offence code results, case assignment history, case reviews, number of victim contacts.

The eligibility criteria to select files for review are described below, with a total of 110 files reviewed.

Note: Where percentages are reported these have been weighted to adjust for reduced sampling of K9 cases (see result code section below, just 40% of K9 files were selected for review).

Offence details

Eligible files for both the current study and the 1997 file review were those involving reported sexual violation offences of adult female victims. The very small numbers of sexual violations reported against adult male victims would require a different study methodology and timeframe. Both studies included attempted and completed sexual violation offences. The frequency of the primary (most serious) sexual violation offence included in the 2015 file review is in table 2.3 in section 2.2.

Result codes

The 'result code' of a police file records the final outcome of the Police response to an occurrence and is used in the study to determine the progression of a case through the investigation process. The 1997 file analysis reviewed only those cases filed K3, K4, K5 and

K6. The current 2015 file review expanded the analysis to include a sample of K9 files that did proceed through to prosecution (note: K5s were not included since this category is no longer relevant).⁴ The inclusion of the K9s was undertaken to ascertain if there were particular factors associated with the cases that proceeded to a perpetrator's arrest.

The relevant result codes for this analysis are:⁵

- **K3 = no offence / false complaint** - where something originally reported as an offence, on investigation turns out not to be.
- **K4 = warning** - When at least one offender has been warned. Can only be used where a person is an Offender (Organisations cannot be warned).
- **K6 = reported offence** – when a report is taken relating to an offence (but no arrest or prosecution is proceeded with).
- **K9 = arrest / prosecution** - reported offence resulting in an offender being arrested (and prosecution proceeded).

Only K6 and K9 results codes are recorded as offences in Police statistics. The number of files for each result code are in table 2.1 in the next chapter. The relative proportion of each result code has changed since 1997, with significantly fewer now resulted as K3 – No Offence. This is discussed further in the results section.

Districts

Files were reviewed from five of the 12 Police Districts. These five were selected on the basis that they replicate as closely as possible those included in the 1997 study.

The 1997 areas were the three major areas of Auckland (52% of files), Wellington (20% of files), and Christchurch (28% of files),⁶ comprising their surrounding hinterlands as well as the major metropolitan centres. Boundaries for Police Districts have since changed but comparisons of Police Areas within five selected Districts matched up well. This resulted in files being drawn from the following five 2015 Police Districts - the number of files reviewed from each district, together with the weighed percentage is in brackets:

- Auckland City (n=19, 16%);
- Waitemata (n=12, 11%);

⁴ K5 relates to a report of an 'incident' rather than an 'offence' and historically was often used incorrectly. While it was included in the 1997 study, it was not relevant for the 2015 file review.

⁵ Note: Since this analysis New Zealand Police have substantially changed the recording of resolution of cases. The K codes are no longer used - cases can either be cleared as 'prosecuted', 'warned' or 'no offence' or closed using a range of 'closure reasons' including 'Duplicate', 'Error', 'No further line of enquiry', 'Non Police Prosecution', 'Police discretion', 'Victim uncooperative - (victim refuses statement – victim withdraws support for investigation/prosecution – victim medically unfit – victim unable to be located – victim dies)', 'Witness uncooperative/unavailable'.

⁶ In 1997 Auckland included Auckland City, North Shore, Manukau and Papkura; Wellington included Hutt Valley and Kapiti Mana; Canterbury included Canterbury and Christchurch Rural.

- Counties Manukau (n=27, 24%);
- Wellington (excluding Wairarapa) (n=22, 21%); and
- Canterbury (n=30, 27%).

Proportions of files in 2015 from Wellington and Canterbury are similar to those reviewed in 1997, as are those from Auckland if the three Districts of Auckland City, Waitemata and Counties Manukau are combined to create similar boundaries to those used in 1997 (51% of 2015 files).

Sample size

The 1997 study reviewed 164 sexual violation files, which consisted of all sexual violation offences reported in 1997 that met the criteria described above from the selected areas.⁷ The current study identified 257 files over a six-month period and reviewed a total of 110 files.⁸

The number of reported sexual violence offences per year (and therefore potentially eligible files) had increased since 1997. Statistics on sexual violation offences supplied by Police for 2014 suggested there were around 697 reported sexual violation offences (codes K3, K4, K6 and K9) in the five selected districts. To make the exercise manageable, we initially decided to limit the review to between 200 and 300 files by reviewing just six months of 2015 files and to review just a sample of the more extensive K9 files (40% of files randomly selected).⁹ The year 2015 was selected to provide a recent data-set but one not so recent as to mean that large numbers of files may still be active and hence unavailable. This resulted in 257 files being identified for review.

The projected sample size was decreased considerably once we as researchers recognised the greatly increased size and complexity of the 2015 files and the extended time needed to read and record all details possibly relevant to their subsequent analysis. We applied the concept of saturation sampling whereby we continued our data collection until confident that we had obtained sufficient material to demonstrate the dominant features and patterns, and that by continuing we would be gathering essentially more of the same kinds of data already captured.

⁷ A total 213 files were initially identified and requested, but 26 were not located and a further 23 files were excluded because they had been wrongly coded, most commonly because adult offence codes had been attributed to offences against children.

⁸ Of the original 257, eight files were excluded because they related to male victims, one file selected was not received.

⁹ K9 files were limited to a smaller sample as the focus of the study was still on those cases that did not proceed through the police investigation process, and also because files are considerably longer and would take more time to review.

The final sample comprised all files selected from each of the included districts for three months of 2015, resulting in 110 files in total.

Data collection

The data collection procedures involved systematic recording of key variables obtained from the search of police sexual violation files. Two main approaches were used:

1. Recording sheet – noting the presence of predetermined factors on a recording sheet.
2. Free text notes – recording of additional descriptive notes on each file.

File review data was supplemented by national data and information supplied by NZ Police relevant to this research such as statistics and background information, as well as changes to policy, training, and procedures.

Recording sheet

For the current study a recording sheet listing key variables was developed to assist with the review of files. This was based on factors identified as significant in determining case progression in 1997 and those identified from other research. It was then refined by the researchers following testing on a sample of real files. The final sheet consisted of 3 pages and over 90 items (factors recorded can be seen in Appendix A). The recording sheet captured details such as demographics of the victim and perpetrator, victim-perpetrator relationship, situational factors (e.g. scene location, presence of alcohol, drugs), victim characteristics (e.g., previous complaints, disabilities), and evidential issues (e.g. DNA, injuries, witnesses).

The researchers spent a week practising to use the coding sheet, with each coding the same file, until they were confident they were both coding the files into the sheet consistently and correctly.

Free text notes

Having read each file in its entirety and recorded relevant information on the recording sheets we also created a separate word document for each in which we wrote descriptive details to capture more information regarding case context, case progression, review processes noted etc. These were attached to case summary reports and the recording sheet, making a 3-document set of data for each individual case.

Data analysis

A mixture of quantitative and qualitative analysis was used to identify which factors are instrumental in police decision-making regarding case progression, and if these have changed since 1997. Careful attention was given to ensuring the privacy of those named in files. All data was anonymised before recording and data entry, names and identifying details of all victims, perpetrators, and detectives investigating the case were removed.

Quantitative analysis was carried out on the data from each file recorded on the recording sheet template that was entered into an Excel spreadsheet. This includes simple descriptive data on frequency of factors that appear influential in the decision to proceed, or not to proceed, to investigation and prosecution, enabling comparison to those that emerged as influential in 1997.

Qualitative data recorded from the files was analysed with the help of NVivo software. This was an incremental process involving identification of key themes emerging from each file progressively, with these grouped under headings to form a body of data pertaining to each theme or factor. Such groupings facilitated analysis providing relative indicators of importance across all factors as well as detail and examples from within each category. This report presents the findings, comparing these where relevant with the 1997 file analysis. As researchers we wanted to include quotations from relevant parties recorded on file, but following requests from New Zealand Police we have agreed to remove those made directly by victims out of privacy concerns.

Key difference to 1997 analysis

The 1997 file analysis determined that the decision to proceed with an investigation was strongly connected to whether detectives believed a victim. This resulted in four categories:

- **Genuine cases** – police gave clear indication on file concerning their legitimacy.
- **Possibly true/possibly false** – comments on the file suggested police seemed unsure whether to treat complaints as genuine.
- **Police said false** – comments on file clear indicated police considered the complaint to be false.
- **Complaint said false** – cases where victim stated the allegations were false.

The files in the 2015 sample reflect the shifts within both society and policing during the intervening years. Police investigators are now encouraged to view rape allegations through a more neutral lens, one that instructs them to suspend their own judgments and follow specialist policy guidelines to allow the evidence to determine case progression and outcomes. Compared with the sometimes damning and judgmental views expressed in 1997, the 2015 files were typically characterised by neutral language and impartial descriptions of victims' actions and behaviours. The majority of files had a clear rationale outlined to support the decision made on whether to proceed. This was usually a summary report that weighed up available evidence.

Such a shift necessitated a shift in our approach. Instead of making the likely truth or falsity of allegations the key focus, as was appropriate in 1997, we opted for a broader approach. This involved identifying the factors that emerged as key to police decision-making as well as recording for each file whether the factors identified as significant in 1997 remained evident. General notes on each file were also recorded enabling emergence of new themes. These were then analysed to identify any commonalities or differences, and to establish

what pattern of responses and issues emerged from the data. The principal lens used became one of assessing how well police investigations appeared to be conducted and identifying which factors were central to police decision-making.

1.4 Terminology

There are a number of terms used throughout this report that require a brief explanation.

- Sexual violation – files reviewed were those with reported offences coded by Police as ‘Sexual Violation’ and included attempted and completed rape and unlawful sexual connection offences. The terms ‘rape’ and ‘sexual assault’ are used throughout the report interchangeably with ‘sexual violation’.
- Victim – is the main term used throughout the report to refer to the person presenting as being harmed by the sexual victimisation. At different stages of an investigation other terms are applicable such as ‘complainant’ or ‘witness’, and we recognise the term ‘survivor’ provides important recognition of other aspects of identity, but for consistency the term ‘victim’ has largely been used throughout.
- Perpetrator – is the term selected to refer to the person in the initial police report who was described as committing the sexual violation. We acknowledge that in certain scenarios and different stages of an investigation other terms are more accurate such as suspect, offender, or defendant but again have chosen to largely use one term for consistency.
- Police – in most cases we use the term Police or officer to refer generically to any sworn Police individual whether they are a general duties frontline officer or detective of varying rank. Where specific mention of position or rank is made in case notes we have used this in some case descriptions.

1.5 Study limitations

There are a number of limitations to this study that need to be acknowledged. These include:

- **Time period** – the time period for the file analysis was three months of 2015. It is possible the nature of the files in this period could differ from the remaining 9 months.
- **Generalisability** – findings from this analysis are based on a small sample of 110 files and caution is required in generalising findings more widely. Findings cannot be generalised to Police Districts not included in the analysis, or to male victims or non-adult victims.
- **Small sample size** – the sample of files was limited to 110 files. Prevalence of some descriptive variables (i.e. factors potentially impacting on case progression) is sometimes less than 20. This means percentages need to be interpreted with caution. The actual frequency of all recorded factors can be found in Appendix A.

- **Accuracy of Police recorded data** – descriptive data in files relies on the accuracy of police recording. Ethnicity, for example, would likely be as perceived by a Police officer and not self-identified.
- **Comparisons to the 1997 sample** – The 2015 file sample is different from the 1997 sample in that it includes prosecution files. When comparing the make-up of the two samples, caution is required for some characteristics that might be specific to K9 files (e.g. number of offences associated with a case).

2. Characteristics of files

This section of the report presents the characteristics of files reviewed. This provides important context before moving on to consider factors influential in case progression, but also enables comparisons to the 1997 file sample. It is interesting to note how key characteristics such as demographics and nature of the relationship may have changed over time. Some changes in file characteristics reflect differences in police processing (e.g. result codes), some changes in society and police awareness around the nature of sexual violation (e.g. increased recognition of sexual violence occurring within an intimate partner relationship), whilst others likely reflect changes in New Zealand's demographic make-up (e.g. increases in migrants, particularly in centres such as Auckland).

Where applicable, characteristics of the 1997 files sample are compared to the 2015 sample, however, it should be noted the two samples are fundamentally different due to the inclusion of the K9 files that proceeded to prosecution in the 2015 sample. This means caution is required when comparing across samples, particularly when considering sample characteristics that are also likely to be associated with decisions to prosecute (e.g. files progressing to prosecution may be influenced by number of offences, nature of relationship).

Note: Where percentages are reported these have been weighted to account for the reduced sampling of K9 cases (see result code section, just 40% of K9 files selected for review).

2.1 Result codes

In 2015 we reviewed sexual violation offences reported in the five selected districts over a three month period. This included all K3, K4 and K6 files consistent with the 1997 file review, but also included a randomly selected 40% sample of all the K9 (prosecution) files. Table 2.1 below reports the number of files of each type reviewed across the five districts, the relative percentage of each reviewed, together with weighted percentages to show the actual distribution of files in each category over this three-month period (the breakdown across districts can be found in Appendix B). The increased percentage of K9s when weighted highlights the importance of using weighted values when looking at the characteristics of the files reviewed.

Table 2.1: Number of files of each result code reviewed.

Result code	Sampled	Unweighted		Weighted ¹	
		n	%	n	%
K3 – No offence / False complaint ²	100%	20	18%	20	15%
K4 – Warning	100%	2	2%	2	2%
K6 – Offence reported	100%	74	67%	74	57%
K9 – Arrest / Offence prosecuted	40%	14	13%	35	27%
Total		110	100%	131	100%

Notes:

¹ Weighted percentages account for the reduced sampling of K9 cases, a weight of 2.5 is applied to the reviewed K9 files

² Police have been instructed not to use the term 'false complaint' now, in favour of using the word 'fabricated' to show the intent to mislead was present.

The greatest proportion of files are the K6 (57%). This is when an offence is reported and appears in official statistics of recorded sexual violation offences, but where no arrest / prosecution occurred. This can be for a number of reasons, including no suspect identified, victims withdrawing their complaint, or when insufficient evidence is available to support a prosecution.

The next biggest proportion are the K9 files where a prosecution occurred (27%). For two of these prosecution files the original sexual violation offence was downgraded to an assault charge following plea bargaining, with offenders convicted after pleading guilty in both cases. For the remaining 12 files: eight were convicted (of which five plead guilty, one youth did not deny, and two were found guilty by a jury); three were acquitted; and one was found unfit to stand trial.

The smallest category is K4 (2%). This is where an offence is reported but the offender receives a warning. In general, a K4 result is not considered appropriate for a sexual violation offence. Of the two cases filed K4, the only decision-making information on file related to insufficient evidence to proceed to prosecution. There were no clear reasons on file why the cases had been resulted K4 rather than K6, although sending a clear message to perpetrators of inappropriate sexual behaviour via the official warning appeared to be a factor in both cases. For example, in one of the two K4 cases evidence around consent was recorded as insufficient for a prosecution, but no reasons given for resulting the case K4 instead of K6. However, there was a note that the perpetrator had a previous similar sexual violence offence on file that had not been prosecuted after the victim withdrew.

The note on file said: '[perpetrator] was spoken to in regards to his behaviour. [Perpetrator] was advised that whilst no prosecution action could be taken, the treatment of women he meets via on-line dating websites is not condoned by Police

as it causes upset to the woman involved. He was severely warned about his treatment of women and that his current behaviour could bring him to police attention for a third time.’ (emphasis added).

The final category of K3 (no offence / false complaint) made up 15% of the files in 2015; as detailed below, this is significantly fewer than in 1997.

Identifying changes to the use of the K3 results code is a key aim of this analysis and is discussed with other findings in more detail in section 3.2.

Result codes in 2015 compared to 1997

In 1997, K9 files were not reviewed, but all the K3, K4, K6 (including some miscoded K5) files from the selected areas for the full 12 months of 1997 were reviewed. Table 2.2 presents the number of files of each category reviewed in 1997 compared to 2015 (excluding the 2015 K9 files to enable comparisons). In 1997 just under half the files in the sample were recorded as K3 (no offence/false complaint), compared to just 21% of the files in the 2015 sample.

Table 2.2: Number and proportion of files of each result code reviewed in 1997 sample compared to the 2015 sample.

Result code	2015		1997	
	n	%	n	%
K3 – No offence / False complaint	20	21%	78	48%
K4 – Warning	2	2%	5	3%
K6 – Offence reported	74	77%	81 ¹	49%
Total	96	100%	164	100%

Notes: ¹This included 17 files cleared as K5.

Because the K9 files have been removed from the total, percentages in table 2.2 should not be used as an indication of the national rates for the various results codes. See figure 3.2 in the next chapter for this data.

2.2 Offences

Reviewed files were all reported sexual violation files (attempted and completed). The offence descriptions and codes of files included in the 2015 review appear in table 2.3.

Table 2.3: Frequency of offence codes in 2015 file analysis (primary offence)

Code	Offence Description	Count	Weighted %
Sexual Violation offences			
2653	Males Rapes Female Over 16	71	60%
2657	Unlawful Sexual Connection Female Over 16	25	24%
2658	Unlawful Sexual Connection with Spouse	3	2%
2654	Husband Rapes Wife	1	1%
2659	Other Sexual Violation Offences	1	1%
2645	Induce Sexual Connection	1	1%
Attempted Sexual Violation offences			
2673	Assault with Intent to Commit Rape Female Over 16	4	5%
2663	Attempt to Rape Female Over 16	2	4%
2677	Assault Intent Commit Sexual Connection Female Over 16	2	3%
Grand Total		110	100%

Note: Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

For both the 2015 and 1997 files the two main offence codes were Male Rapes Female and Unlawful Sexual Connection. When comparable criteria are used, these two offences made up 98% of the current sample and 94% of the 1997 sample.¹⁰ A similar proportion of files involved were rape offences (70% vs 75% in 1997) but slightly fewer Unlawful Sexual Connection (28% in 2015 compared to 19% in 1997), with relatively fewer 'Other Sexual Violation' offences in 2015 (2% compared to 6% in 1997).

Number of offences per case

Some cases have additional offences reported alongside the primary sexual violation case. Other common offences that can occur alongside sexual violation offences include breach of bail, possession of a weapon, other types of assaults, threatening behaviour, or property damage.

For the 2015 files, a quarter of cases reviewed (n=89, 26%) had more than one offence recorded, ranging from 2 to 9 offences per file. This variable was not detailed in the 1997

¹⁰ In 1997 attempted sexual violation and completed sexual violation offences were combined, and for comparison purposes all the 2015 offences involving rape (penetration of a person's genitals by another person's penis) were combined, as were those involving unlawful sexual connection (anal and genital penetration of one person by any part of another or by an object held or manipulated, also includes oral sex).

analysis but was included for the current analysis following a positive relationship found by Triggs et al. (2009) between the number of offences and cases that proceeded through to prosecution. This relationship appeared true for the files reviewed, as seen later in section 3.3.

Table 2.4: Number of offences per case

Number of offences per case	n	Weighted %
1	89	74%
2	16	17%
3	2	4%
4	1	2%
6	1	2%
9	1	2%
Total	110	100%

Note: Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

2.2 Number of perpetrators and victims per case

Sexual violation files can include cases involving multiple perpetrators and multiple victims. In 2015 there were a total of 117 perpetrators and 111 victims associated with the 110 files reviewed.

- eight percent of files involved more than one perpetrator. The number of perpetrators ranged from 2 to 3, with one file just referring to ‘multiple’ perpetrators;¹¹ and
- there was just one case that involved two victims, both recorded as assault with intent to commit rape.¹²

In 1997, there were a total of 181 perpetrators and 166 victims associated with 164 files reviewed. A similar seven percent of cases involved more than one perpetrator but ranged from two to six (the number in one file was unspecified). There were just two cases involving more than one victim, one where there was one perpetrator, and one where there were two.

¹¹ The number was unclear in two files - this included cases where a victim could not remember the exact number of perpetrators but recalled there was more than one.

¹² There was one file that involved multiple victims on multiple occasions, against the same perpetrator. The files had been combined together for the prosecution, but only one offence against one victim was reported during the time period of the file review.

2.4 Victim's demographics

Table 2.4 presents the demographics of the 111 female victims associated with the 110 files. Date of birth was always recorded on file enabling age to be determined, but ethnicity was missing on nine files.

Table 2.4: Demographics of victims from the 2015 file review (n=111)

Variable	n	Weighted % ²
Age		
20 years or younger	21	20%
21-25 years	24	19%
26-30 years	10	10%
31-40 years	23	22%
41-50 years	21	19%
51-60 years	10	9%
Over 60 years	2	2%
Ethnicity		
European	53	52%
Māori	26	26%
Pacific	9	10%
¹ Other	14	13%
Unspecified	9	-
Total	111	100%

Notes:

¹ Other types of ethnicity included victims identified as Indian (n=5), Chinese (n=5), and an African, Asian and Somalian. Ethnicity is based on police records and is not self-identified.

² 'Unspecified' removed from base when calculating percentages. Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

Victims in 2015 tended to be young, with almost half of the victims aged 30 years or younger. Whilst still pointing to an over representation of younger victims, this is less marked than in 1997 where three quarters of the victims were 30 years or younger. Just over half the victims in the sample were European, and a quarter were Māori. These proportions are similar to the 1997 proportions (56% and 22% respectively),¹³ and indicate Māori continue to be over-represented as victims, making up only around 15% of the population. Other ethnicities varied across samples, with more Pasifika victims in 1997

¹³ 1997 percentages were re-calculated after removing 'unspecified' records from base to make figures comparable.

(18%) and fewer designated as 'other' (4%), likely indicative of the changing demographics of New Zealand with increased number of migrants, particularly in big centres such as Auckland.

2.5 Perpetrator demographics

Table 2.5 presents the demographics of perpetrators where recorded. As noted earlier, in 8% of files there was more than one perpetrator associated with the case, with 117 perpetrators recorded as being associated with the 110 cases.

Table 2.5: Perpetrator demographics

Variable	n	Weighted % ³
Age		
20 years or younger	10	13%
21-25 years	15	15%
26-30 years	10	8%
31-40 years	29	32%
41-50 years	17	17%
51-60 years	10	11%
Over 60 years	3	3%
Not identified	23	-
Ethnicity¹		
European	44	48%
Māori	18	22%
Pacific	13	14%
² Other	14	16%
Unspecified/not identified	28	-
Total	117	100%

Notes:

¹ Ethnicity is based on police records and is not self-identified.

² Other (n=14) included perpetrators identified as Indian (n=6), Chinese (n=2), African (n=2) and an Afghan, Australian, Middle Eastern and German.

³ Unspecified/not identified removed from base when calculating percentages. Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

A perpetrator needs to be identified in order for details to be recorded against him/her, and there were 19 files relating to 23 perpetrators where the perpetrator(s) were not identified. Of note, whilst all victims were female to meet eligibility criteria, this did not apply to perpetrators, and one case involved the sexual victimisation of a female by a female perpetrator.

The available data on age suggests perpetrators are typically older than victims - just 36% of the 2015 perpetrators were 30 years or younger compared to almost half of the victims. This older profile for perpetrators was also evident in 1997. Ethnicity of 2015 perpetrators was similar to that of the victims, although slightly fewer European and Māori, and slightly more Pacific and 'other', although this may be influenced by the large number of unspecified or unidentified records. Compared to 1997, there were fewer perpetrators identified as Pacific (28% in 1997 compared to 14% in 2015).

2.6 Relationship of victim to perpetrator

Table 2.5 presents details of the relationship of the victim to the perpetrator at the time of the assault. As in 1997, the vast majority of cases (84%) were where the perpetrator was known by the victim. Whilst the proportion of reported attacks by strangers has remained constant, there are differences across the two samples regarding who the known person was. In 1997, just 18% were recorded as the partner (current or ex) of the victim, but in 2015 this group had doubled to 37%. The majority of partners were the victim's current partner/spouse (n=29), with a smaller number being the ex-partner spouse (n=12).

Table 2.5: Relationship of victim to perpetrator (at time of assault)

Relationship type	n	Weighted % ²
Acquaintance	46	38%
Intimate partner	41	37%
Stranger	13	14%
Family member	6	7%
Other ¹	2	2%
Unspecified	2	2%
Total	110	100%

Notes.

¹ The category of 'other' included a client of a sex worker and a legal advisor.

² Unspecified/not identified removed from base when calculating percentages. Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

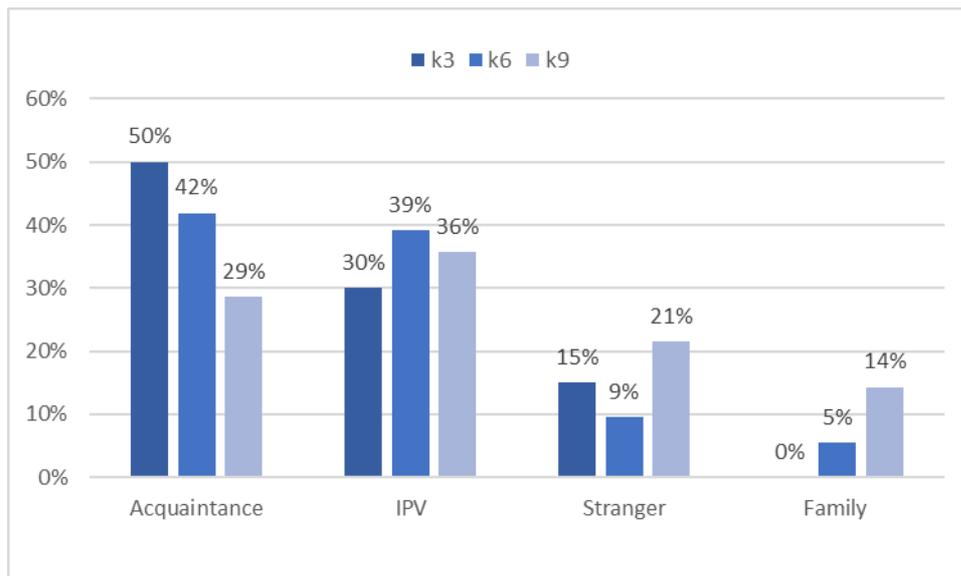
The other significant group were 'acquaintances', which included those in a casual relationship such as where a victim met a perpetrator online (n=15), others were friends of someone known to the victim (e.g. friends of friends), two were neighbours, two were work colleagues (one a supervisor) and one was a fellow backpacker.

Family members made up 7% of files in 2015 (compared to 4% in 1997). Family members included uncles (n=3), a sibling, a step-father and a son-in-law.

In 1997 the police appeared to view the majority of complaints with suspicion, virtually irrespective of the relationship between the victim and the alleged offender. Of cases involving strangers, less than a quarter of the complaints were deemed by police to be genuine, while almost two-thirds (65%) were regarded as false or possibly true/false. With respect to alleged acquaintance attacks, 18% of complaints were perceived to be genuine, compared with 73% where police expressed doubts about the allegation. Similar findings emerged for alleged partner assaults with only 21% deemed genuine.

Figure 2.1 shows the relative frequency of each relationship type within each result code in 2015. Cases where the attacker was a stranger were slightly more likely to proceed to prosecution (accounting for 21% of all K9s compared to 9% of K6s or 15% of K3s). Alleged attacks by acquaintances were the second most common relationship type and appeared more likely to be resulted K3 (50% of all K3s, compared to 42% of K6s and 29% of K9s). This suggests there may still be some support for the traditional view of ‘real’ rapes being more likely to be viewed as those involving stranger attackers rather than persons already known to the victim.

Figure 2.1. Relationship type by result code



Note: There were n=2 cases of ‘other’ types of relationship (a sex worker and legal advisor) both K6s and making up 3% of K6s, and there were two cases where the relationship was unspecified, making up 5% of K3s, and 1% of K6s.

2.7 Other characteristics

A number of other details associated with files were recorded. Several of these are reviewed in more detail under findings, when their role in relation to case progression is discussed. Details of key factors are also provided below so sample characteristics can be reviewed together in one place.

Employment

Table 2.6 presents the employment status of victims and perpetrators. This was unspecified in many files, particularly for perpetrators. Based on details supplied, a greater proportion of perpetrators than victims were employed (56% compared to 42%).

Table 2.6. Employment status of victims and perpetrators

Employment status	Victims		Perpetrators	
	n	Weighted % ³	n	Weighted %
Unwaged ¹	26	42%	12	43%
Employed ²	23	42%	27	56%
Student	12	18%	6	14%
Unspecified	49	-	65	-
Total	110	100%	110	100%

Notes:

¹ Unwaged - victims (n=26) – included 14 on a benefit, 7 unemployed, 3 stay at home mothers, and one backpacker; perpetrators (n=12) – included 2 on a benefit, 8 unemployed, one backpacker and one perpetrator currently in prison

² Employed - victims (n=23) – included 7 sex workers, 4 managers/professionals, 2 part-time or casual workers, others included administration, child care, hospitality, painter, retail, cleaner. Perpetrators (n=27) – included 5 managers/professionals, 6 truck drivers, 6 construction workers, 2 cleaners and 2 retail and 1 part-time or casual work.

³ Unspecified/not identified removed from base when calculating percentages. Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

Characteristics of the incident

Table 2.7 presents recorded characteristics associated with the incident. The most common location of the reported sexual violation was in a private dwelling (84% of all files). In at least 27 cases this was the victim's home and in 18 cases the perpetrator's home. Other cases were private dwellings of acquaintances, friends or family members. The next most common location involved what are deemed public areas (n=14). These could be a park, sports grounds, a street or car park (there were 4 cases of the incident occurring in the perpetrator's car located in a public car park).

Table 2.7: Incident details

Variable	n	Weighted %³
Location		
Dwelling (private home/apartment/flat)	79	84%
Public area (park/grounds/carpark/street)	14	14%
Motel	2	2%
Workplace	1	1%
Multiple / various	3	3%
Unspecified/unsure	11	-
Who reported incident		
Victim	88	80%
Family or friend	13	15%
Other third party (medical staff/social worker)	6	5%
Unspecified	3	-
How reported		
111 call or other call to police	39	44%
Counter	30	29%
Other ¹	28	27%
Unclear	13	-
Other details		
Use of force, threats or injury	62	58%
Weapon used	6	8%
Use of position of status / influence ²	13	11%
Total	110	100%

Notes:

¹ Other (n=28) included – during a police enquiry/attendance on another matter (n=19 – including 5 cases where victim was being arrested for something else), during hospital visit (n=6), other medical appointment (whilst attending medical at medical n=2), victim sought help in a shop and shop keeper contacted police, victim’s employer.

² Use of influence (n=13) included immigration status (n=3), church leader (n=1), landlord (n=1), other threats related to accommodation (n=1), threats to leave in vulnerable location (n=1), business related threat (n=1), other intimidation (e.g. gang connections, violence) – (n=3). [n=2 unclear what]

³ Unspecified/not identified removed from base when calculating percentages. Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

In 80% of cases it was the victim who reported the sexual violation, with a further 15% reported by a family member or friend. The two major ways reports were received were by phone calls (44%) followed by over the counter at Police stations (29%).

Issues of physical force and resistance have long been contentious with regards to rape complaints, with victims historically expected to confirm their allegations by displaying physical injuries to prove their lack of consent and efforts at resistance (Burgin, 2018; Jordan, 2004). Approximately three out of every five victims reported the assault being accompanied by force or threats or resulting in some form of injury (n=62 or 58%), a high finding when compared to international research. Perpetrators were more likely to use their position of status/influence to obtain sex (n=15) than they were weapons (n=6). There were 42 victims recorded as having visible injuries from violence, consistent with the high levels of intimate partner violence observed.

Possible perceived credibility issues related to incident

Table 2.8 and 2.9 present the relative frequency of factors previously identified as influencing judgements about the perceived credibility of the victim. Table 2.8 describes characteristics related to the incident, whilst table 2.9 outlines characteristics of the victims. These factors are presented here for easy reference but their roles in relation to case progression are discussed as relevant within the findings sections of the report.

Table 2.8: Incident details

Variable	n	Weighted % ²
Consent changed	16	13%
Consumed A&D together prior	28	25%
Victim use of A&D prior	48	42%
Victim intoxicated	24	23%
Victim use of other medication prior	14	12%
Victim unconscious prior (fully or semi)	10	9%
Victim asleep prior	13	15%
Victim resistance		
Any resistance ¹	43	44%
No resistance out of fear (compliant or froze)	14	11%
Unable (e.g. unconscious)	6	5%
No recall	3	2%
Other avoidance strategy	1	1%
Total	110	100%

Notes:

¹ Including strong verbal and/or physical (n=9) resistance, followed by compliance (n=8)

² Unspecified/not identified removed from base when calculating percentages. Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

Table 2.9: Victim factors associated with perceived credibility issues

Variable	n	Weighted %¹
Mental health concerns noted	42	34%
Intellectual disability noted	8	5%
Physical disability noted	0	-
Previous consensual sex with perpetrator	43	39%
Victim demeanour not consistent with rape	12	9%
Victim concealment observed / noted	6	5%
Victim unreliable testimony noted	45	37%
Total	110	100%

Notes: ¹ Unspecified/not identified removed from base when calculating percentages. Reported percentages are weighted, with K9 cases weighted to adjust for 40% sampling of K9 cases.

2.8 Summary

This section presented important descriptive details of the files reviewed in 2015, and where possible compares them to those of 1997. It is important to note the two samples are fundamentally different as only the 2015 sample included K9 files (that proceeded to prosecution). This means caution is required when comparing across samples, particularly when considering sample characteristics that are also likely to be associated with decisions to prosecute (e.g. files progressing to prosecution may be influenced by the number of offences, nature of relationship etc).

The characteristics between the two file samples were more similar than different. The only notable differences in 2015 files compared to those in 1997 are listed below:

- **Result codes** – the number of files resulted K3 in 2015 is less than half of those in the 1997 sample.
- **Age** - victims in 2015 still tended to be younger, with almost half of the victims aged 30 years or younger. However, this difference was less marked than in 1997 where three quarters of the victims were 30 years or younger.
- **Ethnicity** – in the 2015 file sample there were fewer victims or perpetrators recorded as being Pasifika and more designated as ‘other’, likely indicative of the changing demographics of New Zealand with the increased number of migrants, particularly in big centres such as Auckland.
- **Relationship characteristics** – the same proportion of perpetrators were ‘known’ to the victim as had been in 1997 (84%), however, in 2015 a far greater proportion of these were IPV-related, 37% compared to just 18% in 1997.

3 Comparison of file progression in 1997 and 2015

This section first looks at changes over time in the in the proportion of sexual violation offences proceeding through to further investigation, with a particular focus on the use of the K3 result of 'no crime/false allegation'. It then considers factors associated with case progression and also those judged as key for decisions on whether to progress a file. Finally, the perceived victim credibility factors found influential in 1997 are re-visited.

3.1 Background to use of the K3 result code

The use of the K3 result code to signify 'no offence disclosed' has long been a source of contention, paralleled internationally in relation to 'unfounded' cases in the US and those 'no crimed' in the UK (Hohl & Stanko, 2015; Lonsway, 2010). These resolutions have often been linked to high levels of disbelief regarding the genuineness of victims' allegations (McMillan and Thomas, 2009).

In New Zealand the K3 code was intended for use only in cases where Police determined there was no offence rather than that the report was a fabrication – in other words, based on credible evidence, Police ascertained after the initial report that no offence occurred (neither rape nor any other criminal offence). Slippage meant that the code became increasingly used as somewhat of a catch-all category for whenever Police determined no further investigation of a case was warranted on a range of grounds, yet was often interpreted as synonymous with false complaints. An artificially inflated figure supports one of the major rape myths: that false allegations from women are common (Jordan, 2004, 2004a; Kelly, 2010).

The misleading impressions created from its overuse were first identified in the Institute of Criminology's 1983 Rape Study (Young, 1983), with the suggestion strongly made that:

At the least it would seem that a separate category of 'insufficient evidence to proceed' should be created. (Stace, 1983, 14)

In the 1997 study the file analysis was supplemented with interviews with experienced detectives, and their views demonstrated wide variation in how they perceived the K3 code should be used. For some it was clear that they believed it should be restricted to fabricated accounts, but others viewed it more broadly. As one commented:

I would have suspected that 'no offence disclosed' grouped together a whole lot of things – false complaints, no offence, 'it happened – no evidence' and 'I don't know what happened'. (D11, quoted in Jordan, 2004, pp171-172)

This was extended further by some to include also cases where the victim decided to withdraw. The key concern resulting from such varied usage was that high K3 numbers were then interpreted as indicative of the numbers of women making false accusations,

thereby supporting one of the major rape myths that portrays women as vexatious liars (Lonsway, 2010; Kelly, 2010).

The misuse and misinterpretation of this offence code has since been increasingly recognised and largely addressed within New Zealand Police. Before 2014, New Zealand Police acknowledge the official reporting standard provided little guidance to detectives beyond that K3 meant that no offence had been disclosed. It was open to interpretation that no formal interview could be equated with no offence and coded K3. However, in 2014 there was a review of the use of the K3 clearance code in all adult sexual assault cases. Identification of the misuse of this code was presented to District Crime Managers in July 2014 and at the Adult Sexual Assault/Child Protections Managers National Conference in Sept 2014. Reporting standards were then updated in 2016.

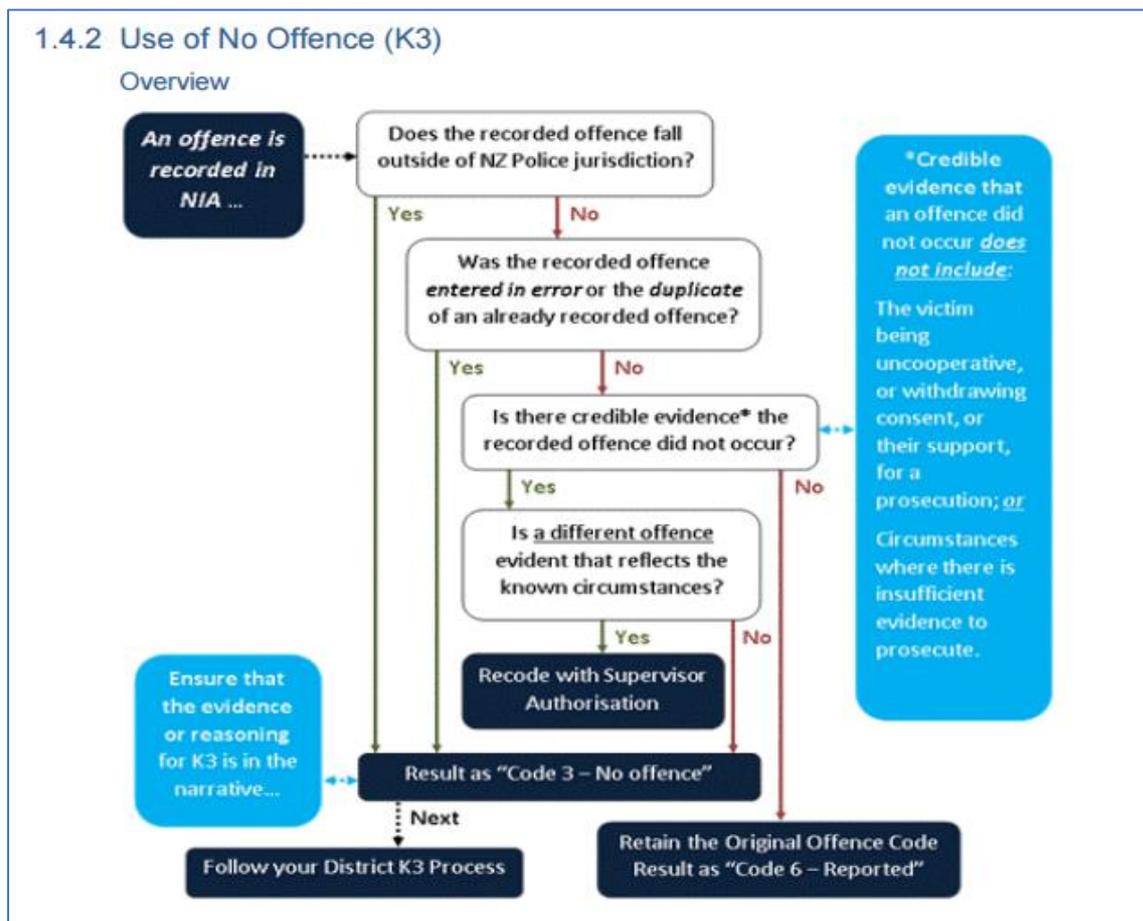
National Recording Standards (v11 – July 2015, p.14) note:

Reports of Offences attended by Police can only be resulted No Offence (K3) when there is credible evidence that no offence occurred, or the offence is contained within an occurrence entered in error.

Further, whilst not yet formally entered into Policy, the flow diagram in figure 3.1 was distributed for use across Districts and it was made clear that this was the expectation of how the K3 clearance code was to be applied in ASA cases.

This was followed in 2016 by a series of formal audits of the use of the K3 code by the Data Quality and Integrity Team (DQIT), see section 5.5 for more details.

Figure 3.1. Flow diagram outlining use of No Offence K3



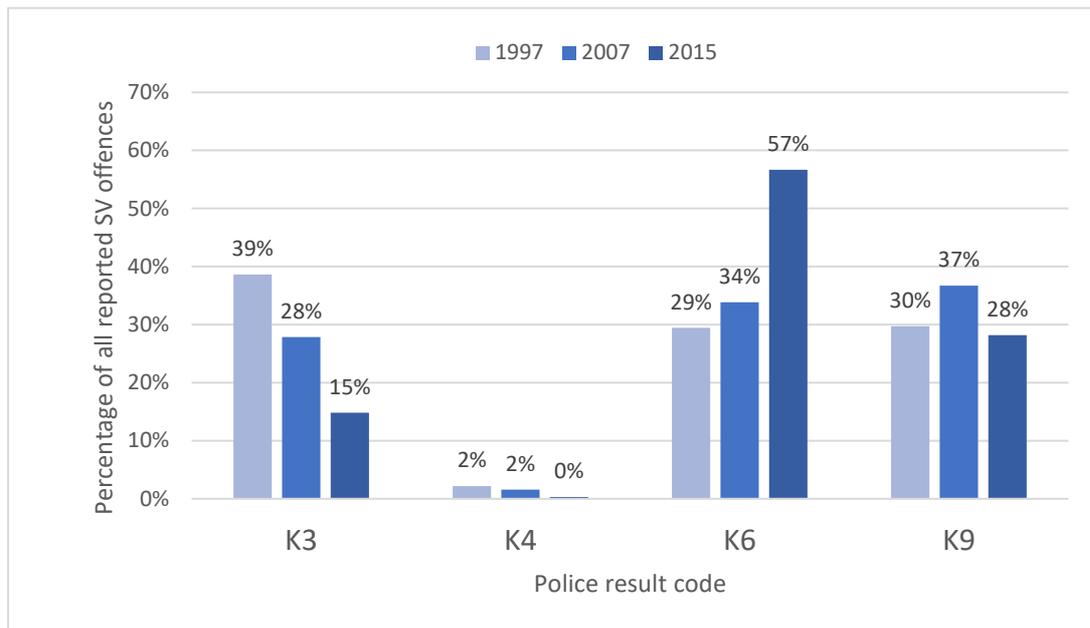
Note: Diagram supplied by New Zealand Police in February 2017

3.2 Case progression in 2015

In the earlier section on sample characteristics (section 2.1), significant differences were observed in the make-up of the 1997 file sample compared to the 2015 sample, with far fewer cases being resulted K3 (no offence/false allegation). This means a greater proportion of files were now proceeding through to investigation, which would be an encouraging finding if supported by a similar trend in national data.

To further explore these observed differences in the make-up of the sample, national data were requested on the use of the different clearance codes over three points in time: 1997, 2007 and 2015. This is presented in figure 3.2 below, which shows the relative use of K3, K4, K6 and K9 clearance codes over time for all sexual violation offences and attempted sexual violation (excluding offence codes relating specifically to male victims e.g. Unlawful Sexual Connection of Male Over 16).

Figure 3.2. Result codes for reported sexual violation offences over time.



Notes: Data supplied by New Zealand Police 1 December 2017.

Two key points can be taken from figure 3.2.

- the sampling of results codes in the current file analysis which were taken from just five districts is consistent with the national rate of use of these result codes (see table 2.1, 2015 sample is K3=15%, K4 =K4, K6=57% and K9=27%); and
- perhaps more significant is the confirmation of the reduced use of the K3 result since 1997. National figures suggest a clear trend over time of a reduced use of the K3 results code from 39% in 1997 down to 15% in 2015, and apparent increased use of K6 (from 29% in 1997 up to 57% in 2015).

A final observation, not visible in figure 3.2, is the increase in the number of reported sexual violation offences over time. The total number of reported sexual violation offences from 1997 to 2015 has nearly doubled. In 1997, there were around 1500, and by 2015 it was close to 3000.

The reduced use of K3 nationally and in the 2015 file review sample is positive and appears consistent with the tone of these more recent police directives. Cases similar in kind to many of those filed K3 and described as likely to be false in 1997 were more likely to now result in a K6 designation, and as will be seen in the next section, this is largely irrespective of factors such as delayed reporting or the victim having had previous consensual sex with the accused.

However, whilst clearly good progress, we did still find a significant number of K3 files (at least 8 out of 20) that appear to be based on an incorrect use of the code. These are discussed below.

Inappropriate use of K3 'no offence'

There were 20 files in our 2015 sample coded K3, of which at least 8 appeared to have been inappropriately filed 'no offence'. In all 8 cases there was no evidence of fabrication, rather, in seven of these eight cases it appeared that it was because the victim had withdrawn the complaint that it was filed K3. As a result of no formal interview being taken, these files had comparatively less detail available to review.

In one case a young female from out of town felt pressured to go for a drink and a drive with a male she had just met, which she agreed to hoping it would keep him quiet and stop his harassment of her. Instead he drove her to a secluded area she did not know and made repeated sexual advances which she refused on multiple occasions. She reported him threatening that she could either have sex with him or be left alone in the secluded area. She says she didn't engage with him physically but asked him repeatedly to take her back. He became increasingly angry and she began to feel frightened and gave in.

She blamed herself for what happened and had not felt able to tell the police, but as soon as her friend heard the latter reported the matter. Police interviewed the perpetrator who maintained the victim had been the initiator and sex was consensual. The file notes that the perpetrator claimed to have made remarks about committing serious harm to the victim, but in a joking manner, and that the victim knew he was joking. The victim later said she wanted to withdraw the complaint, although it is clear Police considered proceeding with it. A female ASA constable wrote: 'After discussing with [senior male detectives] a decision of 'No Prosecution' has been made. This does not preclude any further consideration of a case by a prosecutor.' It was therefore surprising that this case was resulted K3. (E23-K3)

In three cases information on file suggested detectives were concerned over initial reports and had tried to encourage the victim to proceed, suggesting they believed sexual violation likely occurred.

For example, a young woman who had been out drinking the night before woke to find herself in a house with three unknown men and evidence of sexual acts having happened. She went to the hospital and said she thought she may have been sexually violated. A forensic medical examination revealed recent bruising around her anus, non-specific bruising on her hymen and a cut on her leg. While Police were keen to investigate, she said she did not want possible witnesses contacted and other available corroborating evidence collected because she did not want anyone to know. The file shows that although Police suggested she rethink this decision in the interests of public safety and possible future prevention, they respected her wishes. The case was resulted K3, however, despite it being clear Police believed she had been sexually violated. (E14-K3)

These and other cases often referenced injuries sustained by victims and statements from Police indicating they considered the offending had likely occurred, in some instances going to talk with or warn the perpetrator.

For example, a young woman who reported having been vaginally and anally raped by a male friend decided not to continue with the complaint but agreed to police speaking with the perpetrator. The file notes the latter was 'advised of complaint and the seriousness of allegations. He was reminded of the need to ensure 'consent' to sexual activity and advised that a record of this occurrence would remain recorded against his name in the police system.' (E9-K3).

Another case arose when a woman's husband forced sex on her so violently that she was hospitalised for a torn uterus. She later advised the female detective who visited her that she loved her husband and wished to withdraw the complaint, adding that she thought the injury arose from her sexual naiveté and the fact that she didn't know what to do. She still maintained this stance several months later when police visited the house to arrest her husband for the sexual violation of another woman. The case was filed K3. (E10-K3)

The eighth case inappropriately resulted as K3, and the only one that the victim did not want to withdraw, involved a victim alleging sexual violation by an online date.

The woman maintained he refused to stop when asked and pinned her down, while he described it as 'very aggressive consensual sex.' The victim's account lacked detail and displayed poor recall, yet also included her suspicion that her drink had been spiked. There were also suggestions on file of her having a low IQ. Both factors could presumably have contributed towards the poor recall identified by police as posing 'a challenge to any prosecution.' No toxicology results appeared to be ordered and it was determined there was insufficient evidence to proceed. Nevertheless, file notes say the victim is to be advised that 'I believe what she is saying is true', while the perpetrator was 'to be told he is very lucky he is not being charged.' This case was also filed K3. (E45-K3)

These findings suggest that some misunderstandings continue regarding the appropriate use of the K3 code, with it clearly not being restricted to cases deemed to be intentional fabrications. Filing cases K3 inappropriately renders these women even more at risk of having any subsequent rape complaints dismissed, the inference being, as we found on some files, that she is a repeat false complainer. This underscores the vital importance of restricting the use of this code to those cases where there is actual evidence that no offence occurred, rather than that the victim decided not to proceed with the allegation. Recognition of the latter depends on officers having a thorough understanding of the multiple reasons underlining victim withdrawal, as well as sensitivity to the complex dynamics involved in family violence and/or immigration-related cases.

If these 8 files were more appropriately re-coded to K6, the actual percentage of K3s in the 2015 sample would be 9%, representing a far smaller percentage of likely false allegations.

3.3 Factors impacting on case progression

For each file reviewed we recorded and analysed the relative frequency of a range of factors and compared relative proportions across each result code (see Appendix A). These factors are discussed in a number of places throughout this report; this section presents some higher-level findings focusing on factors that differentiated those that proceeded to prosecution or not.

One of the differences between the 1997 and 2015 file analyses was the inclusion in 2015 of a small sample of files that proceeded to prosecution. These files contained considerably more detail and more evidence to support a conviction, however they also differed in the presence or not of a number of other factors.

Table 3.1 presents the biggest differences in factors present in K9 files compared to those resulted K3 or K6. Interestingly, when looking at the data in this way, the characteristics of the K3 and K6 files appear quite similar.

Table 3.1. Factors associated with case progression

	Percentage of files in each result code where factor is present		
	K3 (n=20)	K6 (n=74)	K9 (n=14)
More likely K9 if:			
More than one offence	15%	12%	64%
Perpetrator had mental health concerns	5%	5%	43%
Victim response (resisted any)	30%	35%	71%
Perpetrator testimony (evidence of guilt)	0%	1%	36%
Less likely K9 if:			
Victim WD/no complaint	55%	47%	7%
Reported by victim (not a third party)	75%	86%	50%
Victim declined L3 interview	35%	30%	0%
Victim had mental health concerns	40%	42%	7%
Victim testimony viewed unreliable	40%	47%	14%
Delay in report (over 7 days)	30%	35%	7%

As evident in the table above, cases were more likely to be filed K9 when there was clear evidence of victim resistance. Moreover, nine of the 14 cases involved serious levels of force and violence. This also meant these cases were more likely to involve multiple charges being laid, with these sometimes resulting in plea bargaining around the sexual violation charges, as discussed below. These factors support the findings of Triggs et al.'s 2009 attrition study, where the increased presence of aggravating factors was associated with cases proceeding to prosecution (e.g. multiple offences, perpetrator criminal history, use of force etc).

The K9 files are also characterised by 12 of the cases (86%) being reported within 24 hours of occurrence, and any cases of previous consensual sex between the parties concerned having taken place within marriages/partnerships.

As to be expected, the presence of strong corroborating evidence of sexual violation also differentiated files that proceeded to prosecution, particularly a perpetrator's admission of guilt or strong DNA evidence. Cases where the perpetrator had a prior criminal history for sexual violation and mental health concerns also seemed significant. These are highlighted in the K9 cases described below which also present the prosecution outcomes.

The K9 category equated to 14 cases proceeding to prosecution (27% of weighted cases). In eight of these the offender pleaded guilty, a clearly significant factor in making the case for prosecution easier. However, in two of these cases the sexual violation-related charges were excluded either after plea bargaining or, in one case, where a wife withdrew the rape charge while her husband admitted injury and strangling offences (J27-K9).

One case where the offender pled guilty was the only case in our sample that involved a female perpetrator. The victim, also female, reported being indecently assaulted digitally and by mouth after a night of heavy drinking. When DNA evidence was obtained supporting her account, the offender pleaded guilty and was sentenced to home detention after the judge recognised the impact of her own previous sexual abuse on her behaviour. (E57-K9)

Cases where a perpetrator had mental health concerns were more likely to result in prosecution, whilst cases where the victim was identified as having mental health concerns were less likely to proceed (see section 3.3.5). This suggests the possibility that having mental health issues may be perceived as exacerbating responsibility for offending behaviour while reducing credibility as a victim. One case involving multiple historic rapes committed within a marriage where both parties were described as 'mentally impaired' eventually resulted in the sexual violence charges being dropped on the basis that the accused was unfit to stand trial due to his 'intellectual disability' (E5-K9).

In three of the five cases that went to trial the defendant was acquitted. Two of these involved young women victims who were intoxicated to the point of losing consciousness before waking to find themselves either being penetrated or realising they just had been. One of these cases involved two accused, and all three defendants in these two cases were

acquitted at jury trials. The third case resulting in acquittal at trial involved a young woman with serious mental health issues who alleged an acquaintance in her neighbourhood had sexually violated her. He told her he loved her and wanted to be her second boyfriend. As well as noting his acquittal, the file notes he is a suspect in another sexual assault complaint made by a young girl living in the area (E4-K9).

Only two cases that went to trial resulted in convictions. One case involved multiple charges of rape and violence perpetrated by the defendant against his ex-girlfriend. He was identified as a gang member with multiple previous convictions for sexual violation. Phone calls he made to the victim from prison revealed on-going threats and pressure that resulted in her withdrawing the vaginal and anal rape allegations. The defendant was convicted for the associated assaults, threats and kidnapping (E34-K9).

The second case resulting in conviction is detailed here given that it involved the only defendant in our entire 2015 sample to be tried before a jury and convicted for sexual violation.

In this incident the victim in her late teens, referred to having been at a family gathering where large amounts of alcohol were being consumed. Earlier in the evening she had consensual sex with a male she fancied, before feeling sick and going to bed. She stirred to find a family member, who was in his late 30's, in the room, drifted back to sleep, then woke when she felt him on her. She described being woken by the weight of a male relative lying on top of her. The victim went into shock and froze. She felt unable to say anything or to move, even to look at him, and described going into her 'own little world' while he continued his sexual assault of her.

The male was confronted by family members after the victim told them what had happened. The male after initially denying the sexual assault, indicated to the family that he had made a mistake and apologised for what he had done. When later confronted by Police he was vague about the night, claiming he couldn't remember what had happened and that he was very drunk

The ESR tests came back with a match for the semen and DNA of the defendant, who although he pleaded not guilty was found guilty at jury trial and received a seven-year custodial sentence. (E24-K9)

Achieving a conviction at trial required strong evidence, perpetrator confession and apology, third party confirmation, and DNA corroboration. Overall, of the 12 SV reported offences that went on to be prosecuted, 8 resulted in a conviction. When re-adjusted to account for the 40% reduced sample of K9 files, this equates to a 15% rate of conviction from our sample of files.

Cases less likely to proceed to prosecution

As seen in table 3.1, factors less likely to proceed to prosecution tended to be similarly present in both the K6 and K3 files. All factors listed were victim-related with some involving subjective assessments, but most could be linked to evidential sufficiency issues. These included when the victim withdrew from the investigation (around half of the K3 or K6 cases compared to just 7% of K9 cases) or where a victim elected not to continue with the complaint by declining an L3 interview. Files assessed by police to involve unreliable testimony on her part were also common, and whilst this can be assessed on a range of criteria, a commonly identified factor involved apparent inconsistencies in the victim's testimony (see section 3.4.4). Files less likely to proceed to prosecution included those where the offending was reported by the victim, as opposed to a third party, or where there had been a delay of over 7 days in reporting. A high percentage of cases also involved detectives expressing mental health concerns about the victim.

In reviewing the files, one factor that seemed to be particular to the 20 files resulted K3 was how the sexual assault was disclosed. In three-quarters of these cases disclosure arose in the context of other offending and/or injuries being investigated, for example, while police were attending a family violence incident or the victim was being treated in hospital (n=11), or when the incident was reported by a family member/friend (n=4).

3.4 Key factors influencing case progression

This section reviews the factors identified as most commonly influencing decisions around case progression. This is a similar approach to that used recently by Dhami et al (2018). The factors needed to be judged by us as key to decision making to a particular case, and not just present (as per analysis in previous section). In 1997 the decision to proceed with an investigation was often made early and based on judgements around whether victim should be believed, influenced by her perceived credibility. In the 2015 files, there appears to have been a shift towards investigations being more likely to be completed prior to making a decision on how the case should be resulted (K3, K4, K6 or K9). These decisions appear now to be far more focused on assessments of evidence sufficiency. The three most common factors influencing decision making were: if the victim elected not to proceed (i.e. not to provide evidence), if the victim's evidence was unreliable, and relatedly, if there were mental health concerns regarding the victim.

Key factors in 1997

The 1997 files often contained detailed accounts outlining how detectives perceived the credibility of the victim and the genuineness of her allegations. The emphasis placed on identifying possible false complaints meant that all cases could be viewed through this credibility lens, resulting in the entire sample being divided into four categories: genuine; possibly true or possibly false; police said false; or victim said false. While the high percentage of rape complaints that were subsequently withdrawn by the victim appeared

often to be interpreted by police as signifying false complaints, the analysis suggested relatively few of these were likely to have been made in situations where no sexual assault occurred. Concern was also raised with reference to the 1997 files regarding the high percentage of sexual assault complaints made by persons with intellectual disability or psychiatric instability that were interpreted as false and coded K3.

A range of factors were identified that appeared to impact on police responses and decision-making. There were two factors where all cases fell in the false, or possibly false/true category, with none proceeding through to further investigation. These were where there was:

- some concealment of facts by the victim (100% of 10 cases did not proceed); or
- her having made a previous complaint of rape deemed false (100% of 11 cases did not proceed).

Other factors where 75% or more of the cases with this factor did not proceed included:

- where the victim was identified as having some level of psychiatric disturbance (87% of the 30 cases did not proceed);
- delayed reporting (86% of the 37 cases did not proceed);
- perceived immorality (84% of the 25 cases did not proceed);
- victim experiencing previous rape/abuse (84% of 31 cases did not proceed);
- victim having had previous consensual sex with the accused (83% of 36 cases did not proceed);
- where she had intellectual impairment (75% of the 16 cases did not proceed); and
- victim being drunk /drugged (72% of the 51 cases did not proceed).

These factors reflected the widespread adherence to common rape myths prevalent within police and the wider society that assumed 'real rape' equated to stranger attacks perpetrated against sober, moral women with no previous victimisation history who sustained visible injuries defending themselves and reported to police immediately.

At the time it was noted that suspicion of rape victims appeared 'entrenched' within police services, a finding consistent with international research indicating high levels of police scepticism surrounding rape complaints. This attitude persisted despite changes in legislation specifying all victims were to be treated with respect and compassion and police training suggesting a starting point of belief should be adopted by investigators. The inference was that substantive shifts in police responses to rape victims were difficult to achieve and would require a multi-faceted response, a perspective shared with many police researchers internationally (Gregory & Lees, 1999; Kelly, 2002).

Much of significance has occurred within New Zealand Police in the twenty years since then. These changes have included:

- the introduction in 1998 of a specific policy to guide how Adult Sexual Assault cases were to be investigated;

- growing recognition of the need for specialist training and policing;
- shifts in interviewing styles and techniques
- improved quality assurance processes; and
- medical and technological advances that have improved forensic practices.

Almost certainly the biggest catalyst for change was the Commission of Inquiry into Police Conduct, 2007. Dame Margaret Bazley’s requirement that an external government department would regularly monitor the progress New Zealand Police were making in implementing the recommendations ensured a decade of change followed, with sexual assault investigations prioritised in unprecedented ways. Several of these positive changes are reviewed in section 5.

The extent of the changes made suggested a high likelihood that the 2015 file analysis would provide evidence of more rigorous and thorough policing than that which emerged from the 1997 analysis, and indeed the results largely concur with this expectation.

Factors viewed as key to decision-making in 2015

After reviewing each file, we recorded what appeared to us to be the factor or factors most influential to detectives in their decision on how to finalise the case as K3, K6 or K9. We called these the ‘key factors’ (see Appendix C for frequency of key factors).

Overall across all 110 files, the top two factors identified as key to police decision-making in rape cases were: cases where the victim’s testimony was viewed by Police as unreliable and, equally prevalent, those where the victim either declined to make a complaint or later withdrew her complaint. These factors appeared key to decision making in 28% of cases. The third key factor involved cases where the Police held concerns regarding the victim’s mental health.

- no victim complaint/victim withdrawal (key to decision making in 28% of cases);
- victim unreliable testimony (key to decision making in 28% of cases); and
- mental health concerns identified for victim (key to decision making in 13% of cases)

Table 3.2 shows the frequency of various factors recorded as key to decision making within each of the three result codes (note: as there were only two K4 cases, these were not included in any comparative analysis). This breakdown reveals the prevalence of the key factors varied across the results codes.

Table 3.2. Factors influential in decision making across different result codes (top three for each code presented)

K3 (no offence)	K6 (offence recorded)	K9 (arrest/prosecution)
<ul style="list-style-type: none"> - No victim complaint/ victim withdrawal (40%) - Victim unreliable testimony (25%) - Victim MH concerns, prior K3, victim retracted (15%) 	<ul style="list-style-type: none"> - Victim unreliable testimony (35%) - No victim complaint/victim withdrawal (31%) - Victim MH concerns (15%) 	<ul style="list-style-type: none"> - Witness testimony (36%) - Accused testimony (21%) - Accused does not deny; DNA link made, accused SV criminal history, strong victim testimony (14%)

Of files resulted K3, 40% involved cases where the victim herself had not made the complaint or had withdrawn her complaint, and this factor was also highly evident in cases resulted K6 (31%). Also highly evident in both K3 and K6 resulted cases were concerns over the victim providing unreliable testimony, accounting respectively for 25% and 35% of cases. One factor evident only in relation to K3 resulted cases involved instances where the victim was already on record for having filed a previous complaint that was resulted K3 (15%), the implication being that, as found in 1997, having one recorded possible false complaint on file made it more likely that any subsequent reported rape might be viewed with some suspicion by police. The issue of Police concerns regarding the victim’s mental health was evident mostly in cases resulted K6, suggesting that these assumed greater relevancy during the course of the investigation.

For cases that did progress to prosecution (K9), key factors related to the availability (rather than lack of) evidence. The key factors were where evidence supportive of sexual violation was available in testimonies, particularly when this came from a corroborating witness.

The top three factors influencing case progression in 2015 are now more extensively reviewed:

- (i) victim withdrawal or no complaint;
- (ii) victim unreliable testimony; and
- (iii) mental health concerns.

Victim withdrawal/no complaint

The most significant factor identified that was associated with cases not progressing to further police investigation arose from victims withdrawing their allegation or deciding after initial police contact to make no formal complaint.

In the 1997 files, victim withdrawal accounted for nearly half of all reported cases (47%; n=77). One major assumption held then by the police was that a victim’s withdrawal of an allegation should be viewed as a retraction, a denial that any offence occurred, with the police often interpreting this as evidence that the allegation was fabricated (Aiken et. Al., 1999). Greater awareness exists now that there are many reasons why victims decide to

withdraw or may simply fail to stay in touch with police about proceeding further. For example, victims may be too afraid to proceed, or decide that the likely costs of pursuing the complaint might outweigh the advantages. The latter conclusion could be reached as a result of encountering hostile reactions from the perpetrator, negative responses from family or friends, disbelieving or judgmental police perceptions, or result from the victim's own fears, doubts and self-blaming processes. Case retractions or withdrawals can therefore signify many different things and it is important for the police to try to ascertain what it signifies for the victim rather than stamp their own interpretation on her actions.

As in 1997, the 2015 analysis revealed similarly high levels of victim withdrawal/no complaint (n=49; 39% of weighted cases).¹⁴ This factor also emerged as the most common factor in decision making (along with victim unreliable testimony), key to decision making in 28% of all cases. It was the most common factor of K3 cases (key in 40% of K3 cases) and second most common of K6 (key in 31% of K6 cases).

This section takes a closer at cases where the victim has withdrawn or declined to make a complaint. Considering its significance as a major factor in decisions around case progression, it is important to understand the circumstances associated with these cases, and review what if anything can be done to make pursuing criminal justice a realistic option for more victims.

The withdrawal/no complaint category included several scenarios including where the victim:

- had made no complaint (the report was made by a third party, and victim declined to proceed) (n=9);
- had made the initial complaint but had then withdrawn (actively or passively) prior to a formal interview being completed (n=33); and
- had completed a formal L3 interview but subsequently retracted their statement (n=7).

While this factor was significant in 1997, in contrast to the earlier study, the majority of 2015 files went on to further investigation and were resulted K6 (73% of weighted cases). Only 11 files were resulted K3, however as noted in section 3.2, it appeared at least 7 of these were miscoded K3 simply because the complaint had been withdrawn/not made, with no credible evidence of fabrication. In the overwhelming majority of withdrawals, the victim withdrew early in the process and did not complete a L3 interview (42 of the 49 cases).

¹⁴ Note: the 1997 files excluded K9 files, if these are removed from the 2015 sample to enable comparison, the percentage of victims who withdrew would be a similar, but slightly higher 51%.

Of those that withdrew early, 23 cases of sexual violation had been reported to police by the victim, 10 cases had been disclosed in the context of reporting other offences, and 9 cases had been reported by someone other than the victim. Most cases did not proceed far before being withdrawn. Overall, there were only 7 cases where the victim had completed an L3 interview before deciding to withdraw the complaint.

Police have recently sought to implement more consistently the practice of having victims who wish to withdraw their allegation do so by signing a formal withdrawal form and citing their reasons for withdrawing. As noted below, 18 victims had signed such a form and this assisted us in understanding the reasons why a victim had elected to withdraw her case from the investigation.

In our analysis of the 2015 data the victim withdrew the allegation in one of several ways:

- 18 victims formally withdrew by signing a withdrawal form;
- 10 victims withdrew by another formal means, such as by written email or recorded statement;
- 12 victims withdrew semi-formally, such as via text or phone call; and
- 9 victims failed to engage with police and effectively disappeared.

As noted above, nine cases of victim withdrawal arose in contexts where someone else other than the victim had reported the sexual violation to Police. These accounted for almost half of all cases where a third party had contacted the police (n=19), mostly a family member/friend (n=13) or a third party (e.g. nurse, hospital social worker, n=6).

A further 10 cases of withdrawal arose in contexts where the sexual violation had been disclosed to police in the context of other offending being reported, most typically family violence offences (n=7). It could be in these cases the victim was reluctant or ambivalent about disclosing and pursuing the sexual violation charges, for a range of reasons. In only one of these cases did the victim complete an L3 interview, a case in which the complaint arose in the context of a dispute over another matter:

In this particular case the victim made historical allegations of sexual violation against her former partner. After leaving this longstanding relationship, she said the combined effects of undertaking a women's refuge course and entering a new relationship enabled her to recognise that much of what she had experienced was abusive. She said her understanding of consent had been limited, and her way of coping with her partner's sexual demands and rough sex was to self-medicate. The victim reported one specific incident where, after she had taken sleeping tablets, the accused had started having sex with her. When his behaviour became too rough with her being dragged by the hair, she asked him to stop. He restrained her, told her he had 'nearly finished' and continued. The detective refers to this couple having been in a 'very dysfunctional relationship, both significant drug users'. However Police information identified only the accused as a known user of illicit drugs and prone to

abusive behaviour. Police did speak to the perpetrator and the victim said she was happy they had done so, and now the other matter had been resolved elected to withdraw the complaint. (E1/J1-K6)

In seeking to understand the reasons for withdrawals, we found evidence suggesting a diverse range of explanations were possible, and typically more than one. These are summarised below (multiple responses possible).

Victim withdrew because:

- of mental health issues/wanting to avoid extra stress = 14;
- reluctant/ambivalent victim = 13;
- has moved on, wants to forget = 12;
- fearful of perpetrator = 11;
- doesn't want anyone to know = 9;
- does not want to go to court = 9;
- wants relationship with perpetrator to continue = 6;
- does not want perpetrator imprisoned or negatively impacted = 5;
- happy perpetrator spoken to/wanted him spoken to = 5;
- police processes and delays too lengthy = 4;
- some-one else reported or felt pressured = 4;
- it was enough that the police took the complaint seriously = 3;
- sexual violation charge withdrawn, and perpetrator charged other violent offences = 3; and
- unclear why = 2.

As the above list shows, in 14 cases the victim said she did not want to continue with the complaint because it would impact negatively on her mental health. In some cases it appeared that the perpetrator's actions had caused the stress that now undermined the victim's confidence to proceed, while in others there were inferences from police to suggest the complaint may be a product of the victim's already impaired mental health.

There were 13 cases where the victim could be described as a reluctant or ambivalent victim, with many of these characterised by the victim effectively disappearing or refusing to engage in further police contact. These cases were not necessarily quickly resolved.

In one case, for example, the victim first came to police in 2015 wanting a forensic medical examination and stating she was undecided about doing a L3 interview. Four months later she advised that she did not wish to continue and agreed for medical evidence to be destroyed, however the decision was made to keep evidence on file until police talked with the accused. It took a further five months before the accused was spoken to and the file was finally closed. The victim's reasons for not continuing the case were that enough people had already been hurt, she had no desire to cause further pain, and the process was too lengthy. (E2/J2-K6)

In a further 12 cases, the victim noted that what she most wanted was to forget the sexual violation and move on with her life. For example, the withdrawal form for the case below noted the victim just wanted 'everything to go away and to forget about it'.

This case arose from the victim initially dialling 111 to report a serious intruder rape at her property. She described her embarrassment when four male police officers arrived and found her with various injuries, including extensive anal tears and bleeding. It emerged that there were possibly multiple perpetrators who rather than being intruders had arrived following an on-line booking. She failed to attend an appointment for an L3 interview, later texting that she had made a mistake and there was no need for an interview. (E51-K6)

Fear of retribution was a factor affecting at least 11 victims' decisions to withdraw or discontinue the complaint.

For example, in one case the victim reported at least 8 historical rapes perpetrated by a male relative while her partner was away from home. She felt fearful of both men, with the file noting:

'She is concerned about what [her partner's] response will be should she make a complaint and she is concerned about [perpetrator's] response should she make a complaint. She considers [perpetrator] to be dangerous and he has sent her a text message that she takes to be a threat to her should she say anything.' The police noted she had been in contact with women's refuge and tried to encourage her to continue but she was insistent on withdrawing the allegations. (E43-K6)

Nine cases involved situations where the victim said she did not wish anyone else to know about what had happened. Four of these cases involved scenarios where the victim appeared to be so drunk or out of it that she woke to find out someone had violated her.

In one case a woman was drinking all through the night at a friend's house with others present. She woke next morning to find herself naked, in the spare room, with no recollection of how she came to be there. She went downstairs and was approached by her friend's partner who made a comment to her that made it clear they had been sexually involved the previous night. She decided to report it but later learned from her friend they had had a three-some the previous night. The victim subsequently said she wanted no police follow-up with those involved given the ramifications for her relationship with her friend, commenting that she just wanted to forget the incident. (E22-K6)

The prospect of defending a rape charge in court deterred a further nine victims from proceeding. One example involved a young woman raped at her home by a male she knew and feared. She reported the offence the next day but later signed a withdrawal statement, stating: 'I am not prepared to go to Court. What I have said happened is true, but I do not want to take it any further.' (E36-K6)

In 6 cases the victim told Police she wished to withdraw the complaint because she was back in a relationship with the perpetrator. In at least four of these it was apparent that Police held genuine concerns for the victim's safety.

One of these incidents included the perpetrator 'ragdolling' the victim around the house and holding her in such a tight headlock she feared her neck would break. She screamed and cried as he raped her, saying in the end she was resigned to it since she knew he'd do it anyway. He was jealous that she may have looked at another man. She dropped the rape charge but allowed the physical assault charges to proceed. (J39-K6)

The above was one of three cases where, although the victims withdrew the sexual violence allegations, the level of physical injury was such that the perpetrator was still convicted for violent offences. One case proceeded regardless of the victim's wishes when she wanted the relationship to continue.

This latter case involved a married couple with young children where an argument ensued after the husband told his wife he wanted sex. It developed into a situation where the man grabbed his wife and carried her with his arm blocking her throat and making it difficult for her to breathe. He bit her arm and pulled her pants off before attempting to have sexual intercourse with her. She fought back, tried to grab the phone to call Police but he intercepted and threw it away. She persevered, grabbed it and ran into a bedroom and locked the door. The victim had severe bruising, defensive wounds, and grazing round the neck.

The defendant admitted having an argument about their sex life, and that he had grabbed hold of her with the intention of having sex. The Police, acting on the victim's wishes, sought a Temporary Protection Order but seven weeks later she filed a new statement. She said she could now see that her husband had been joking but had taken the 'joke' too far and she wanted to withdraw the charges. The attempted rape charge was withdrawn but Police charged the husband with assault with intent to injure, to which he pleaded guilty. Despite Police concerns for her safety, the victim declined the option of a Protection Order. (J27-K9)

There were four cases where delays in police processes were specifically mentioned as being a factor deterring victims from continuing, the implication being that it hindered their ability to recover and move on.

The victim had completed the L3 interview and MEK but the file notes five months later that little progress had been made due to Police resources being tied up with a large homicide investigation. Twelve months later notes on file state that the two main witnesses still need to be contacted to determine further case progression. When the victim was contacted a month later she said this incident had happened

during a period in her life when she was struggling with mental health issues – she was now in a better space and wanted no further police action. (E51-K6)

Some victims said they withdrew their allegations because they did not want to see the perpetrator possibly imprisoned or otherwise negatively impacted (n=5). A further five said all they wanted was for the police to speak with the perpetrator, and in two cases the victim preferred community-based responses as a means of giving him the message that his behaviour was inappropriate and unacceptable.

As the above analysis demonstrates, many factors contribute to a victim's decision to withdraw allegations and these should not be interpreted as indicative of the complaint being fabricated. Consideration needs to be given to finding ways to reduce victim withdrawals given that these often equate to unapprehended perpetrators. However, the victim's own wishes and safety concerns must always be taken into account, and reluctance to engage with the current court system is also an understandable response.

Unreliable testimony

While, as noted earlier, many of the comments made on the 1997 files suggested possible grounds for complaints being false allegations, it appeared that shifts in language saw 2015 files more frequently characterised in relation to unreliable testimony.

There were 45 files (36% of weighted cases) where doubts were noted with respect to the reliability of the victim's testimony. This was found to be key to decision making in relation to case progression in 28% of cases (the same as for victim withdraw/no complaint). In the majority of these cases the files are resulted K6 with insufficient evidence to proceed; just 2 out of these 45 files proceeded to prosecution. In both cases the victim's testimony was considered unreliable due to poor recall resulting from alcohol or drug use, however, in both cases there was strong corroborating evidence, and whilst in one case (E5) the perpetrator was found unfit to stand trial, the other (E24, detailed in section 3.3) resulted in the perpetrator being convicted by a jury.

The largest category of files where unreliable testimony was indicated stemmed from detectives' perceptions due to inconsistencies and discrepancies recorded in the victim's account (n=16). There were a further 13 cases where the victim's ability to recall accurately what had happened was compromised by the impacts of alcohol/drugs – this factor is discussed in section 3.5 below. In a further 11 cases it was stated that the victim was known to lie or make false complaints claiming to have been sexually violated. Within the unreliable testimony category overall, 14 cases involved victims described as having mental health issues – discussed further below in section 3.4.5.

The following case provides a good illustration of the emphasis placed on inconsistencies, with little apparent consideration given to how vulnerabilities such as intellectual impairment or mental health concerns may have impacted on the victim's ability to provide a clear account.

A woman alleged she had gone to a friend's for a massage but he removed her underwear and anally raped her before attempting to put his penis in her mouth. She reported the offence more than a week later and, while initially unsure if she wanted more to happen than the [perpetrator] being spoken with by Police, then decided she did wish to lodge a formal complaint. The L3 interview was arranged for, and completed three weeks after the report, but it was not until almost a year later that the decision was made to test the clothes she was wearing. Further delays occurred at ESR, with no results received until a year and a half later and these then were of no evidential significance. The file emphasised the victim's inability to provide a coherent account, with the report form stating:

'During the interview it was clearly apparent that [victim] was unable to give a clear and concise account of the actual incident. She tended to go off on tangents and was unable to stick to a clear chronological order of the events that occurred.'

Because of her intellectual impairment, the file was sent to a Child Protection Team detective for review well over a year later with a note urging, 'Please give some priority to this as it has dragged on.' The subsequent report form noted:

'I have viewed the L3 interview and her description of the event. Her description of what occurred is not clearly communicated....she told him she did not want any of it. Afterwards she says that he had locked her into his flat and asked her to stay the night. She then sat and had a drink with him.'

While the victim's lack of ability to provide a clear, coherent account is emphasised, the content of the L3 interview and other comments suggest some form of possible learning impairment or other vulnerability concern. This factor and its possible impact on consent issues is not addressed with the emphasis placed on consistent victim recall, and no effort appears to have been made by Police to interview potential witnesses, such as the victim's psychologist or support worker. The case was filed K6. (E47-K6)

A US FBI investigator once noted how frequently lies and inconsistencies might feature in accounts from sexual assault victims, particularly those who knew their assailant. He expressed it this way:

Sexual assault victims do indeed have something to hide and they do indeed lie. Their lies, however, have more to do with preserving their dignity and their self-esteem than they do with intentionally misleading investigators. Those of us investigating these cases must be attuned to these issues and address them as they occur.' (Carney, 2004, p. 105).

Our analysis also suggested there were instances where victims tried to conceal some facts or embellish others out of a desire to make themselves and their case appear more credible to police. This involved, for example, pretending to have consumed less alcohol or drugs

than what was actually consumed (E45-K3), concealing previous consensual sex (J35-K6), not disclosing they still worked in the sex industry (E29-K6), or claiming to have been attacked by a group of strangers rather than a possibly known assailant (E51-K6).

In general, there appeared to be an imbalance in the attention spent investigating the credibility (or not) of the victim and her complaint, over that of the alleged perpetrator. While we noted in some cases comments were made regarding discrepancies or evidence of concealment in victims' accounts sufficient to halt investigations, less weight appeared to be placed on the lies and cover-ups displayed by perpetrators.

The kinds of inconsistencies noted on the files varied somewhat, although they all appeared influential on decisions regarding not to proceed to prosecution. In one case the file notes behavioural inconsistencies in how 'direct' and 'demanding' the victim sounds on her phone messages, which tallies with how the two perpetrators describe her, in contrast to how she presents to Police (E32-K6). In another case it is noted that the inconsistencies observed may mean no L3 interview is proceeded with, yet those described appear relatively minor such as recalling the exact time of the assault, how much she had drunk, and whether she was on her way to or back from the supermarket (E48-K6). Emphasis was placed by Police on her initially saying she had drunk only one glass of wine when she smelt of alcohol and later said she had drunk two glasses of wine after the alleged sexual violation.

Inconsistencies in victims' accounts can be problematic in terms of deciding what weighting to give them. Some appeared more straightforward, such as when one woman's account was contradicted by texts found in which she admitted she had cheated on her boyfriend, and additionally this was despite having said her phone was flat (J37-K6). Other cases, such as E48-K6 above, involved confusion and contradictions around timings, event chronologies, and other details. Such confusion has been recognised elsewhere as possibly indicative of trauma impacts, alcohol and drug effects, or shame and self-blame, with recent police guidance in the UK advising officers against assuming inconsistencies indicate fabrications (National Council of Police Chiefs, 2015, cited in Dhimi et al, 2018). Current New Zealand Police policy guidelines also urge investigators to avoid drawing conclusions when faced with victim inconsistencies, but our analysis suggests further progress is needed to erase the 'culture of scepticism' recognised by Dame Margaret Bazley (Bazley, 2007).

Whilst it is understandable a detective is committed to uncovering the facts related to any crime of which a coherent account is often key, the complexities associated with the cases of sexual violation described above suggest a more sophisticated approach is needed, one that acknowledges the many factors contributing to apparently 'inconsistent' recall.

Psychiatric conditions/mental health concerns

In 1997 there were 30 victims (18%) identified as having a psychiatric condition or history. They were the most likely to have their complaint recorded as false (60%), with the overwhelming majority likely to have their allegation proceed no further through being

found to be either false or possibly true/false (87%). Only 1:10 of victims presenting with symptoms suggesting psychiatric disturbance were viewed as genuine victims.

In 2015, presence of mental health concerns was the third most common factor seen to be impacting on decision making (key to decision making in 13% of all files). Compared to 1997, an even larger proportion of all rape victims were described as having mental health issues (n= 42, 33% of weighted cases), with these particularly represented in cases resulted K3 and K6. In 8 of these cases, indicators on police file suggested the rape allegation was perceived as a likely fabrication. This mirrored to some extent the association more commonly made between psychiatric conditions and false allegations in 1997, and it is indeed possible that some of both sets of allegations may be more reflective of the victim's mental state than any actual sexual violation. However, the risk also exists that the stigma and common misunderstandings surrounding mental illness may discredit the victims' testimonies in ways that create barriers obscuring recognition of their victimisation.

Considered more positively, some files indicated possibly greater recognition of the behaviours, medications and disorders indicative of mental health issues, including suicidal and self-harming behaviours, anti-depressant and anxiety medications, as well as bi-polar, schizophrenic and other diagnosable psychiatric illnesses. It is possible that the growing normalisation of mental health issues means they are less likely today to be interpreted as signifying diminished credibility, with this reflected in less pronounced trends and outcomes than those evident in 1997. Whereas the 1997 cases often suggested the influence of stereotypical thinking, the 2015 file analysis identified a broader range of responses, with more examples evident showing a growing awareness of the vulnerability that can accompany mental health issues and inflate the risks of victimisation.

The majority of the cases (n=31 of the 42, 71% of weighted cases) were investigated and filed K6, which was an improvement on 1997 in that more investigation was undertaken. However, only two of these cases resulted in a perpetrator being charged, in both cases probably largely due to the attributes of the perpetrators. One of these went to trial and resulted in jury acquittal of the accused (E4-K9):

The victim had been crying outside her house following some sad news when someone living in her neighbourhood came to comfort her. He took her inside his house where quickly the touch turned to touching her breasts, putting his hand down her pants, with digital penetration followed by his getting on top of her, whereupon she managed to push him off and get away. The victim was later found crying by her boyfriend but didn't want to tell him why. Her community support worker arrived shortly after for a scheduled appointment and recorded in her notes that the victim was not her usual happy self and told her what had happened. The support worker thought the victim went to the police station and did not understand why a complaint was not made, and 8 days later accompanied her to the station herself. Despite the mental health issues apparent in the victim, this case proceeded to the perpetrator

being charged. The police may have decided to proceed in part because of the involvement of the support worker, and in part because the man concerned was a suspect in another sexual assault complaint made by a young girl, who identified him in a photo-montage. Despite the victim giving what police recorded as 'credible evidence in trial', the jury acquitted the accused on all charges. (E4-K9)

The other case progressing to prosecution involved the accused being belatedly deemed unfit to stand trial due to 'intellectual disability' (E5-K9).

In the majority of cases, police perceptions of the victim's lack of credibility still played a determining factor in case progression, although this was more frequently expressed now in terms of her mental health issues reducing the chances of a successful prosecution.

In one case a young woman in her late teens rang the female constable who had attended a mental health incident involving the young woman a week earlier and told her she had something 'really important' to tell her. She disclosed historical sexual abuse from a few years earlier where a man several years her senior began perpetrating multiple acts of violence and rape, including forcing hard items inside her. The victim was described as having borderline personality disorder and some indication of the weight attached to this is evident in the report opening by stating '[Victim] is a young female who has a long history of mental health issues.' The female detective was highly proactive in carrying out a thorough investigation, persisting with requests for medical and psychiatric reports from those who had treated the victim, and interviewing a wide range of her family and contacts in her efforts to obtain a full picture. A lack of corroborating evidence and the credibility issues resulting from her mental health status informed the decision not to proceed with this case, with the letter to the victim being careful to point out, 'This is not to say that you are not believed.' (J20-K6)

The files relating to a further seven cases indicated that, despite their mental health concerns about the victim, Police were prepared to conduct a thorough investigation of the allegations, as was evident in the following case.

A young woman described experiencing a forceful sexual encounter while she was alone in the house with a young man. She disclosed a history of self-harming, depression and anxiety. The attending male officer reported: 'From what I saw of both of them, I would believe that something happened. But I am not sure how credible she would be.' He asked: 'Is it possible to have a nice kind female contact [victim] and see if there is any validity to her complaint?' The victim is spoken with by a female ASA detective who appears to recognise both the victimisation and the vulnerabilities involved. She also considers it possible that this is a predatory repeat offender, noting of the victim, 'She has heard anecdotally that there are other girls that he has done this to and that he often targets young girls, as young as 15.'

The young woman decides she is not mentally robust enough to proceed, and the detective describes seeking to ensure that she will not later regret this decision, concluding, '...it became apparent that she had thought through the consequences and does not feel in the right mental space to be making a complaint at the moment.' This detective also provides specialist support information and leaves a pathway open should the victim subsequently change her mind. (E37–K6)

Overall the file analysis suggests that changes made to the conducting of rape investigations since 1997 have increased the likelihood that victims with mental health issues can have greater confidence that Police will take any rape allegations seriously. What remains difficult to determine is how much such changed behaviours by some detectives reflect shifts in awareness and understanding or result from the more recent blanket directive to respond to all complaints initially as though they were genuine.

Greater societal awareness around mental health issues could influence disclosures of these, although by no means has the stigma associated with these disappeared. In 2017 New Zealand Police were challenged to review their practice of not accepting recruits who were taking anti-depressant medications (Fonseka, 2017), a stance that could reinforce within the wider police culture a continuing stigma around mental illness and what it means to be taking associated medications. While this policy was subsequently revoked in favour of adopting a case-by-case approach (Stewart, 2017), the legacy of such thinking could influence officers to continue to be more likely to assess mental health issues through a credibility lens rather than a vulnerability one. In the following case, for example, it is surprising that the vulnerable status of the victim was not recorded on file.

Following police attendance at a family violence incident, the perpetrator was served with a Police Safety Order (PSO) requiring him not to have contact with the victim and after he left the address, the victim went to sleep in the lounge. Later that night the perpetrator breached the PSO and returned to the house, woke the victim, and an argument ensued. He forced her into the bedroom, stripped off her clothes and allegedly raped her. When he left she rang Police to report his breaching the PSO. While Police were in attendance she disclosed the rape but was then unwilling to say more or have a medical.

The CIP notes 'The victim has a mental health history. The victim has previously made a rape complaint against the same suspect several years earlier. The victim later recanted her statement while a patient in [mental health facility]. The rape charge was dismissed, and the victim was warned for making a false statement.'

She was noted as being a sex worker, with numerous family violence involvements and a suicide attempt noted. The perpetrator was recorded as having committed multiple family violence offences and had been identified twice watching/following young women and mothers with young children while appearing to be rubbing his genitals. It was interesting that, despite all her victimisation by him, it was assumed

this would be a false rape complaint like an earlier recorded false complaint. It was curious that the CIP recorded there were no vulnerability factors in relation to this victim. The case was filed K6. (J40-K6)

Victims of rape and sexual assault who present with mental health issues seem more likely overall to have their cases accepted for investigation and are less likely to be overtly dismissed for making false allegations. However, even if police are more inclined to recognise their vulnerability, the chances of their cases proceeding to trial remain remote. Cases previously filed earlier may now proceed further in the justice system, but ultimately attrition rates for these victims will not change due to so few being prosecuted. In this way, barriers to justice remain in place for those victims made vulnerable by evidential factors still assessed through a credibility lens.

Intellectual impairment/learning difficulties

The presence of intellectual disability/learning difficulties in victims is another factor similarly impacting on how victims are assessed. There is much overlap with victims with mental health concerns and so this is discussed here as a sub-section of mental health concerns.

One of the concerning findings from 1997 was that 10% (n=16) of recorded victims were noted as having intellectual impairment. The victims in such cases struggled to be recognised as credible, with 75% of cases being deemed by police either false (44%) or possibly true/false (31%). Of all complaints made by persons with intellectual disabilities or who were psychiatrically disturbed, only 13% were regarded as genuine by police. These findings highlighted the barriers to accessing justice faced by these vulnerable groups within our communities.

The 2015 sample yielded a smaller number of such victims (n = 8, 6% of weighted cases). Of these, none were prosecuted, three were resulted K3, and five K6. However, in half of these 8 cases the intellectual impairment was considered a key factor in decision making around case progression.

The overall smaller number of cases in 2015 compared to 1997 is somewhat difficult to understand, given the growing awareness of how learning difficulties can be associated with increased vulnerability and the inflated risks of sexual assault such individuals face. One possibility is that fewer such victims are reporting, or being encouraged to report, or it may reflect a difference in recording practices.

Some detectives in the 2015 files indicated they recognised learning difficulties increased vulnerability factors, yet there could be uncertainty regarding how best to respond. This was particularly evident in a case involving a 19-year-old woman with a learning impairment who was recorded as having the comprehension of a 14-year-old.

This young woman reported being raped after a male friend asked her via Facebook to meet up with him for coffee one day. It emerged that she had made previous allegations, including against a family member years previously and more recently against an older man. Later she said this allegation was false and the detective firmly states, 'She will be charged' and notes that an arrest file will be prepared. Following file review, the decision is made to result it with a warning and a NIA update regarding false complaints. As the investigation continued, comments are made by a female detective sergeant indicating recognition of the victim's vulnerability, for example: 'She is extremely vulnerable to being taken advantage of due to her intellect and has admitted that males have given her drugs in the past and wanted to use her for sex and make her have sex with men for money.' This detective discovered the victim was now living with a much older male who, she noted, displayed a 'possessive' attitude towards her and was reluctant for her to speak with police without his being present. The victim told the detective he kept trying to have sex with her and she wanted to leave, so she tried to find her alternative accommodation. The case was resulted K3, with the police noting their decision that the 'most appropriate way to try to reduce further false complaints was to get her more support and engage [victim] with community services.' (J22-K3)

The vulnerability of women with intellectual impairments is also clear in the next case, and raises questions over what is the most appropriate technique for conducting interviews with this special group.

In this case a young woman met up with a man who bought confectionery for them both before driving to a motel, where she said he penetrated her vaginally before putting his penis in her mouth. When he ejaculated she said she spat out the 'juice'. She also said when he hurt her and she screamed, he had placed a pillow over her mouth. Her initial disclosure made to a detective and female constable was largely made in writing due to her being shy and uncomfortable speaking. Corroborating evidence was found in a diary entry from the day the alleged rape occurred together with evidence of the identity of the perpetrator and confirmation of their meeting that day.

The file notes the victim had the mental age of a 10-year-old and the decision was made to interview her by child interview specialists. The file notes inconsistencies in the victim's account, insistence by the accused that no sex had occurred, and evidence from text messages that was noted to '...present challenges in a way of her mental capacity. The texts sent by the victim when viewed objectively show someone who is experienced and sexually active.' Text examples included the [perpetrator] asking if he should bring condoms, with her agreeing that he should. He also asked, in colloquial terms, about whether she'd ever had sex and given oral sex. Her responses seemed to indicate that she understood the queries and was a willing participant.

Police concluded victim would 'present as a poor witness upon cross examination' and would not be 'creditable', and that ESR analysis of the MEK returned negative results.

During the investigation evidence emerged that the perpetrator had booked a day room at the motel (10am-2pm) and agreed taking the victim there but said no sex occurred. The file notes, 'It is believed that sexual intercourse took place despite [perpetrator] declining to give an account of what happened.' No charges were laid and the case was filed K6, with both parties given prevention advice to avoid meeting up with strangers in situations like this. (J34-K6)

Police responses to allegations made by women with learning disabilities suggest that while some officers recognise the high levels of risk and vulnerability characterising these women, others make little allowance and continue to emphasise inconsistencies as indicators of possible falsehood. While the difficulties of progressing such cases are acknowledged, evidence suggests that, with specialist support, victims with learning difficulties are able to engage fully with police processes and also be competent witnesses within courtroom settings (Mirfin-Veitch et al, 2014). Using specialist child interviewers goes some way towards recognising diverse needs but may have limited efficacy in such cases. Greater attention needs to be paid to investigating and arranging the most appropriate supports when persons managing learning disabilities are the victims of sexual violation.

3.5 Comparison of other factors found to be significant in 1997

Rape and sexual assault cases have long been notorious for the difficulties they pose for police investigators specifically and criminal justice processes more broadly (Gregory and Lees, 1999). The majority of rape cases occur between persons already known to each other, involve no witnesses, result in no visible injuries, and are often described as resulting in a 'he said; she said' contest that becomes a vexatious battle should it reach our adversarial court system. Traditionally this has translated into an excessive emphasis being placed on the character and credibility of the parties concerned. Our justice system's emphasis on avoiding the risk of possibly wrongful convictions, however, has meant in practice that defence counsel are permitted to produce character witnesses supporting the accused while conversely presenting whatever 'evidence' they can find to undermine the victim's credibility.

The 1997 file analysis noted that, as well as the usual demographic information and case descriptions, the police routinely recorded information concerning the state of the victim – for example, police perceptions of alcohol and drug use, intellectual impairment, and psychiatric conditions. Reference was also often made concerning the victim's moral character and whether or not the victim had experienced previous sexual victimisation.

As seen in the previous section, the 2015 analysis indicated that intellectual disability and mental health concerns are strongly linked to assessments around unreliable victim testimony, thereby continuing to impact on case progression. Other factors emerging as

most significant in 1997 are considered below alongside 2015 comparisons to gauge what levels of progress have been achieved.

Alcohol and drug use

In 1997 over half of all the files analysed (n=84; 51%) involved victims whom the police described as drunk, intoxicated, or high/stoned. While one-fifth of cases involving drunk victims were perceived as genuine complaints, nearly three-quarters (72%) were regarded by the police as false or possibly true/false. This suggested that drunkenness was often correlated with doubts about victims' credibility and/or the likelihood of cases not passing the evidential threshold.

The 2015 analysis indicated there was less evidence that alcohol and/or drug use by a victim was a barrier to cases progressing, being present in a third of cases proceeding to prosecution. However, the overall prevalence of this factor across files raises questions around whether closer attention is needed to the ability of a victim to consent.

Across all files, there were 48 cases (42% of weighted cases) where the victim was recorded as having consumed alcohol or drugs prior to the sexual violation, at least one involuntarily. In half of these cases (n=24; 23% of weighted cases) the victim was noted as being intoxicated, some to the point of losing consciousness. Often (n=28; 25% of weighted cases)¹⁵ both victim and perpetrator had been drinking and/or using drugs together before the incident. Eight victims were noted to be fully unconscious at the time of the rape and two semi-conscious, with a further 13 recorded as being asleep when the sexual assault began. Overall this translates into at least 23 (24% of weighted cases) of victims effectively being unable to give their consent to any sexual activity at the time they alleged the rape/sexual assault occurred.

In some cases the file notes the women decided, after talking with Police, not to proceed with the complaint. This was the decision made by the victim referred to previously (section 3.3.3) who had no recall of her friend's partner raping her, and has similarities with the following example.

A young woman was on holiday with her partner and a number of his extended family. She returned to their accommodation alone 'tipsy but not intoxicated' and went to bed. When she woke 2 hours later she could feel her vagina being rubbed and assumed it was her partner, only to find it was a young male relative. She realised he had removed her clothes but managed to convince him to leave saying she was scared of waking others and the wrong conclusions being made. The victim said she wanted the perpetrator spoken to but no other action taken, while he claimed any sexual

¹⁵ Note presence of factor in K9 cases impacts on percentage based on weighted cases.

activity between them was consensual. With no evidence supporting her lack of consent or inability to give consent, the case was filed K6. (E59-K6)

The cases above illustrate the difficulties often associated with obtaining evidence in relation to consent when significant amounts of alcohol are involved. Both were likely investigated more fully than they may have been in 1997, with understanding greater now regarding the common links found between alcohol and sexual assault and its use as a date-rape drug.

Issues of victim intoxication were also apparent in instances of historic cases reported to the Police, raising doubts regarding recall accuracy.

A woman alleged while she was employed by the defence force two separate incidents of rape by a highly ranked member in the organisation. The heavy drinking that preceded these incidents, along with confusion resulting from the victim having attended many similarly alcohol-infused work dinners, made precise recall difficult. Police did proceed to interview the [perpetrator], who maintained sex was consensual and the woman's motive was retribution for her having recently been let go due to heavy alcohol consumption and mental health issues. The Police report form, completed by a female specialist ASA detective, acknowledged the retribution argument might be used by defence counsel should the case proceed, but also recognised that 'her disclosure came via an encouragement from another senior manager during an exit interview. On this basis it could be argued that she disclosed at a time she felt most supported.' The difficulties of achieving a conviction at trial were noted along with Police concerns that, given that the victim was currently receiving mental health care and medication, proceeding further may not be in her best interests. The case was filed K6. (J30-K6)

Some of the comments made on Police files by detectives, like the above, showed they often had some understanding of how alcohol intoxication enhanced victim vulnerability, but little evidence was apparent to suggest they also recognised it increased any perpetrator's responsibility for ensuring the victim was able to consent. Police decision-making regarding whether or not to proceed to prosecution appeared to reflect primarily concerns regarding whether sufficient evidence existed to demonstrate a clear lack of consent as well as anticipation regarding how defence counsel could discredit victim recall and testimony. This reflects how the current adversarial justice system pivots on assessments of victim credibility, rather than putting the onus of proof on the alleged perpetrator to demonstrate on what evidence he believed the victim had consented.

[Previous rape/victimisation](#)

In 1997 victims who were identified as having experienced previous rape or abuse were also likely to have their complaints deemed false or possibly true/false. Since then a growing body of research evidence regarding the high prevalence of repeat victimisation may have

helped inform police understanding of the ways in which this factor might indicate an increased vulnerability to victimisation rather than evidence of fabrication (Walklate, 2011). Similar shifts are apparent with regard to how delayed reporting by the victim is assessed, with greater awareness of how common and comprehensible this is meaning it is less likely to be interpreted as indicative of the complaint being false. However, it is interesting in this regard that the majority of cases resulted K9 involved victims who had reported within 24 hours of the offence occurring, suggesting this factor may still carry some weight.

The 1997 data recorded nearly one in five victims (n=31; 19%) as having previously experienced/reported previous rape or sexual abuse. The analysis then found this factor was strongly linked to police doubts regarding the veracity of the victim. Most of these victims (84%) had their current rape allegation determined as false (42%) or possibly true/false (42%).

In 45 cases in the 2015 sample it was noted that the victim had experienced prior victimisation (38% of weighted cases), most often within the context of family violence (n=34). Others disclosed child sexual abuse (n=2), sexual violence (n= 4), both child abuse and family violence (n= 2), and both sexual violence and family violence (n=3). Prior victimisation was a factor in 9 of the cases filed K3 (45%), 33 (45%) of those filed K6 and only 3 of the cases filed K9 (21%).

Previous false rape allegations

In the 2015 analysis in 5 cases the file notes that victims had previously made false rape allegations, 3 of these were filed K3, 2 K6 and none proceeded to prosecution. Historically, the inference has been that if a previous complaint was deemed false, any subsequent one was likely to be so. The victims in some of these cases may have presented as having questionable credibility but also appeared highly vulnerable. For example, in one case where the victim was recorded as 'makes false complaints', evidence was also recorded of visible physical injuries on the victim and a history of over 40 family violence-related occurrences. It was difficult to ascertain what efforts may have been undertaken to determine what underlay this woman's multiple victimisation experiences.

On 26 files reference was made to possible motives that could underlie complaints being false. These covered a wide range of suggested reasons with no particular factors dominating. Interestingly, in only one case was the much-cited motive of 'regretful sex' cited, and few cases were linked to possibly retributive motivations, thereby contesting two dominant contemporary rape myths.

Moral character – sex work

As noted earlier, the 2015 analysis showed a higher proportion of reported rapes proceeding further through investigation processes and suggested there was less capacity for some of the factors previously viewed as reducing victim credibility to impact negatively on case outcomes. Less pronounced now are the judgements historically made regarding

the victim's moral character, with increased awareness of how no woman's sexual past or occupation can render her unable to be raped, or recognised as a rape victim.

For example, one area where these differences are perceptible is in changing Police responses to rape complaints made by sex workers. In the 1990s, before sex work was decriminalised in New Zealand, sex workers feared the powers Police could exert over their lives and businesses and seldom felt able to report rape attacks (Jordan, 1991). Those who did took the risk of the response being largely dependent upon the attitudes of the individual Police whom they approached. Since then there has been considerable public debate about sex workers' vulnerability within the context of several high-profile murders as well as commentary surrounding the Prostitution Reform Act 2003. Researchers, as well as spokespersons from NZPC, have observed at least some increased willingness for sex workers to report more of the rapes and assaults they experience (Abel & Fitzgerald, 2010).

While judgements around sex work may be less evident, it still appears this group often struggle to get justice. In the 2015 sample of cases, 9 involved sexual violence allegations made by sex workers. While all but one case proceeded through to further investigation, none proceeded to prosecution. While there was no evidence that initial reports were not taken seriously, other factors appeared to impact on case progression. These included the victim seeming unsure about how far to take the complaint, while drug and alcohol use and/or mental health issues were common with cases and complicated the investigation. It was disappointing to see dismissive language related to drug and alcohol use like in the case below.

For example, in one case a woman phoned the police reporting her concerns for her friend. The latter had been out working when she was picked up by a regular client. She had taken illicit drugs to numb the pain of working on the streets and when he took her back to his house, she fell asleep. She woke to find him having sex with her, then passed out again. He sexually assaulted her while she was unconscious, and she woke with a sore anus. He then returned her to the street. He did not pay for sex. The following night she was picked up by another client who told her he had seen a video of the perpetrator having sex with her. The victim spoke with Police by phone but declined a medical examination and never showed for appointments. She is described by the male D/Sgt as 'a druggie and is likely to be off her face', and the police note the file will be closed as 'no offence', although it is actually recorded as K6. (E33-K6)

In a couple of cases there is less emphasis on a victim's sex worker status early in the file, perhaps indicating a greater awareness of sex work being viewed as a legitimate occupation. However, in the case below it appears to act against her in the final summation of the case.

One case arose by a victim claiming she was roughly violated by a casual acquaintance in a manner that reminded her of when she had been raped as a teenager. The perpetrator maintains he believed sex to be consensual and was surprised and

apologetic when she texted him to say that she had been left in agony and felt violated. The woman's anger was interpreted by Police as resulting from her having believed he had become her boyfriend until he rejected her immediately following this particular sexual encounter. The Police file indicates a thorough investigation despite these concerns. The detective notes his belief that this is a false complaint, and that the case fails to pass the evidential test for proceeding to prosecution. Noted is an additional factor detracting from the likelihood of successful prosecution:

'[Perpetrator] has said that [victim] told him she had not recently been in a relationship, as a result of which they had unprotected sex. It appears likely from his account that she had not mentioned her work as an escort, and this lack of honesty is likely to affect her credibility in trial.' (E29-K6)

While understandable on some fronts, such a comment shows little empathy for why sex workers might reasonably be circumspect over divulging the nature of any paid work involvement in such a still heavily stigmatised industry.

3.6 Summary

Overall, judgements based on perceptions of the credibility of the victim seem far less likely to prevent case progression in 2015, but they do seem to still pose a significant barrier to achieving justice through a prosecution. Some of the factors influencing Police doubts about the veracity of victims' accounts of sexual violation in 1997 were clearly less evident in this analysis, suggesting greater awareness of how normal and understandable it might be to delay reporting or for women about whom negative moral judgements might be made to nevertheless be genuine victims of rape. There also seemed to be increased acceptance that the highest levels of sexual violence occur within the context of people who know each other, including within intimate partnerships, a shift reflecting increased political, community and Police awareness of family violence.

While such shifts are encouraging, our analysis also revealed areas where a need for increased awareness still existed. For example, there was less evidence now of high levels of victim intoxication being linked to doubts regarding victim veracity, and in some cases we could see greater recognition of how intoxication raises vulnerability issues. However, there was minimal evidence indicating recognition of the perpetrator's responsibility to ensure victims were sufficiently conscious to give consent. This translated into a few instances where perpetrators were warned for their behaviour, but they were generally not held to account for their actions. Police hesitancy was probably linked to concerns regarding the evidential threshold and their anticipation of defence counsel tactics, but for the victims this can equate to justice denied.

Similar findings emerged in relation to how victims of intellectual disabilities/learning difficulties had their allegations responded to. On the one hand we could see some indication of increased sensitivity to their vulnerability, yet it was surprising that there were

fewer cases reported than in 1997 and this could indicate a lack of confidence in the justice system. Also surprising was the way in which little allowance of the impact of their disabilities seemed evident with regard to expectations around consistent recall and capacity to consent.

Mental health issues also appeared to be less of a barrier to investigations proceeding but with the victims still assessed through the same evidential lens. This meant in practice that such aspects as blanks and inconsistencies in statements were emphasised and resulted in only one case involving a victim with a known mental illness proceeding through to prosecution. It was for reasons such as these that Professor Betsy Stanko, long time researcher with the London Metropolitan Police, once stated that such low police responsiveness meant the rape of vulnerable victims such as these had effectively been 'decriminalised' (Stanko,2014).

Overall there are positive signs of progress evident in the 2015 analysis alongside indicators of on-going concern. While some of the latter is no doubt attributable to the evidential requirements of the current adversarial justice system and knowledge of defence lawyers' antics, it would be reckless to assume there was nothing attitudinal left to change. Traditional rape myths and stereotypes may hold less influence than they did, but they have by no means completely disappeared. Still apparent is a need for greater understanding of such realities as the dynamics within relationships characterised by violence, control, and power, as well as fuller comprehension regarding the impacts of mental illness and learning difficulties. Keeping abreast of societal changes is an important aspect within all of this, with the next section moving on to consider policing challenges within a changing social landscape.

4 Changing landscape

Although less than 20 years has passed between the 1997 and 2015 file analyses, this has been a time of rapid social and technological changes. These are evident in the different emphases placed in some areas more recently, two of which are the expanded awareness of the prevalence and seriousness of family violence, as well as in the emergence of new arenas such as online dating sites that can be used to meet sexual or romantic partners, as well as by sexual predators.

This section reviews these contexts where reports of sexual violation are increasing. The two different scenarios have distinct but also common issues which impact on the likelihood of such cases reaching prosecution. Both contexts typically involve sexual violation with someone known, at least minimally, to the victim, with negotiation of consent often the focal issue. In many cases reviewed it seems the current law is failing victims. It remains difficult to prove to a court beyond reasonable doubt that a perpetrator had belief on reasonable grounds that the victim was not consenting or had withdrawn consent.

4.1 Emergence of online dating sites

In recent years there has been a growing tendency for couples to use the internet as a means of forming connections and meeting new intimate and/or sexual partners. This is evident in the popularity of sites such as Tinder and NZ Dating, which many people use successfully and without apparent risk but which also, as with any such development, carry the potential for misuse and abuse.

In the 2015 sample there were 13 cases where the parties had initially met online. None of these saw any perpetrator prosecuted, although several resulted in police informally warning both parties about the risks possibly associated with such encounters. Collecting sufficient collaborating evidence of sexual violation in these cases appears a particular challenge.

Differing expectations

Online dating typically involves people who are meeting each other for the first time and from reading the files it appears that sometimes the parties involved had differing expectations regarding why they were meeting up, creating later confusion around what was being consented to. This is evident in the following case with one party looking for a long-term relationship and the other interested in just hooking up for sex.

After a few online exchanges, the woman said the man could visit her but not for sex. After he arrived there was some hugging and kissing before he pushed her on to the bed. When she tried to push him away, he assured her he loved her and wanted to marry her. He had sex with her despite her protests, then left. Next day the woman messaged him asking why he had not stayed over, and after more messages agreed he could come to visit her, when sexual intercourse occurred again. There is confusion

on the file regarding whether this second occasion was consensual, as the Police initially believed, or also against her will, as the notes from the MEK suggest. The victim had told police she had a tear from the previous night, but the perpetrator proceeded anyway, saying she would feel nothing. Subsequent interviews, supported by the content of the messages sent between them, reveal the victim was seeking a long-term relationship while the man, although stating similarly, appeared focused on getting sex and adept at grooming behaviour. He maintained all had been consensual, otherwise she would not have allowed him back into her apartment. From what we can see on file, she thought she was consenting to sex as the gateway to a future relationship, while his agenda was sex full stop. (E26-K4)

The confusion surrounding the sexual acts and what was consensual, as well as whether it could be proved that the perpetrator was aware the victim had not consented, made the option of prosecution untenable. There was no indication on file that Police did not believe the victim, with decisions to K6 the file based on assessment of evidential insufficiency. In this particular case Police became aware of a previous sexual violation allegation from another individual against the same perpetrator for similar behaviour that had been withdrawn. As in other cases where no prosecution was possible, but where Police had concerns, they reported 'sternly warning' the perpetrator about his inappropriate behaviour, but that was where the accountability ended.

One concerning factor associated with rapes committed following couples linking up on-line relates to the high levels of shame and self-blame victims may experience. This was very apparent in the following case:

A woman met a man online and they began seeing each other and had consensual sex. He began asking her to do things she considered 'weird'. He gave her gifts including a sex toy, saying he wanted to watch her inserting it. They went out for dinner and he was 'sulky' then later during sex he put his fingers in her anus. She asked him to stop but instead he shoved his penis in her anus, causing what she described as 'excruciating pain.' It was hurting so badly that she yelled at him to stop, and he pushed her head down into a pillow and placed another on top. She described feeling nothing but pain. Afterwards she kept crying and he went to sleep, no apology or anything. She asked him why next morning; he said he thought she was enjoying it. She was bleeding for a week.

When she later visited him to confront him about it, he refused to engage, told her he did not want a relationship and accused her of making it all up. She felt so ashamed and distressed that she took an overdose, and it was while she was in hospital that she disclosed the rape. The evidential interview was not completed until five months after the initial report, long past the time for a MEK. The perpetrator refused to be interviewed and through his defence counsel described what had occurred as 'relationship experimentation.' The detective concluded there was insufficient

evidence to proceed and added: 'I require that the victim is to be updated with my decision and reasons surrounding this. I require that the victim is to be told that I believe what she is saying is true. The victim is to be provided with the appropriate support.' He also stated: '[Perpetrator] is to be left in no doubt that the victim's complaint has been taken seriously. He is also to be told that he is very lucky he is not being charged.' (J24 – K6)

While rapes and other forms of sexually assaultive behaviours can occur in any dating context, the stigma some women feel from meeting potential partners on-line can prove an additional barrier to reporting.

Opportunities for duplicity

Online encounters provide potentially greater opportunities for duplicity, a degree of which appeared likely in the case described above (E26-K4). In a different case, a woman agreed to go back to a man's place for consensual sex, only to find he invited a male friend round and she was held down while he encouraged his mate 'to keep fucking her.' (E32-K6). In another example a perpetrator agreed he had posted a false Tinder profile after Police noted the victim had discovered he had not only used a false name but also lied about his age, marital status occupation and previous history of violence. (J17-K3)

While meeting online serves in parallel ways to previous forms of meeting potential partners, and can be viewed as simply technology-enabled dating, it can also facilitate greater duplicity during the initial contact stage and grooming-type behaviours by would-be predators.

Consent issues with rough or aggressive sex

The issue of 'rough sex' was not as evident in the 1997 files, but the term emerged as significant in 14 of the 2015 files where women described feeling often intense pain and experiencing 'pounding'. These cases often had overlaps with the 'differing expectations' mentioned above when sex became more aggressive than what the women had been anticipating. Three of these cases began with the victim and perpetrator meeting online, initially engaging in consensual casual sex that progressed beyond what the woman wanted. It is clear from the case illustrated below how women in such cases typically feel they have been violated.

One woman felt prompted to report her experience after hearing she was not the offender's first victim. She described initially being willing until the perpetrator became very rough, pulling out her hair, scratching her to bleeding point, and holding her down so forcefully she came bruised. What she said really concerned her was when he put two hands around her neck and tried to choke her. She told him she felt scared and couldn't breathe and asked him to stop. She said he expressed surprise. She also said she was too scared to ask him to stop, so just let him finish.

She then cleaned herself up and walked home, crying, where her flatmate thought she looked like she had been beaten up. She said her flatmate did not blame her but blamed him, although her comments suggest she blamed herself for acting unsafely. The victim accepted that there were evidential issues and that the investigation would not continue. The file notes that the perpetrator said he was not aware consent had been withdrawn during the sex act. It also noted that the perpetrator had been under the impression that the victim liked rough sex – this highlights that what is rough sex to one person can be experienced as brutal by another. (E15-K6)

Similar to the ‘differing expectations’ in case E26-K4 above, while there was insufficient evidence to prosecute, it is clear the detective was sympathetic to this woman’s experience. While interviewing the perpetrator he provided him with a warning and considerable prevention advice which perhaps also highlights the areas where confusion can arise:

‘With rough sex you need to discuss this with the people definitely more than you have been – you can’t have an expectation you know let’s just try things and push boundaries...’

‘If you hook up with people, it needs to be fully consensual, this hair pulling, and choking needs to be consulted with the person...’

‘Rough sex is rough sex, that’s fine – but just don’t go there until you know the person is keen for it and don’t just push boundaries...if they aren’t keen for it, what might happen is more complaints and we’re going to pick you up from your place of work for another interview.’

The perpetrator replied that maybe things had gone a little too far and he should have discussed things with them, to which the detective replied: ‘Yep, two girls in two weeks, it’s gone too far.... You don’t want to be back in our office.’ He gave the perpetrator a final warning, ‘These files don’t disappear.’ (E15-K6)

Further discussion of rough sex is contained in the next section where links with pornography are considered.

4.2 Intimate partner and family violence

Since 1997 there was an increase in the proportion of sexual violation offences reported that were family violence, particularly where the relationship was a current or ex-partner of the victim. In 1997 the intimate partner (IPV) group made up 18%, whilst in the 2015 sample it had doubled to 37%. This increase likely reflects growing community awareness around the prevalence of family violence, the impact of campaigns encouraging reporting, and enhanced Police training and responsiveness to violent acts perpetrated within partnerships.

Of the 47 cases recorded as IPV or FV, 41 were IPV (n= 29 current partners and n=12 ex-partners), and 6 were where the perpetrator was a family member (these included a brother, son-in-law, brother-in-law, two uncles and a best friend’s father). Of these 47

cases, 7 were prosecuted. When weighting is applied to account for the reduced sampling of K9 cases, this rate of prosecution is similar to the overall rate, (30% prosecuted compared to 27% for the whole sample).¹⁶

The 7 cases prosecuted included 4 cases where the perpetrator pleaded guilty to at least some charges, although the unlawful sexual connection charges were dropped or reduced to lesser assault charges in three of these. In one case the husband admitted to two of the 14-15 rapes his wife accused him of, but more than 18 months later the file notes 'belated notification of accused unfit to stand trial for SV (intellectual disability)'.

In two cases the perpetrator was convicted at trial, one an IPV case and the other involving a perpetrator who was a family member (uncle). Both cases were evidentially strong. The IPV case involved an active gang member with an extensive history of violence being trialled for more than one sexual violation case. In the case involving the family member, compelling DNA evidence refuted the perpetrator's denial that sex had occurred.

Considering the increasing prevalence of these family violence cases, it is still interesting to review the characteristics of those cases that did not proceed. As with online dating, consent issues repeatedly arose in the IPV cases. Distinct to IPV were common accounts of female partners feeling they had to put up with sexual activities they neither wanted nor enjoyed, as the following examples demonstrate.

In one case, the female partner described that the '[perpetrator] wanted to have sex with her, but she was too tired and didn't want to. She gave in when he kept pressuring her and let him get it over with. (E31-K3)

Another woman recounted her partner tying her up and having sex with her despite her protests. (J31-K6)

And a third woman described a power and control relationship where she was being held down by her very strong partner, who would then ejaculate on her face and force her to watch porn. (E11-K6)

The normalisation of violence and control within many relationships serves both to make its recognition difficult and its reporting even more so, as the next section shows.

Reluctance to report or acknowledge rape within a relationship

Of the 41 victims who alleged their sexual assailant was their partner/ex-partner, more than a third (n=15) had initially approached Police for some other reason. Most typically (n=11) this was to report incidents of physical violence and they disclosed the sexual assault later. This suggests there is still some reluctance or ambivalence felt by victims about reporting

¹⁶ Weighting of 2.5 applied to K9 cases, resulting in 17.5 FV cases prosecuted out of a total of 57.5 family violence cases.

assaults of a sexual nature committed by their partner, a finding that may be in part a response to their feeling Police may only view them as legitimate victims if they have been physically assaulted as well.

In one example, while Police were attending a domestic assault, the victim disclosed the perpetrator had also raped her several times over the course of that weekend. The couple both had extensive family violence histories, with the perpetrator being noted as a high risk and high-volume perpetrator who should be arrested if there was sufficient evidence. On this occasion the victim had a swollen face from being punched and recounted how he forced her to have sex, describing how her partner wrapped his arms around her neck. He persisted despite her saying she was too tired, and tried to have anal as well as vaginal sex with her.

The Police recognised that 'This is a high-risk victim living with a violent man' and worked to ensure the victim's safety by transferring her to a women's refuge and working with both the victim and perpetrator on a safety plan. A protection order was issued, and the victim told it would be null and void should she invite her partner back in, but indications on file suggested she saw no alternative other than staying with him. Police actions and efforts reflected clear concerns for the woman's safety and a good CIP completed, including considering locating an interpreter given that the victim was from [Asia], but within three days she stated she wished to withdraw the complaint against him. The case was filed K6. One curious aspect was why, when he was such a prolific perpetrator, Police did not press charges on the physical assault or breaching of the protection order. (E54-K6)

In another 4 cases the victim reported the sexual violation in other contexts, including while being treated for a suicide attempt (n=2), after being taken intoxicated and half-naked to hospital, or while reporting other offending by the perpetrator.

Sometimes the women said it took some time for them to realise that what they were experiencing met the legal definition of sexual violation.

This was the situation for a woman in a ten-year relationship who felt she owed her husband sex because he was the breadwinner but would medicate herself to tolerate it. It was only after she left the accused and did a women's refuge workshop that she said she understood what rape was and decided to report one very rough and aggressive incident to the police. She had asked the offender to stop but he told her he was 'nearly finished' and continued. (E1/J1-K6)

While rape allegations typically involve disputed notions around consent, the file analysis also revealed instances, such as the online dating case E26 above, where it appeared that men and women were sometimes operating with opposing understandings around what sex signified. In some cases the file information suggested a pattern whereby the male felt it was his right to insist on sex with his partner while the latter, realising 'sex' was inevitable,

sought to find ways to manage it as best she could. This is evident in one case where the victim described her violent partner often demanding sex and her realising saying no was not an option.

She explained that when she told her partner to stop he would become even angrier and she would be beaten worse. She described a recent incident where he called her a 'whore', 'yanked' her round by her hair and bit her. She described letting him do things to her, such as forcing sex on her, as she knew from experience that the sex would calm him down. Despite believing he was capable of killing her, she kept returning to him and just wanted him to get some help. She withdrew the rape complaint. (E63-K6)

The case above could also illustrate how what is 'rough sex' to one party is 'rape' to another, and how fear can limit a women's ability to consent. These are explored more fully in the next sections.

Rough or aggressive sex

Similar to online dating, complications around withdrawing consent when sex became too rough were also evident within the context of on-going relationships, as shown in E1/J1-K6 above. Disputes can arise between what is unacceptable sexual aggression as opposed to mutually agreed 'rough' sex. Ten of the 14 allegations made involving rough sex arose within the context of partnerships and ex-partnerships. In the case below the parties had had a consensual sexual relationship in the past.

When after some time the young man visited her, he became very physical, digitally penetrating her while fondling her breasts. She objected that she did not want him doing this and said she believed he took this as a challenge. He subsequently forcibly penetrated her digitally. She asked him to stop but he kept going harder and harder until she used both hands to make him stop. The file also reports, 'She promised him sex in order for him to stop.' Later she felt pressured to go along with sexual intercourse but later that night he crawled into her bed and used his fingers again. She told him to stop because he was really hurting her and suggested he give her oral sex instead, as a way to stop him. At this point he manoeuvred her so she was under him and penetrated her vaginally. She described being so shocked that she stopped functioning. She said she wanted to say no, scream and tell him to get off but couldn't and just froze. She said that he carried on despite knowing he was hurting her, treating her as if she was his property. Evidence from texts between them later show his apologising and during a police interview admitting he had failed to stop when asked. However, despite evidence of both digital and penile penetration occurring against the victim's wishes, the consent issue is muddled by her promising him sex to get him to stop and later going into a freeze response. (J10-K6)

This case was filed K6 and provides a good illustration of how our current law can conclude there was no offence because it is not possible to demonstrate that he had a belief based on reasonable grounds that she was not consenting. Recognition of how this woman's apparent 'consent' was based on shock, fear and acquiescence would be more possible should an active definition of consent be adopted in law that required the man to detail the cues and behaviours from her that he interpreted as consent. Our current laws, however, provide no protection or justice for women experiencing situations such as this victim faced.

One of the two rough sex cases resulting in a perpetrator being prosecuted arose in the context of serious physical violence, threats and rough sex within the context of intimate partner violence.

A woman described having been in an on-off relationship with her partner for the past 18 months. She arrived home one afternoon to find him drinking and argumentative. He told her he'd slept with someone else and, when she didn't react how he'd hoped, became violent.

The woman said she thought her indifference angered her partner, and as a result, he became physical, spitting on her and throwing a drink in her face. She attempted to ignore him and carry on with household chores, but he interfered. At her suggestion that she would leave, he threatened to cut her wide open while sharpening a large knife in front of her. After he violently assaulted her further, she tried to retreat to the bedroom, but he followed her saying he wanted sex and ripping off her clothes.

Later, after she managed to find a phone and text someone to come and get her, he left the house. She called 111 saying she did not want to make a complaint against him for the assault but was scared of him and seeking a Protection Order. She also alerted police that he was in possession of a large knife.

A warrant for his arrest was issued, and he was charged with Assault with Intent to Commit Rape, Assault with Attempt to Injure, and Threatens to Kill/Do GBH. He maintained he had also been injured and that the victim's injuries all resulted from 'rough sex.' The police form opposing bail notes that the victim in the past had refused to co-operate with police following other assaults he committed, and he was known for being jealous and possessive, having already destroyed property of hers.

Despite this, the perpetrator was bailed, with a curfew to remain at a court approved address between 7pm-7am daily, and not to consume alcohol or have any association with the victim. The file details an extensive criminal history— a mix of theft, burglary, wilful damage, cannabis supply, assaults, firearms and weapons charges, plus numerous breaches of community work and one prison term. The dossier sheet also describes family violence incidents from when he was with his previous partner. It was therefore surprising that under the heading 'Prosecutors notes' on report form the statement is made that: 'The defendant has no family violence history with the

victim and [this] would be his first violence charge.’ He pleaded guilty to a representative assault and a threatening to kill charge. (J47-K9)

In this case it is likely the active criminal history of the perpetrator and also the physical evidence available from the assaults would have supported the decision to proceed to prosecution.

The other rough sex case proceeding to prosecution saw the perpetrator admit to two of the multiple rapes disclosed by his wife but he was eventually declared unfit to stand trial for sexual violation due to intellectual disability (E5-K9).

Impact of pornography

International researchers have recently drawn attention to the increased sexual aggression infusing much of contemporary pornography, with some linking this to the prevalence of rough sex and sexually violent behaviour (Bridges et al, 2010; De Keseredy & Hall-Sanchez, 2017). Three of the 10 IPV rough sex cases referred to the defendant using pornography.

In one of these cases the woman came to report historic rapes committed by her ex-[defence force] partner whom she believed was now stalking her. She described his holding her down, forcing her head round to watch porn, coming on her face, and using hard objects to penetrate her. The pain, she said, was ‘excruciating’ and ‘I felt like I’d been split open.’ Concerns were raised on file about the victim’s mental health and it was determined the perpetrator would be informed of her allegations and the case was filed K6. (E11-K6)

Pornography was referred to explicitly in three other cases, including one case where a teenage girl reported having being raped by a man in his thirties. She described that the perpetrator had explained having been in love with her for a long time. He said he masturbated while fantasising about her, and that he had watched a lot of pornography with girls who looked like her in it. (E39-K6)

While only small numbers of victims referred directly to the perpetrators watching pornography or forcing them to watch it, growing awareness of the influence of pornography on rough and aggressive sex, as well as in increased demands for anal sex, suggests this is likely to be a greatly under-reported factor.

Fear limiting consent

Consent issues were also rendered particularly problematic when accompanied by the use of threats or force in ways that compromised the woman’s ability to make her own desires known (also an issue in several of the online dating cases).

In more than half (n=24) of the IPV cases the victim reported the use of force or threats by the perpetrator, with visible injuries from such behaviours evident in 14 of these cases.

These cases often overlapped with violent aggressive sex. In several cases it is clear that the victim did not want sex but felt too frightened to refuse.

One example involved a woman disclosing historical instances of sexual violation by her partner, motivated to do so by his imminent release following charges of raping a girl under 12. She said she feared he would return to her address and continue abusing her, especially since they have a young daughter together. She described at least 20 episodes of non-consensual sex, including an incident after her partner had been released from prison. He repeatedly touched her sexually despite her protests that she was not in the mood. She didn't want to have sex with him but said she didn't feel like pushing him away and was content to lie in bed and do nothing. Later she accused him of rape, and he responded by saying he'd thought she was fine with it.

This woman's knowledge of his previous violence and the fears it generated significantly limited her capacity to refuse his advances. Issues around consent and lack of corroborating evidence resulted in a decision not to prosecute the perpetrator and the case was filed K6. (E27-K6)

The above illustrates well the difficulties faced by victims in meeting the evidential standards required by our existing legal framework. Placing the onus on them to actively demonstrate their lack of consent, particularly in contexts where they know and fear what the perpetrator is capable of, effectively leaves them vulnerable to repeat victimisation.

4.3 Evidential issues around consent

Questions of consent lie clearly at the heart of all rape complaints, past and present. However, the 2015 analysis identified some consent-related concerns that were not particularly evident in the 1997 study. In 32 of the 2015 cases specific comments and concerns were raised on files over consent issues. The victim's description alleging no consent or the withdrawal of consent was typically at odds with the perpetrator's account of what occurred, and there was insufficient corroborating evidence to prove one account over the other. The files in 9 cases simply referred to consent being an issue without specifying why, with the remaining cases involving a range of different scenarios. A common scenario arose from situations where, like in case E27 above, the victim felt she 'gave in', often from fear following threats or force, and lay there wanting it to be over (n=12). Examples illustrating their perspectives include the following three examples.

One victim stated that she lay still and let him finish, relieved that he had stopped being rough and too frightened to tell him that she wanted to go home. (E15-K6)

Another described that she knew she couldn't stop him from doing what he was going to do, so just urged him to hurry and finish. (J39-K6)

A third victim said she would rather be raped than suffer the other severe physical violence he was threatening. (J23-K6)

Whilst sexual violation appeared clear, the statements given by these women left them open to the defence arguing the perpetrator could not have known beyond reasonable doubt that she was not consenting.

Particular complexities arise in contexts where one form of consensual sex is occurring, and the perpetrator assumes this equates to different sexual acts being consented to. In three cases, for example, the victim had agreed to vaginal sex but felt violated when the perpetrator performed anal sex on her, often in ways described as excruciatingly painful, without consent.

Consent issues arose also from victims being asleep or extremely intoxicated (discussed earlier in section 3.5) and in situations of unequal power relationships where the victim described feeling 'pressured' to comply. For example, the power imbalance in the case below compromised the victim's capacity to resist:

A young woman alleged a justice professional whom she contacted for advice repeatedly sexually assaulted her and she felt pressured into having sex with him, sex that was 'extremely rough.' The [perpetrator] insisted he was not acting in his professional capacity and had tried resisting the victim but 'got horny and succumbed.' She, however, had experienced the sex as often painful, causing her to bleed, which he told her was 'normal.' She complained of feeling used for sex. She decided later not to proceed with charges against him because she felt she had too much to manage with other issues. (J13-K6)

4.4 Summary

This section has considered issues emerging within the changing social landscape since 1997. This has been a time characterised by increased awareness of the prevalence of intimate partner violence, but accompanied also by technological advances spawning a proliferation of on-line dating sites for those seeking new or different partners. These create opportunities for rape as well as romance, with some of the cases studied here showing the challenges they can pose. This has been paralleled by the proliferation of pornography on-line, evident in some men demanding that their sexual partners replicate what was portrayed on screen. It has been associated with increased demands for anal sex and a normalising of rough sex, both of which have produced challenges to consent issues. Policing in the 21st century involves confronting the difficulties associated with sexual relationships characterised increasingly within the ambivalences and complexities of 'fifty shades of grey'.

5 Positive changes in police practice

The 2015 analysis provides evidence indicative of the many positive changes New Zealand Police have implemented since the 2007 Commission of Inquiry, particularly oriented around quality assurance and gaining greater national consistency in adult sexual assault investigations. These have included significant developments linked to investigator training, victim interviewing, and case review processes. There have also been moves towards increased specialisation as well as an expanded emphasis on prevention activities, the latter demonstrating consistency with the recently introduced Prevention First National Operating Model of New Zealand Police.

This section reviews the changes we have been made aware of, and where applicable describes any impacts evident in the files reviewed.

5.1 Tiered training

Extensive changes have been made to training New Zealand Police to respond appropriately to reports sexual violation. Training is now organised according to a tiered model providing increased specialised knowledge to different levels of officers and supervisors. Courses include material addressing relevant issues such as counter-intuitive evidence and provide opportunities for detectives to hear directly how victim/survivors experience police processes. Refresher training is provided through advanced ASA courses and the annual ASA coordinators conference.

5.2 Victim interviewing

Changes in victim interviewing since 1997 have greatly reduced the dangers of victims being expected to provide full statements in the immediate aftermath of a sexual assault, when the quality of evidence obtained was likely compromised through a combination of exhaustion, intoxication and trauma impacts. Current practice is for a brief statement to be obtained at reporting and a full statement to be taken preferably within a few days of the offending. In recognition of the need for greater specialisation to provide optimal service delivery to victims, the full L3 interview is undertaken by one of a small number of women interviewers trained in the use of narrative interviewing techniques. Ideally these interviews are conducted in rooms and facilities designed to maximise the victim's safety and comfort, away from police stations. These practices are designed to enable victims to provide the best evidence possible.

The majority of files we reviewed appeared to be adhering to this new process, although in some cases the L3 interview was not undertaken for several weeks and there were others where Police appeared to obtain substantive comments at the time of initial reporting.

5.3 File reviewing and QAIF process

During our file analysis we noted the ways in which New Zealand Police had increased their own processes for reviewing case progression and the positive impacts deriving from having managers and sometimes HQ staff involved in such assessment. This reduces the opportunity for investigators to act from their own biases or premature judgements regarding possible case authenticity.

The new Quality Assurance Improvement Framework (QAIF) requires supervisors in each District review 10% to a maximum of 20 files every four months; District Managers review a random sample of 10% up to a maximum of 20 files every four months; national office reviews 5% of each District's files, including some that have been previously reviewed at District level, annually. Any files failing the annual review must be remedied and actions taken reported to national office

There were several instances where the files recorded reservations expressed during Police review processes and urged greater investigative effort to engage victims or seek corroborative evidence.

In a case involving a scared victim, for example, the file review makes clear: 'Better follow-up with the victim is required. The victim from the information contained in her statement is vulnerable and could be exposed to further risk. A plan to safeguard the victim's safety needs to be created and executed.' (J15-K6)

Thus in many ways the 2015 file analysis was encouraging in that it demonstrated victims of rape appeared more likely to have their allegations investigated fully than in 1997, and there was some greater recognition of particular victims' vulnerability. This finding tallies with New Zealand Police's own assessment of their progress as reported in the ten-year report implementing recommendations from the Commission of Inquiry into Police Conduct (New Zealand Police, 2017). It suggests that other sectors of the system now pose the major barriers to victims accessing justice, turning the focus to court and trial processes. However, there were still some indicators suggesting there can be no room for complacency, as the following section of findings demonstrates.

5.4 Case Investigation Plans

The introduction of Case Investigation Plans was intended to provide a useful timeline for investigators to table key actions and decisions as well as be reminded of other actions deemed necessary. We saw evidence on files of the ways in which these were used positively and appeared to aid investigative processes. However, the use of CIPs was by no means uniform and consistent, with many files not containing these or, when present, inconsistencies at times between what was recorded there with other information on file, as our discussion of vulnerability factors demonstrated.

5.5 Guidance and audit around use of K3

While concerns about the excessive and inappropriate use of the K3 code had long been voiced (Jordan, 2001, 2004), it was not until comparatively recently that this issue was directly addressed by Police. Our study results are based on offences reported in 2015 and demonstrate significant improvements in the number of reported sexual violation cases that are now more fully investigated and less likely to be dismissed prematurely as false complaints (see section 3.2).

Since the 2015 study period, there have been a series of audits conducted by the Police Data Quality and Integrity Team (DQIT) around the use of the K3 code for all offences including sexual violence offences. All cases of inappropriate use identified are fed back to the national Adult Sexual Assault manager for appropriate action. These audits have been accompanied by an auto-generated report that enables transparency of results and trend analysis over time. There are also now weekly checks by the ASA National Office to ensure all cases closed K3 are appropriate.

The audits have shown improved accuracy in the use of K3 since 2016, with the last audit finding close to 90% of all K3 closures nationally to have been correctly applied (as opposed to the 60% (12 out of 20) we found).

Interestingly, results of the 2016 audit of sexual assault offences (12 months on from the files we reviewed) estimated the rate of K3 (no-offence) to be around 8%, similar to the corrected estimate we found in 2015 of 9%. More recent Police analysis from 2018 onwards suggests the rate is now flattening out at around 7%.¹⁷

5.6 Withdrawal process

It is well recognised that one of the hardest decisions victims of rape face is whether or not to report the offence to police, and that many do so with some ambivalence (Kelly 2002). While we found a concerningly high level of withdrawals, the files also provided evidence of police working hard to support victims in order to avoid withdrawals. When victims decided nevertheless to withdraw their allegations, efforts were made to obtain a statement in writing from many, including trying to ascertain the reasons behind their decision. Such information is potentially useful to Police in enhancing understanding of the many fears and difficulties faced by victims and reinforces the necessity of specialist training to better support victims through demanding processes. Fuller details are outlined in section 3.4.3.

¹⁷ Personal communication New Zealand Police, 13 March 2019.

5.7 Notification processes and taking opportunities to validate the victim

Concerns have long been expressed by victims in New Zealand and internationally regarding the lack of information about case developments, with one area of particular concern being how police tell victims that their case will not proceed to prosecution of the perpetrator. Police policy now directs that such communication is best delivered in person and with specialist support available, recognising the potential impact of such a decision. Our study found some examples of where police followed this guideline, such as one case where the detective and a specialist support person visit the complainant to explain why the case would not progress: 'At the end of the conversation she stated that she understood and accepted the decision and she did not have any questions.' (E30)

There were also examples where such notification occurred in less ideal ways. One example of the latter involved the detective phoning the victim to advise her there was insufficient evidence for the case to proceed. He seemed surprised at her response, noting: 'She hung up on me.' He waited an hour then phoned her back to see if she wanted her clothing returned. The benefits of the review process were evident when this case was included in the audit and prompted the following response: 'I have raised with investigator's supervisor as a training issue. Victim should have been told in person with appropriate crisis worker.' (E13-K6)

Emphasising and prioritising the importance of communicating such decisions in ways that validate and support victims is to be encouraged as part of Police's commitment to sensitive and respectful treatment.

Taking opportunities to validate the victim

Earlier research on victims' experiences of reporting sexual violence to police noted how frequently victims felt disbelieved or undermined by the experience (Gregory & Lees, 1999; Jordan, 2001, 2004). While some of those from the current study may have expressed similar sentiments, what we also found evidence of were occasions where police worked hard to validate the victims' experiences. One way this was undertaken was by advising victims that they believed them, with this being especially appreciated in contexts where there was insufficient evidence to proceed to prosecution.

One case that illustrated positive empathy and concern from a female officer towards a victim arose in the context of a young woman whom the constable met first while attending a mental health incident. Later this young woman re-contacted the constable and disclosed multiple assaults and rapes during a year-long relationship she had been in. The victim was now in a mental health facility and the file shows police going to great efforts to follow up and check on her well-being. Care was also taken when communicating that insufficient evidence meant no prosecution would result, with it being stressed that: 'This is not to say that you are not believed.' (J20-K6)

It was not uncommon to see notes on the files notes such as the one below. This instruction was issued by a senior detective, to the detective overseeing the case, following a review of the file, where despite the victim's wishes, the case did not proceed to a prosecution (filed K6):

'I require that the victim/family are to be updated with my decisions and reasons surrounding this. The victim/family are to be told that I believe that what has been described has happened to her. The victim/family are to be provided with the appropriate support' (E29-K6)

Respecting the victim's wishes is another way in which she can feel validated. In one case, for example, a victim who stated a clear preference for speaking with a female detective had this wish granted (E10-K3). Such consideration was evident in some cases where victims expressed clear views regarding the perpetrator being spoken with, or not, by Police. Some victims strongly indicated they wanted Police to speak to the perpetrator and make him aware of his actions. This was the case with the victim who experienced rough sex from a Tinder date who said she did not want to go to court but did want him spoken with. She was recorded as being very happy when this was undertaken, writing back to the detective to say that she did not want to follow-up with a formal complaint because she was not comfortable with going to court and the formal proceeding. She went on to thank the detective for making the whole investigation less traumatising. (E15-K6)

There were 8 cases where the victim was adamant she did not want the perpetrator spoken to, where this was also respected by police. On at least 3 other occasions, however, Police revisited victims asking for their agreement to approach him. For example, in the following case discussed earlier in section 3.2, it was after a file review that this was mooted to the detective in charge of the case:

'Victim needs to know that he remains a risk to others if he is not made aware of these allegations and that we have a duty to the general public to prevent further offending; is there any way that she would be comfortable with him being advised of the allegations? If not, we need to discuss this more.' (E9-K3)

Another example contained file notes suggesting the victim, a teenager, was put under some pressure to agree with what the detective wanted, after having reported only because of pressure from a family member to do so.

In this incident she went to go to sleep after drinking with friends but was physically picked up by a man who took her into a bedroom, locked the door, and raped her. He had threatened her when she said she would scream, and she believed he had gang connections. She contracted STIs but was reluctant to have the Police involved and stated that her family had been pushing her to go through with it, but she didn't want to. The male detective wanted the perpetrator spoken to, but noted in the report:

‘She did not want this to occur and told me that she thought this would make things worse for her as her friends would all hear about it and she genuinely feared [perpetrator] may try to target her for involving the police. I asked her how she would feel about further girls being targeted in this way and would she be prepared to be a witness if any further events like this occurred with [perpetrator]. She told me she was not sure, and it would depend on the circumstances.’ (E40-K6)

In a separate case involving a victim who felt trapped and fearful in an abusive relationship, comments on the file noted serious risks to Police could result from this perpetrator not being informed that there was now a note in NIA linking him to an ASA complaint.

‘I believe it is necessary in this case to advise [perpetrator] of the allegations made against him. He is now in NIA as a [perpetrator] linked to an ASA complaint there are significant risks to police if he becomes aware of this only via indirect means such as any future vetting process. Further, Police need to ensure he is not a current or future risk to other women. I believe the perceived risk to [victim] (and her grandchildren) can be managed, and does not outweigh the requirements to advise ‘suspect of allegation.’ (E11-K6)

The inference here was that the victim’s concerns may again be viewed as secondary to police wishes.

The mixed examples presented here provide evidence both of desires to serve victims well and meet their needs alongside adherence to police scripts of what actions should be taken from their perspective. This conflict of wishes has long existed and is illustrative of the many tensions that can exist between victims’ needs and police operational or best practice requirements.

5.8 Prevention advice given

The recent strongly stated commitment by Police to their role in preventing crime was reflected in increased evidence of prevention advice being given to both victims and perpetrators. There were 22 files referencing prevention advice to victims, sometimes noting simply that ‘Crime Prevention Advice given’, no details provided, and more fully described in other cases. In 4 cases support or advice was provided to women victimised by their partners around obtaining protection orders. Other advice included measures such as securing doors and windows, changing phone numbers, and ceasing contact with the perpetrator. In one occasion a female detective was explicit in advising a woman to set up a cat litter tray inside in order to ensure she kept a ranch slider shut and locked, although it later emerged this had not been an intruder attack (E51-K6). Another female detective spent time advising a young woman, despite her deciding not to proceed with her allegation, about ways to reduce her risk of assault after it became clear that a combination of alcohol and drugs repeatedly placed her at risk:

'I spoke at length to [victim] in a crime prevention capacity about how certain behaviour is perceived by others, healthy relationships, and clear communication in terms of consenting to sexual activities. [Victim] advised she is seeing a counsellor through Counselling Services Centre and she is helping with some tactics in respect of good decision making.' (J42-K6)

In a case involving a young woman with a learning disability, sexually assaulted by a man she met through an online dating service, police advised her to decide on a secret word she could use if needing help, so that she could text that word to a friend if she needed to. She was advised to always let a friend know where she was. (E30-K6)

A young woman who fought off her attacker was given advice for the future by the male detective who took her statement. He wrote:

'Prevention advice given:

- scream loudly, knock on doors, get attention of anyone.
- Rego's are helpful but never put yourself in danger.
- Ring us straight away so we can get the offender.' (J43-K6)

Other women were advised not to walk alone, not to meet up with men they didn't know, or 'engage in random sexual activities', all well-intentioned advice. There is a risk, however, that such messages can be unrealistic given some women's situations and may also reinforce the notion that preventing sexual offending is largely women's responsibility.

It was positive to see in 14 files notes referring to Police giving the perpetrator prevention advice. What this amounted to in 8 cases was effectively a warning that while he may have escaped prosecution this time, he needed to know a record of this incident would be kept on file in case it might be useful as propensity evidence on some later occasion. For example, one detective, while noting that the perpetrator was to be advised that a record would be kept on file, also stated:

'[Perpetrator] is to be left in no doubt that the victim's complaint has been taken seriously. He is also to be told that he is very lucky he is not being charged.' (J26-K6)

It was clear in three of these cases that the warning was accompanied with advice to the perpetrator to be more careful about ensuring consent, with this being particularly strongly driven home in relation to one of the cases discussed earlier in section 4.1 regarding rough sex (E15-K6). The latter included directives that actions such as biting, hair-pulling, and choking were inappropriate without specific consent being obtained for such behaviours. While such advice is clearly constructive, what also needs acknowledging is how difficult it might be for women to refuse within some contexts. In four cases the prevention advice given to the perpetrator was simply to stay away from the victim, which could be ambiguously interpreted as 'watch out for your own behaviour' or 'watch out for hers'. The

potential exists for detectives to extend educative and preventive activities or even refer perpetrators to community-based courses addressing consent issues.

For example, in one case two university students were drinking together before the male asked the female back to his place. She went but felt uncomfortable and when he started being sexual, she asked him to stop. He continued with vaginal and anal sex. The victim continued to ask him to stop, but said she felt helpless. After he finally ejaculated, she left. She went to a friend's address and it was that friend who reported the incident to police. Two weeks later the victim withdrew the complaint, advising that she had thought about the complaint, and discussed it with others.

She decided that she wanted to forget the incident ever happened and move on with her life.

Comments on the police file suggest they believed the complaint was genuine and, despite her clear wishes that she did not want the perpetrator contacted, she was asked for her consent to make him aware.

As noted earlier (section 3.2) the Police warned the perpetrator about the importance of obtaining consent before proceeding with sexual activity. He was described as having been shocked, but also admitting to having been drunk. A file review notes, 'good prevention activity in regard to [perpetrator].' Despite such actions and comments, this case was filed K3 as if no offence had occurred. (E9-K3)

This case noted the preventive activity undertaken by the Police, and the emphasis on such actions is a new and potentially useful development in police investigative practices, particularly with the very real challenges within the current system of securing sufficient evidence to proceed, yet alone achieve, a conviction.

5.9 Summary

In this section of the report we wanted to highlight areas reflecting the positive changes made by Police. These became evident as soon as we realised the size and complexity of the 2015 ASA files in contrast to the bulk of those from the 1997 study. As well as noting how this was associated with most investigations progressing further, we also saw evidence suggesting positive impacts arising from the various initiatives introduced in response to the recommendations made in the Commission of Inquiry report, 2007. These included specialist tiered ASA training, the introduction of CIP plans, and internal review and audit processes, initiatives recognised in Rowe and Macaulay's earlier assessment (2018). The 2015 files also revealed an increased involvement by Police in prevention-related communication with both victims and perpetrators.

Much of Dame Margaret Bazley's emphasis in the Commission of Inquiry report had emphasised the importance of essentially more victim-centred processes. We found evidence suggesting an overall improvement in Police interviewing procedures, including procedures when complainants decide to withdraw their complaint as well as when Police decided to halt investigations. However, many files failed to detail Police actions in such situations meaning these could not be easily assessed, or indicated that other than optimal processes had occurred. This suggests some aspects of Police policy currently remain aspirational rather than actual, and that more effort and resourcing may be required to achieve greater consistency.

6 Opportunities for further improvement

While undertaking the file review, both of us as researchers noted aspects we considered raised concerns about the quality of some investigations. Our assessments are necessarily subjective and reflect a victim-centred approach. From this stance, we noted concerns in 50 of the files overall. These reflected a wide range of issues, the most commonly observed being an apparent failure to collect evidence (n=19), extensive delays to the investigation proceeding (n=13), and apparent failure to recognise the victim's vulnerability (n=13). Other issues observed included what appeared to be inappropriate use of the K3 code (n=8 – reviewed in section 3.2), not recording or speaking to a known perpetrator (n=7) and communicating sensitive information with victims over the phone (n=4).

6.1 Evidence not being collected

While many files showed investigators going to extensive efforts checking out all avenues of possible evidence, others appeared less rigorously managed. In relation to evidence not being collected, this included not conducting scene examinations, not speaking with witnesses, not requesting toxicology tests, and not checking other possibly relevant information sources such as phone records and CCTV footage. It was often difficult, if not impossible, to determine the reasons behind such decision-making and the extent to which these were financially motivated or based on perceptions already formed regarding the reliability of the victim's recall and testimony.

In one example, the victim had met a man online whom she later went on a trip with, during which consensual sex occurred. There was an incident of non-consensual digital penetration, then later an incident where the woman woke with a sore vagina and realised her underwear had been removed. She allegedly called a friend after this incident, and subsequently disclosed what had happened to a second friend when she got back into town, with the latter calling an ambulance in response to the victim's complaints of abdominal pain. These and other possible witness sources, as well as records from the trip the couple allegedly made together, were not retrieved and the perpetrator was not spoken with until five months later. It was determined there was insufficient evidence to proceed. (E6-K6)

In some cases delays in investigative processes impacted on evidence retrieval, as noted in the next section.

6.2 Delays in the investigation process

Delays in the investigation proceeding were often noted on file, with these most commonly occurring in relation to files not being assigned to investigators for months, or delays in the scheduling and conducting of L3 interviews. When the delayed interview procedure was introduced, the intention was to provide a short window of time for the victim to get some

sleep or sober up if need be before making their statement – in other words, the intention was to facilitate the obtaining of better evidence.

The possibility that some victims may wait up to a month or longer for the L3 interview could potentially work against the best evidence being obtained, with the time having passed for scene examinations and witness identification. Given that the interview is recorded and may be played in court, the delay can mean victims come across more composed than juries might expect victims of rape to look like, or manage their distress through dissociation, which can also confuse jurors. Such delays can also advantage perpetrators, giving them time to organise witnesses, dispose of evidence, threaten the victim, and arrange 'alibis'.

The following example shows how delays can feed into missed opportunities for obtaining potentially useful evidence.

In this case a young woman went back to a man's apartment thinking she might have sex with him, but once there his behaviour scared her and she wanted to leave. He proceeded with what he termed 'rough sex', including attempted anal sex, then ordered her to leave. A local store owner described the two of them coming into his shop to buy condoms earlier in the evening, then her coming back distressed about 6am and asking him to call an ambulance. He phoned Police and when the operator asked to speak with her, she disclosed rape.

The findings appeared muddled, because of the significant delays affecting this case's investigation. The first report in 2015 notes the victim needs to complete an L3 interview and numerous enquiries need to be undertaken. While the evidential interview was conducted the following month, the victim was sent at least 6 emails and letters over the next 8 months that repeatedly stated that her file had been received and an investigator would be assigned shortly.

This delay was accompanied by significant time delays that resulted in the window having passed to locate relevant EFTPOS records from the store and obtain CCTV footage from the area. Two days after the reported sexual violation, in early 2015, a police job sheet noted that a constable went to collect local CCTV footage and was told to contact the store manager. Nine months later an ASAT detective went to talk to the store manager regarding camera and EFTPOS records and was told these did not extend back that far. In addition, the detective was told the employee who could have been spoken to as a witness had now left the company. There was also a delay in sending the MEK for forensic examination, with the subsequent QAIF review noting it had not been sent for examination 'in a timely manner' – the evidence collected at the time the report was made that could identify an unknown perpetrator was not delivered to ESR until nine months later.

The victim indicated the rape had occurred in an apartment which was occupied by tenants of a specific ethnicity, although she thought the man who took her there was not of the same ethnicity. When an ASAT detective made inquiries at the apartment in more than six months later, it emerged that some tenants had been living there at the time with a male boarder, but all had now moved on, leaving no contact details. Efforts made by Police in 2016 to trace the tenants showed they had left New Zealand the previous year. The case was filed K6. (J7-K6)

6.3 Failure to recognise victim vulnerability

As noted in section 5.4, the introduction of Case Investigations Plans appears a positive move, providing of course they are actually being utilised. It was good to see included in the CIP a box that could be ticked to acknowledge victim vulnerabilities, suggesting this should be an important consideration in planning and conducting an investigation. In practice, however, this appeared to be completed erratically, remaining unchecked when some victims displayed what appeared to be clear vulnerability. As noted earlier, many victims were recorded as having mental health issues (n=42), previous victimisation experiences (n=45 across all forms), learning difficulties (n=8), and intoxication issues (n=24), all of which could be viewed as possibly enhancing vulnerability. To Police, as observed historically, such factors may also signal a lack of credibility.

Of concern was the finding that fewer than one-third of detectives (n=12) ticked the box denoting vulnerability on the CIP for these cases. This included the victim in J40-K6 (discussed in section 3.4.5) where the vulnerability box was not ticked despite it being noted on file that the victim:

- the victim was in a relationship with a known recidivist violent offender;
- had numerous prior family violence episodes recorded on file;
- struggled with alcohol abuse; and
- suffered from severe depression.

Many other victims were recorded as having come to previous police attention through being repeat victims of family violence offences, yet recognition of their vulnerability across files remained erratic.

One example involved a woman who had been in an on-off relationship with a married man for more than 4 years. Following assaults on her, she took out a protection order against him that he was recorded as having breached multiple times. His latest physical assault on her was accompanied by an attempted rape, and at the preliminary interview it was noted: 'It is expected that [victim] will disclose multiple sexual assaults. She stated that sexual violence towards her has been a common theme throughout the entire relationship.' Victim vulnerability was not ticked, and comments on file suggested annoyance over her seeming unwillingness to cease contact with him: 'She has not taken on prevention advice, which has included no

contact with named [perpetrator].’ However, later comments on file indicated possibly greater recognition of the victim’s ‘fragility’ and police working with her on a Victim Intervention Plan that included encouraging her to re-engage with specialist support and change her cellphone number. (E60-K6)

While police seemingly struggle at times to recognise vulnerability factors, perpetrators often display greater aptitude in this regard, aware also of the compromised credibility issues surrounding those they target. Greater police acknowledgment of these dynamics will help to break the unconscious collusion that may currently arise between police and perpetrators.

More attention on evidence of inability to give consent

Lack of consent to sex lies at the heart of our current rape laws and, as noted earlier, was understandably a major factor in determining whether an evidential threshold was reached supporting perpetrator prosecution. What appeared less well recognised were contexts where men proceeded with sexual acts and/or penetration despite the women being incapable of giving consent. This included situations where victims were asleep (n=13), unconscious (n=8), or semi-conscious (n=2), equating to at least 23 cases where the victim was unable to fully give consent. Some of the additional 22 victims described as inebriated/drugged may have had dubious ability to give consent also.

One example of such a case involved a young woman who, after heavy drinking at a party, was helped to a bedroom by the party host. She vaguely remembered coming to enough to feel someone was having sex with her, tried to push him away then passed out again until morning. She woke to find her undies had been lowered and felt sore in the vagina and anus. She later told a friend she believed she had been sexually violated and went to Police next day. Given the delay before reporting and having a MEK, amounting to 36 hours during which she had taken two showers, it was impossible to determine her level of intoxication and no male DNA was found. While the detective noted: ‘Having read her statements to police I believe she is a credible and believable witness and cannot see any evidence to suggest she has any reason to make up any of the allegations’, her vague recall was assessed as providing little prospect of conviction and the case was filed K6. (E7-K6)

Such cases clearly provide challenges for Police, but while the difficulties stem in part from our current laws and evidential requirements, they effectively work in ways that protect perpetrators from prosecution in such contexts.

6.4 Insensitive information communicated over phone

In situations where the Police decide to halt investigation of a case, the accepted protocol specifies that the victim be notified of such a decision in person with a support person present. This requirement recognises the huge significance of such a decision and the

potentially traumatic impact it can have on someone victimised by sexual violation. The files often failed to record if this requirement had been adhered to, with only two cases specifying such notification had been undertaken face to face with a support person present. In at least 3 cases, it was clear that such notification was undertaken via a phone call, and 2 via letter. In most other cases the wording on the file failed to detail how such communication was made, using vague wording such as 'Victim updated', or 'Victim advised.' Our findings reflect those in the recent Gravitas report where key informants expressed concerns when Police advised complainants by phone that their case would not be proceeding to prosecution and without ensuring support was available (Gravitas, 2018). The report notes such behaviour fails to recognise how 'devastating' (p.47) this news could be for victims and the extent to which they need to fully understand the basis for such decision-making.

6.5 Lack of understanding

In at least 11 cases comments were made suggesting detectives lacked adequate understanding of how mechanisms of power and control were typically associated with acts of sexual violence. These were apparent, for example, in their failure to understand that when victims seemingly went along with a perpetrator's wishes, they might be acting out of fear and in their own self-survival. This could arise also in situations where victims continued to interact with, even sexually, men whom they nevertheless believed had raped them. Examples include significant weight being attached to a victim going back to the accused's house to watch a movie after his attack on her (E2-K6), and to other victims failing to verbally object when subjected to forceful, violent sex (E29-K6, J7-K6, J23-K6). A situation arising from an arranged marriage also seemed difficult for the investigator to comprehend in the following example:

The couple were married in Asia but he then left for work in New Zealand, leaving her living overseas. When she did join him in New Zealand, within a few weeks of her arrival she had made sexual violation allegations against him. These arose after she was found by a couple from her community bruised and crying outside a community centre, and they took her to the police station. The file was not assigned to a detective initially then the investigation further delayed by workload pressure, meaning three months lapsed before this woman was interviewed. Review comments on the file noted:

'It is domestic related marriage sexual assault. There are no witnesses to the incidents. There is only her word.'

The investigator added: 'Reading as though matter is a bad marriage.'

In June it was noted: 'DVDs of victim viewed, and it is noted by the investigator that the victim is describing things that happen within a new marriage. There are a few demands for sex as stated by victim.'

However, the interviews conducted included descriptions of her husband having oral, vaginal and anal sex on multiple occasions in the first two days after she arrived. She said she did not like doing these things and did not want 'to conform to his ways.' She describes the day after she arrived crying while he made her give him oral sex and ejaculated in her mouth, then had intercourse with her three times that night. She said when he tried to have anal sex she resisted. She questioned why he was doing this when he didn't like her. After several days of arguments, oral sex and intercourse he told her that if she wouldn't do those things with him, he'd find someone else to do them with. The victim presents with a vaginal injury but the file notes this does not necessarily mean a lack of consent.

Also described on file is her description of his hiding of her passport and phone and intentionally provoking a fight where he dragged her by the hair, pushed a pillow on her face and threatened to kill her, stopping only when she scratched his arm trying to resist him. At this point he said, he would call the police and have her arrested for the scratch so he could get her deported. She was concerned about the shame involved in returning home. The investigation was complicated by language issues and immigration issues, and by the perpetrator declining to make a statement regarding the sexual violation charge. Eventually Police determined there was insufficient evidence to proceed. (J9-K6)

Sometimes comments made by detectives indicated a possible lack of awareness about the diversity of ways victims might respond to, or anticipate, rape attacks. In the following case example, involving a reported stranger attack, the ASA detective appears sceptical that a woman may have planned in advance the survival strategy or 'ploy' she might use if attacked. He wrote:

'During the rape, [victim] was clearly able to recall an earlier conversation she'd had with associates about what they would do if they were in a situation such as she was finding herself. Not only was she able to recall the ploy, she was able to have the fortitude to execute it while being raped. Even more remarkable is that the ploy worked. Whilst the recall and successful use of the ploy is not impossible, it is certainly unusual.'

The detective asked the victim more about this and she said she was fearful for her life and felt she had to do something because there was a risk she could be killed.

He also asked her why, after the attack, she initially chased after the perpetrator yelling at him – she said she felt she had been naïve till now and the attack and degradation made her angry. It was not until initial rage abated that she realised she may still be at risk and ran to a friend's place. (J21-K6)

Both the behaviours queried – planning in advance how to respond and initially chasing the perpetrator – are actions we are aware of other victims exhibiting in similar circumstances,

including two of the women sexually victimised by serial rapist Malcolm Rewa (Jordan, 2008). This suggests a possibility for enhanced training around survivor responses and strategies in ASA training.

6.6 Dismissive language

The 1997 files contained multiple examples of negative and judgemental language used by detectives to describe both victims and perpetrators, and the 2015 files were characterised generally by a marked absence of such descriptions. However, it was concerning that in some instances the language used by detectives suggested a minimising of the impacts of the defendant's behaviour, particularly evident in a case where a young woman's boyfriend had forcefully penetrated her using his fingers and penis together during consensual sex.

He persisted until he saw how much she was bleeding, when he panicked, jumped out the window and ran off. Several hours later she was still bleeding when her sister found her and she went to hospital where it emerged she had a 7cm laceration to her vagina that needed reconstructive surgery. Despite the serious injury and trauma inflicted, the CIP plan states there had been no violence in the relationship apart from injury caused by 'over zealous sexual activity' (E53-K3).

In another case involving assault with intent to commit rape, threats to kill, and an 18cm knife, a detective sergeant's describes the incident in ways that suggest a minimisation of the extreme violence: 'The victim has experienced this behaviour from the defendant in the past where he has successfully had sex with her against her will.' (J47-K9)

Similarly, a male detective in a separate case noted the following:

'[Victim] did not verbally object at any point (apart from her objection to anal) as she feared she would be hurt or killed if she didn't give him what he wanted. The sex lasted approximately one hour.' (J7-K6)

Comments like the above can suggest a failure to appreciate the impact of such behaviours from the victim's perspective and reduce acts of rape and violence to being little more than 'just sex' (Gavey, 2019). Referring to rape as 'sex' minimises one of the most serious criminal offences we have, and could silence victim/survivor testimony.

6.7 Summary

While New Zealand Police have made many positive and significant improvements affecting sexual assault investigations, this section focused on areas presenting opportunities for further improvement. Our analysis revealed there were challenges still to be resolved in terms of achieving overall compliance with requirements regarding victim notifications, robust evidence collection, and achieving minimal delays in undertaking L3 interviews and assigning files to detectives. The extended length of delays in some cases led to missed opportunities for evidence retrieval as well as losing victim engagement, both of which can

effectively contribute to avoiding offender accountability. There were several areas identified that both reinforced the vital importance of Police specialisation while also indicating a need for further investigator training and awareness. These included the importance of recognising issues of victim vulnerability and greater understanding of the many ways in which the freedom to consent can be compromised. There were also indications at times suggesting not all ASA detectives were adequately aware of, and sensitive to, the many ways in which 'consent' can be obtained or acts of sexual violation masked as supposedly consensual sex. The right actions will only impact positively if supported by the right language and attitudes.

Working to ensure specialist Police are available to engage with every complainant should, in our view, be recognised as an essential aspect of Police service delivery and prioritised as important to achieve nationwide. The specialist needs of rape and sexual assault victims require higher levels of engagement and Police responsiveness than those facing most other kinds of victims, and necessitate enhanced resourcing to ensure these can consistently be met. Reducing delays, the timely securing of evidence, and ensuring consistent and regular support are all vital in encouraging complainants to continue with their cases and be the best possible witnesses they can be.

Having made such encouraging progress over the past 10 years, these are some of the issues for Police to consider going forward, as the following Conclusion recommends.

7 Conclusion

In the 20 years since 1997, much has changed in relation to societal awareness about rape as well as changes within police training and investigatory practices. The most intensive period of change came in the wake of the Commission of Inquiry into Police Conduct, and many of the positive improvements made were outlined in Rowe and Macaulay's (2018) review. As they noted, however, concerns still remain regarding the continued existence of a 'geographic lottery' that translates into inconsistencies in the quality of service delivery received by victims reporting rape and sexual assaults. This finding was reflected also in the Gravitas report which recognised the significant improvements made while at the same time acknowledging that widespread variability still occurred in victims' experiences (Gravitas, 2018).

This file analysis reflects the positive changes made overall that demonstrate how police are now charged to undertake robust and thorough investigations despite any initial misgivings they may have regarding the authenticity of the victim or allegations. The result is that comparatively few cases are currently dismissed as 'no offence disclosed' and more efforts are made to obtain statements and undertake investigatory procedures. This is evident in the reduced proportion of cases filed K3 and the increased numbers investigated and resulted K6.

In terms of cases progressing to see perpetrators charged, however, the small numbers apparent suggest detectives still assess the majority of cases as failing to reach the evidential threshold for prosecution. Their assessment that there is no reasonable likelihood of a conviction resulting reflects the very real concerns currently being debated here and elsewhere regarding the limitations of the adversarial justice system. For victims, however, the message many take from such decision-making is that they are not believed or supported, despite some detectives providing verbal reassurances to the contrary. Either way, this leaves the overwhelming majority of perpetrators in our communities immune from being held accountable for offences among the most serious on our statute books.

One difference relevant here compared with 1997 involves the increased size of the 2015 files. This reflects the extended investigative work now required before cases can be filed, as well as the expectations on detectives to provide enhanced services to victims. It is possible that the worrisome delays we noted in this report may relate to the CIB not being adequately staffed and resourced to meet these increased requirements and expectations, and that these need to be factored into considerations of staff numbers, workloads and expectations in relation to sexual violation files.

Much of contemporary police behaviour reflects the fact that, while research findings were available in the 1990s, these had not percolated through society in the ways they have today, when they have been reinforced further by canons of additional studies. For example, it is now much more widely accepted that many factors need to be overcome

before a rape victim will report to the police, so delayed reporting is understood as a frequent occurrence. Also more widely appreciated are the ways victims may not disclose all facts fully and honestly as they struggle with self-blame and fears regarding how others, including police, might judge them. This can result, for example, in some victims concealing particular details, such as how they met up with the alleged perpetrator and what behaviours they may have engaged in together prior to the sexual assault (e.g. drug and/or alcohol consumption). What we understand regarding counter-intuitive evidence provides a stronger context now for making sense of behaviours victims may engage in post-assault also, including co-operation with the perpetrator's wishes.

Just as the above shifts in understanding have not necessarily percolated through all sectors of society, nor are they necessarily accepted throughout police organisations. This reinforces the critical need for all sexual assault allegations to be investigated by specialist detectives who are not only expertly trained but routinely up-skilled to ensure they exhibit evidence-based attitudes, behaviours and responses when interacting with rape victims and perpetrators.

What emerges from this 2015 contemporary analysis is an impression of less weight being attached to some of the victim attributions that affected case outcomes in 1997, such as delayed reporting, lack of evidence of victim resistance, and perceived immorality. It is difficult to know to what extent this reflects changed attitudes and/or changed investigative behaviours. On the one hand, since the 1990s Police investigators have become increasingly exposed to expert-informed training regarding the dynamics and impacts of sexual offending. On the other, they have also had much of their earlier discretion regarding case investigation processes limited as New Zealand Police introduced extensive supervisory and case review processes. Which of these changes is responsible for rape investigations being conducted more thoroughly is hard to discern, and it may be a combination of both.

One aspect that is very clear is how much more aware detectives are of the importance of recording a list of Police actions to demonstrate adherence to the Adult Sexual Assault Investigation Policy and in line with Headquarters review procedures. Cynics might suggest it is conceivable that the dangers of leaving potentially damaging paper trails expressing judgemental attitudes are now so well-known that few would risk expressing any such thoughts in files, unlike in 1997 when these were abundantly clear and detectives often shockingly frank. More optimistically, it may be that the checks and guidelines introduced in the last ten years are proving effective in achieving less biased and more consistent responses to rape allegations than were achievable previously. In addition, these have been introduced within the context of slowly improving societal attitudes and beliefs as traditional rape myths become increasingly questioned, at least in some quarters.

The arena where rape myths continue to carry the most weight lies now within our courtrooms, evident in the extremely low rates of convictions resulting from jury trials for

rape. Efforts to make court and trial processes easier to manage are being introduced, including producing more resources to inform and prepare victims for court, such as a recently launched on-line guide (Ministry of Justice, 2018). Further plans include providing Justice personnel with specialist training to enhance responsiveness to sexual violence victims, improving in-court facilities, and undertaking research with victim/survivors themselves so that their voices might inform subsequent changes (Ministry of Justice, 2018).

Police file analysis can only ever tell part of the story, and a more rounded and reliable conclusion requires an extensive, independent, interview-based study of victims' experiences. Lacking the resources to undertake such a study, we decided to undertake key informant interviews with selected relevant Police personnel and representatives from specialist agencies in Auckland, Wellington and Christchurch to obtain agency perspectives regarding police progress. These interviews were completed in November 2018 and the results will be available in 2019.

Meanwhile the New Zealand Police face another critical crossroad of similar import to that of 2007. The last ten years have shown the improvements that can be made by prioritising a specific crime area for training and resourcing. One danger is that an attitude assuming all is now well in the sexual violence arena will translate into an easing up of effort, and a lessening of resourcing. The gains made need constant reinforcement to become truly embedded within the organisation. It is likely that at least some of the biases and judgements from 1997 continue to influence 2015 practices, given that these attitudes remain evident within the broader society from which police officers are drawn. The lack of gender equality throughout our culture and institutions demands on-going attention if we are going to succeed in combatting gendered crimes such as rape and sexual assault. In many ways the work has only just begun.

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Appendices

Appendix A: Frequency of factors recorded as present

Final clearance code (circle)	Totals	k3	k3%	k6	k6%	k9	k9%
Totals	110	20	100	74	100	14	100
Recorded FV file	37	7	35%	24	32%	6	43%
Delay over (7days)	34	6	30%	26	35%	1	7%
Offenders >1	10	1	5%	8	11%	1	7%
Offences >1	21	3	15%	9	12%	9	64%
No suspect identified	18	6	30%	12	16%	0	0%
Insufficient evidence	79	10	50%	67	91%	0	0%
Not in public interest	0	0	0%	0	0%	0	0%
Who reported – victim	88	15	75%	64	86%	7	50%
Use of position of status/influence	15	3	15%	12	16%	0	0%
Use of force, threats or injury	62	6	30%	45	61%	9	64%
Use of weapon (describe)	6	0	0%	3	4%	3	21%
Consent changed	16	4	20%	9	12%	1	7%
Consent unclear	27	4	20%	20	27%	1	7%
Consumed A or D together pre incident	28	4	20%	21	28%	3	21%
VICTIM – use of A or D – Pre	48	7	35%	36	49%	5	36%
VICTIM – Intoxicated Pre	24	4	20%	16	22%	4	29%
VICTIM – use of other medication Pre	14	0	0%	13	18%	1	7%
VICTIM – unconscious Pre (fully, semi etc)	10	2	10%	7	9%	1	7%
VICTIM – asleep Pre	13	0	0%	9	12%	4	29%
VICTIM response (resisted any)	43	6	30%	26	35%	10	71%
VICTIM response Strong	20	0	0%	13	18%	6	43%
Accused A&d Pre	32	6	30%	20	27%	6	43%
Accused Intoxicated Pre	18	3	15%	10	14%	5	36%
Accused medic	4	0	0%	1	1%	3	21%
Victim Reluctant/unsure at start	37	9	45%	23	31%	4	29%
Victim WD	49	11	55%	37	50%	1	7%
Victim retracted	6	3	15%	1	1%	2	14%
Police pref k9	15	2	10%	8	11%	5	36%
Medical exam completed	56	8	40%	39	53%	8	57%
Medical exam refused	8	2	10%	6	8%	0	0%
L3 interview	60	5	25%	42	57%	11	79%
L3 interview declined	29	7	35%	22	30%	0	0%
Police note vulnerability-record if in CIP	19	2	10%	15	20%	2	14%
VICTIM FACTORS							
Employed	23	3	15%	17	23%	3	21%
Student	12	2	10%	10	14%	0	0%
Unwaged	26	6	30%	18	24%	1	7%
Sex worker	7	1	5%	6	8%	0	0%
Stranger	14	3	15%	8	11%	3	21%
Alcohol issues/dependency	16	1	5%	13	18%	1	7%
Drug issues/dependency	13	1	5%	12	16%	0	0%
Regular use of prescription drugs	20	2	10%	17	23%	1	7%
Victim mental health concerns	42	8	40%	31	42%	1	7%
Victim intellectual disability	8	3	15%	5	7%	0	0%

Victim physical disability	0	0	0%	0	0%	0	0%
Prior victimisation (CSA, ASA, FV, other)	45	9	45%	33	45%	3	21%
Victim criminal history – violence	11	2	10%	9	12%	0	0%
Victim criminal history – any	20	3	15%	16	22%	1	7%
Victim transient	3	0	0%	3	4%	0	0%
Previous consensual sex with accused	43	7	35%	30	41%	5	36%
Victim demeanour not consistent with rape	12	1	5%	10	14%	0	0%
Victim concealment observed – describe	6	1	5%	5	7%	0	0%
Victim unreliable testimony	45	8	40%	35	47%	2	14%
Victim prior k3	5	3	15%	2	3%	0	0%
Victim prior k6/k9	4	0	0%	4	5%	0	0%
Potential motive for false allegation noted	26	6	30%	18	24%	0	0%
ACCUSED FACTORS							
Employed	27	3	15%	20	27%	2	14%
Unwaged	17	2	10%	11	15%	4	29%
Accused admitted	3	0	0%	1	1%	2	14%
Alcohol issues/dependency	9	1	5%	4	5%	4	29%
Drug issues/dependency	9	0	0%	8	11%	1	7%
Regular use of prescription drugs	4	0	0%	1	1%	3	21%
Accused mental health concerns	11	1	5%	4	5%	6	43%
Accused intellectual disability	3	1	5%	0	0%	2	14%
Accused physical disability	0	0	0%	0	0%	0	0%
Accused transient	3	1	5%	1	1%	1	7%
Accused SV criminal history	11	2	10%	7	9%	1	7%
Accused violence criminal history – state if FV	36	5	25%	24	32%	6	43%
Accused any crim his	54	9	45%	34	46%	10	71%
SUPPORTIVE EVIDENCE ON FILE							
Accused testimony	6	0	0%	1	1%	5	36%
Eye witness testimony	6	1	5%	1	1%	4	29%
Disclosure witness testimony (Recent Complaint Witness)	43	7	35%	28	38%	8	57%
Surveillance (e.g CCTV)	2	0	0%	0	0%	2	14%
FORENSIC	3	0	0%	1	1%	2	14%
Scene / Property damage – recorded	4	1	5%	0	0%	3	21%
MEDICAL – conclusive	6	1	5%	2	3%	3	21%
MEDICAL – consistent or conclusive	44	7	35%	28	38%	8	57%
Visible injuries from violence on victim MEK	42	7	35%	26	35%	8	57%
Medical attention required	3	0	0%	3	4%	0	0%
CONFLICTING EVIDENCE ON FILE	0	0	0%	0	0%	0	0%
Victim testimony	8	4	20%	4	5%	0	0%
Accused testimony	40	7	35%	25	34%	7	50%
Eye witness testimony	11	2	10%	8	11%	1	7%
Disclosure witness testimony	12	1	5%	11	15%	0	0%
Surveillance (e.g CCTV)	3	2	10%	1	1%	0	0%
DNA/semen not linked to accused	6	1	5%	5	7%	0	0%
Scene / Property damage – no recorded	1	0	0%	1	1%	0	0%
Other	0	0	0%	0	0%	0	0%
Medical supports S	5	1	5%	4	5%	0	0%

Appendix B: Result codes by district

	Auckland City	Canterbury	Counties/ Manukau	Waitemata	Wellington	Total
k3	4 (21%)	8 (27%)	2 (7%)	-	6 (27%)	20 (18%)
k4	1 (5%)	1 (3%)	-	-	-	2 (2%)
k6	13 (68%)	17 (57%)	22 (81%)	10 (83%)	12 (55%)	74 (67%)
k9	1 (5%)	4 (13%)	3 (11%)	2 (17%)	4 (18%)	14 (13%)
Total	19	30	27	12	22	110
Weighted percentages						
	Auckland City	Canterbury	Counties/ Manukau	Waitemata	Wellington	Total
k3	20%	22%	6%	-	21%	15%
k4	5%	3%	-	-	-	2%
k6	63%	47%	70%	67%	43%	56%
k9	12%	28%	24%	33%	36%	27%
Total	16%	27%	24%	11%	21%	100%

Note: Reported percentages based on weighted k9 cases to adjust for 40% sampling of k9 cases.

Appendix C: Table of key factors judged most influential to decisions on case progression

Key factor in decision making	K3 freq	K3%	K6 freq	K6%	K9 freq	K9%	Total Count	Count %
Victim WD complaint – later	8	40%	23	31%	0	0%	31	28%
Victim unreliable testimony	5	25%	26	35%	0	0%	31	28%
Victim mental health concerns	3	15%	11	15%	0	0%	14	13%
Overall insufficient evidence	0	0%	9	12%	0	0%	10	9%
Consent changed around time of incident	0	0%	8	11%	0	0%	8	7%
Victim retracted L3	3	15%	1	1%	1	7%	5	5%
Victim demeanour not consistent with rape	0	0%	4	5%	0	0%	5	5%
Prior K3 on file	3	15%	-	-	-	-	-	-
Potential motive for false allegation noted	0	0%	5	7%	0	0%	5	5%
Evid of SV -Disclosure witness testimony (Recent Complaint Witness)	0	0%	0	0%	5	36%	5	5%
Evid of SV – In accused testimony	-	-	-	-	3	21%	3	3%
Evid of SV - Accused does not deny	-	-	1	1%	1	14%	3	3%
Evid of SV -DNA linked to accused	-	-	1	1%	2	14%	3	3%
Evid of SV – Strong victim testimony	-	-	-	-	2	14%	3	3%
Accused SV criminal history					2	14%	2	2%

Notes: Top three key factors in any category presented (shaded blue) and top 10 across all files, with those in highlighted red being the top three across all codes); note low frequencies mean percentages should be interpreted with caution.

