

CITATION: *RL v Northern Territory of Australia* [2005] NTMC 083

PARTIES: RL
v
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: LOCAL COURT

JURISDICTION: NORTHERN TERRITORY

FILE NO(s): 20316651 & 20316658

DELIVERED ON: 23 December 2005

DELIVERED AT: Darwin

HEARING DATE(s): 29 July 2005

JUDGMENT OF: Mr R.J.Wallace

CATCHWORDS:

Crimes Compensation – Crimes (Victim Assistance Act s17(1) “the balance of probabilities – s12(2) circumstances which prevented the reporting of the offence”

REPRESENTATION:

Counsel:

Plaintiff: P Garton
Defendant: C. Spurr

Solicitors:

Plaintiff: Geoff James & Associates
Defendant: Halfpennys

Judgment category classification: C
Judgment ID number: [2005] NTMC 083
Number of paragraphs: 84

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20316651 & 20316658

BETWEEN:

RL
Plaintiff

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
Defendant

REASONS FOR JUDGMENT

(Delivered 23 December 2005)

Mr R.J.WALLACE SM:

1. These are two applications for assistance certificates brought pursuant to s5 of the *Crimes (Victims Assistance) Act* (“the Act”). Each application relates to the alleged commission of an offence contrary to s192 of the Criminal Code, by a man P. The offences are of rape. The claim is that they were committed on 4 August 2001, and 20 April 2002. The applications are both defended by the respondent, the Northern Territory of Australia, on the ground that there is not sufficient evidence for the Court to be satisfied that these crimes happened at all. In respect of the earlier of them the application is further defended on the ground arising from s12(2) of the Act:

“The Court shall not issue an assistance certificate...(2) where the commission of the offence was not reported to a member of the Police Force within a reasonable time after the commission of the offence, unless it is satisfied that circumstances existed which prevented the reporting of the commission of the offence.”

2. Mr Garton appeared for RL, and Ms Spurr for the Northern Territory. P was never charged with either offence, let alone found guilty. He took no part in the hearing, which was on the papers.

The Evidence

3. RL's case rested mainly on her affidavit sworn 19 March 2005, which became Ex1, and a related collection of documents entitled "Applicant's Exhibit Book" which became Ex4. The pages of Ex4 have been consecutively numbered and will be identified as EB1 etc. The other material consisted of:
 4. *Ex2*, an affidavit of Frederica Gaskell sworn 7 February 2005. Ms Gaskell is the co-ordinator of Anglicare's Refugee and Migrant Settlement Services programme. She first met RL, who came to Australia as a refugee from Sudan after 5 years in a camp in Kenya, in 1999, soon after RL's arrival in Australia. Ms Gaskell's contact with RL for the first few years was as a volunteer support person. She became professionally involved with RL – Ms Gaskell has a Diploma in Counselling as well as her degree in Health Sciences – after the second alleged offence.
 5. Ms Gaskell believes that RL was sexually assaulted. She appears to have no doubt about it. Ms Gaskell shares and reflects RL's frustration and disappointment with the authorities – most particularly the police - for their failure to accept the truth of her complaint and to prosecute P. Ms Gaskell draws on her knowledge and experience of refugee women in general, and RL in particular, to explain why RL might not complain of and seek support in relation to such crimes in quite the same way that a woman raised in Australia might. Ms Gaskell speaks of her observations of a collapse in RL's morale during the months after she reported the offences. Ms Gaskell also speaks of RL's dissatisfaction with the accuracy of a statement RL had made to police. It is not altogether clear when RL began to speak of these inaccuracies, but it seems to me that Ms Gaskell is suggesting that it was

fairly early in the piece – perhaps in the second half of 2002. RL gave as the reason for the occurrence of these inaccuracies the fact that she had not had the assistance of an interpreter, and that she had been in a state of shock at the time. Ms Gaskell, who was, of course, well acquainted with RL’s abilities with the English Language, appears to find it credible that the lack of an interpreter could account for errors.

6. Ms Gaskell goes on to speak of how RL’s distress from the assault and from official disbelief and inaction was further aggravated by rumours of the offences starting to circulate in the African community in Darwin, and by their leading to her children being teased etc at school. Then her children started to have troubles with the police. RL began to isolate herself from the African community. (Later still, although Ms Gaskell’s affidavit does not say so, RL moved from Darwin to Melbourne, in order to get herself and her children away from the situation.)
7. Ms Gaskell’s is an impressive affidavit. I do not need to trouble myself with the question whether she is technically an “expert”, as the law of evidence understands the word, on any of the subjects touched by her affidavit – for example, the cultural and social characteristics of African refugee women in their dealing with and reporting of crimes against them, or other dealings with authorities - because s15(3) of the Act provides that:

“Subject to this Act, the Court is not bound by any rules of evidence, but may inform itself on any matter in any manner as it thinks fit.”

8. Apart from paragraphs 6 and 7 of her affidavit, I accept that Ms Gaskell’s is expert enough for me to give considerable weight to that part of her evidence which is drawn from her knowledge and experience of refugee women. I also accept her evidence as to the decline in RL’s condition, morale and well-being during the months and years after she disclosed the offences to Ms Gaskell. In all of these matters it seems to me that I can have more confidence in the accuracy of Ms Gaskell’s observations than I

would say, in the opinions of a psychologist reporting after one or two consultations. I do not, however, put any particular weight on Ms Gaskell's belief in the truth of the truth of RL's account, that the offences occurred.

Paragraphs 6 and 7 read:

“6. It is well established, that there are people in countries that accept refugees, who prey upon vulnerabilities of such women. The method of operation of such people is to befriend the refugee, and then abuse the trust that has developed.

7. These appear to be the circumstances that have been described to me by RL in relation to the sexual assault she suffered.”

9. I think Ms Gaskell may have misunderstood her reading, or have got the wrong impression about P. Whatever else P may be, he is not, on all the evidence, a calculating, systematic predator of the type described in paragraph 6.

10. *Ex3* is a single page from a NT Police Case Report (page 19 of 21). There are three items of interest on it. Case notes log number 44 and 45 will become significant when I discuss the competing versions of events by RL, by P, and by a witness Nicholas Saroukos. The third is Log No 46:

“13:30 hrs 07/05/2002 MEGGITT reports received handwritten letter in internal mail (source not known) letter from RL and outlines an incident in August 2001 involving [P] physically assaulting her and possibly sexually assaulting her. Letter to be typed and uploaded”

11. This was the first notice police had had of the first offence. It appears from paragraph 25 of RL's affidavit, *Ex1*, that the handwriting was that of her English teacher, Jovanna Nova, who urged RL to report this offence in addition to the second one. I haven't seen the handwritten letter, but it was “typed and uploaded” and the typed version appears at EB11 and 12.

12. *Ex5* is an affidavit of DL, RL's eldest son, born 20 May 1988. DL speaks in this affidavit (sworn on 10 March 2005) of events in August 2001 that have

a bearing on the first offence. I will discuss its contents when considering the evidence concerning that offence.

13. *Ex6* is an affidavit of a Mr Deng Mador Kock, an interpreter between the Dinka and English Languages. RL's first Language is Dinka. His affidavit speaks of his assisting RL with the preparation of hers, i.e. *Ex1*.

14. In paragraphs 3-5 of his affidavit Mr Kock writes:

“I assisted RL with a statement she prepared in relation to two assaults and rapes which occurred in Darwin.”

She had already made a statement to the police about the second incident and told me that she has been misinterpreted on many issues in that statement. She sought my assistance to correct the record.

When it became necessary to present her evidence by affidavit in these proceedings she again sought my assistance to ensure that she fully understood the contents of the document.”

15. The “statement” spoken of in paragraph 3, if it is not *Ex1* itself, does not appear to be in evidence before me. I do not know when it was made, except that it was obviously later than the police statement (April 2002) and earlier than the affidavit (March 2005). Mr Kock's reference to RL's dissatisfaction with the accuracy of her police statement is even less securely dated than Ms Gaskell's, but it at least goes further to suggest that RL's dissatisfaction may not have been very recent at the time she swore her affidavit (wherein the inaccuracies are spoken of in some detail).

16. So much for the other evidence. As for the Applicant's Exhibit Book (*Ex4*), its contents are listed in paragraph 4 of RL's affidavit, *Ex1*. It is perhaps worth mentioning its first item EB1-10, separately. This is a paper by Jennifer Foster, Destiny Nicklin, Brenda Nevell and Charles Kemp entitled “Refugee Women” published, according to Ms Gaskell (see paragraph 4 of her affidavit *Ex2*) by “Baylor University in the USA” which must be Baylor College, a place of learning reputable not only for its football team. The

observations in the paper are very general, treating of women refugees from everywhere, not just Africa. The author's concerns are primarily with refugees' adjustments to life in the United States, where the supports provided are doubtless different (whether better or worse) from those in Australia in general or in Darwin in particular. Nevertheless, despite the paper's lack of particular relevance, it has seemed to me to be worth reading and re-reading EB1 and EB 6-9 while I have been considering competing explanations for odd, curious, peculiar features in the material emanating from RL. Similarly, and simultaneously, I have tried to keep in mind her linguistic handicap, consideration of which also has the potential to shine a new light on some of these odd features in that material. As it happens, P too is not a native English speaker, and in considering odd features of material emanating from him, I have had to keep in mind his linguistic limitations as well.

17. The rest of the material in the Applicant's Exhibit Book is more directly relevant to the question in issue, whether the offences are proved to have occurred. There are various statements by RL, medical records, a statement by P in a recorded interview with police, ditto from the witness Mr Saroukos, and a transcript of part of the evidence given by P in a case where RL was charged with assaulting him on 16 June 2002. (That charge was dismissed.) The transcript is only of P's cross examination and re-examination, and P gave his evidence through an interpreter. Apart from these statements, of one sort or another, there are a few items evidencing aspects of RL's conduct following the second offence, for example her efforts to change her address, and there is at least one item found as a result of police investigations, in relation to telephone calls by RL to P. I will first epitomise RL's six statements, in the order they were made.

(1) The 000 Call

18. EB 78 is a transcript of a call RL made on 26 April 2002. Other evidence establishes that at the time she made the call, or at least at the time she started speaking, P was still in her house, Mr Saroukos was there, or had left moments before, and the offence, if it had happened, had ceased not more than a couple of minutes earlier. The relevant parts of RL's call were:

Police 000	173225 how can I help you
RL	You know three old boy they coming now in my house here
Police	Yeah who are they
RL	Um they are Greek they are Greek boys one is older he used to be a friend here he come first when I saw him and he talked to me and I opened the door and he coming in and two boy then they coming when they coming in and you know they start to rape me in the house now when I want to come to ring Police and they cut me and one is broken is run away and let down when they have doesn't have leg is run away and those boys two boys they leave me and they run away and now I come to ring Police
Police	Alright then
RL	Yeah I know the boy is broken I know him but the other boy I don't know him I tell him you must to wait the police here and I ring police police coming to see why bring the boy and rape me in the house
Police	Ok so they tried to rape you
RL	Yeah
Police	Ok so how did they do that did they grab you
RL	They want to come they say they want to fuck me now
Police	Alright then what was your name
RL	R
Police	R and what's your other name
RL	L
Police	Alright then do you know where they live
RL	Yeah yeah they are neighbours here
Police	So they live next door to you
RL	Yeah
Police	Which number
RL	I don't know the number but when the police maybe

	I come to the place
Police	Alright then we'll get someone there for you
RL	Ok then
Police	Ok and you're at 19
RL	Yeah
Police	Ok we'll
RL	Is someone coming now
Police	Alright we're coming now
RL	Ok then bye bye

19. At first glance much of this transcript seems to be gibberish, but this becomes less so in context. “Three old boy” is problematic in the number, three, as will be seen below, but “old boy” may be RL’s term for “young man” – both P and Mr Saroukos were aged 17 at the time. “One is broken” and “the boy is broken” is a reference to the fact that P was walking on crutches at the time, as, perhaps, is “doesn’t have a leg”. “They cut me” is obscure, but may be a reference to an injury RL sustained to her head.
20. I suppose that in the last twenty years I have listened to a dozen or so recordings or read transcripts of 000 calls made by victims very shortly after the commission of serious offences against them. Most have been less than usually coherent, for entirely understandable reasons. I can’t remember one that required such extensive decoding as RL’s. This call gives me some idea of her command of English at the date of the offence, but at a time when she was also flustered, upset, angry, fearful and shocked. Her later statements are all mediated through English speakers – police officers, a medical practitioner, Mr Kock and her lawyers etc.

(2) Dr Huffam

21. I don’t know what RL said to the police who eventually answered her 000 call, but she must have made a complaint of sexual assault. By 2am on 21 April she was at the Sexual Assault Referral Centre (“SARC”) being

examined by Dr Sarah Huffam. EB 22-30 is a copy of the Sexual Assault Protocol filled in by Dr Huffam during the course of that examination. EB38-40 is a typed statement by Dr Huffam, which reproduces, with some minor additions and deletions, her handwritten notes from the Protocol recording the history given to her by RL.

22. In the Protocol (at EB23) the reported time of the assault is recorded as 2300 on 20/04/02. The handwritten history reads:

“Known male came to house, she let him inside. He told her he must ‘fuck’ her. Two other men came in the house and held her down whilst the first male penetrated her. Penis →oral, and penile vaginal. Hair pulled, no other injuries noted. She fought and screamed, (no scratching). Has given clothes to police.

Has not had sex with this man before, doesn’t think he ejaculated into her mouth or vagina.”

23. At EB26 the results of the genital examination are recorded in Dr Huffam’s handwriting. In this instance her typewritten statement seems more informative. At EB39:

“On general appearance she appeared quietly distressed and tearful. She was clean and neatly dressed in shirt and jeans.

On genital examination the external genitalia showed no acute signs of injury. There was a small (approximately 3mm) split in the skin of the posterior fourchette, which had a pink base, although there was not currently bleeding, it was tender to touch. Examination of the inner thighs, perineum and anus were normal. Internal vaginal speculum examination was limited because of pain in the posterior fourchette, the vagina appeared normal, however the cervix was incompletely visualised.”

24. Dr Huffam’s conclusions are written on the same page:

“In conclusion, the examination findings were of a small skin split in the posterior fourchette, which would be explained by recent vaginal penetration. There was no other physical evidence of assault to the genitalia. A normal genital examination does not rule out the possibility of sexual assault.”

(3) Statement To Detective Meggitt

25. On the following day, RL recounts in her affidavit, Ex1, at paragraph 55:

“The police then phoned me at Watchen’s and they came over and took me to Casuarina Plaza to an office and one lady officer took a statement from me. I think her name was Jacki Meggitt. I did not have an interpreter when I made this statement. I have now had this statement interpreted to me and it is not what happened.”

26. I can see no way around reproducing the whole statement, altering only the appearances of P’s name. I have put into italics those portions of the statement which RL, in her affidavit, specifically rejects. As for the reasons why the statement might have been so wrongly recorded, she says in her affidavit (paragraphs 57-60):

“This statement (**EB Pages 13-20**) is not a true account of what happened. I need an interpreter. I arrived in Australia in 1999. I could not speak any English when I arrived. I stated learning English in the NTU in 1999. Now my English is very simple. I can say and understand simple everyday things but I do not have the language to speak to officials or to talk about anything complicated. I do not know the words for many things.

After the police officer took this statement she read it back to me. She read it back quite fast and I accepted it. But afterwards when I had it read to me slowly I began to realise that it was not a true account. I have also had it interpreted to me in Dinka and that confirmed to me that it is not an accurate account of what happened.

This statement was done on 21 April 2002 which was the day after [P] raped me. I had not slept the night of the 20th because I was upset and vomiting. I do not know if I was vomiting because of the medicine or because I was upset. I also felt dizzy. I did not feel good when I gave this statement.

After I made the statement to the police officer she took me to Berrimah Police station for fingerprinting. This police officer then took me home and told me to wait until the police called me. I continued to feel dizzy and sick and could not sleep so I went back to the hospital later in April. They told me I felt like this because I was upset and that these symptoms would go. They gave me some medicine to help me sleep.”

27. And here is the statement (EB13-19):

“I, RNL, of, Wagaman, DO SOLEMNLY AND SINCERELY DECLARE THAT:

I was born in Sudan, but I came to Australia to Darwin in 1999. I live with my sons, DL who is 13 and ZL who is 10 AL who is 8 and ML who is 5. We moved to in 2000. The boys' father was put in gaol by the government and I don't know where he is now.

Soon after we moved to my children would play in the park. My boys started fighting with some Greek boys and an older boy brought them home to me. He was being helpful. He told me his name was [P], but the pronunciation is hard for me and I don't know how to spell his name. I don't know his last name. [P] became a friend and he would bring us chocolate and fish after he went fishing. He lives with his Mum in a house very close to the park where my children play. I don't know if his house is in the same street or a different one, but it is close by. When we were new to the street I went to the park and I met [P]'s mother, but I didn't go inside their house.

[P] is a greek boy. His English is not really good, he has an accent. He is not very tall, I think I am taller than him and I am about 165 centimetres tall. He is not really big now, he is normal size. He has dark short hair with no beard or moustache. He used to work building, but he doesn't work now.

Before he used to have a car, a big white van, an old one. I don't know what sort, I never went close to check it. Some time in about July or August last year he had an accident and damaged the car. It was a very bad accident and he was in hospital for a long time. I think he got out of hospital in January this year. He was on a machine for about three weeks and couldn't speak or anything. He broke both of his legs and he was in a wheelchair for a while.

My sons and I visited him in hospital maybe two times. [P] used to always come over to my house and played with the kids. Often my best friend PO who is also from Sudan would be at my house and we visited him in hospital together.

After he got out of hospital he came to visit my place in his wheelchair. He had to go to hospital again and then came out again. I didn't see him for a while and I didn't go to his house. Always since I have known him [P] would always be friendly and helpful. He never asked me to be his girlfriend or anything like that. Before the

accident he was always polite, but afterwards he was talking about fucking all the time. He would say he wanted sex with me. I told him he was too young. He is only 17 turning 18. I told him I'm a big person. I used to go out with a man, John who is from Italy or something. I went out with him for about 6 months. I don't know John's last name, my people don't use family names. John lives in Palmerston, but I don't know his street. I broke up with John one week ago.

The reason I broke up with John was because [P] saw John at Casuarina. They must have been talking about me. John came and saw me and was very angry because [P] had told him that he had been fucking me for two years. That wasn't true, but John didn't believe me.

I rang [P]. I can't remember his number. I argued with him about what he had said. He said that he had told John that he had fucked me. I wanted John and [P] to talk together and explain that it wasn't true. The meeting didn't happen because John went to Indonesia maybe for business or something. I don't know when he is coming back. I didn't hear from John during the week. I think he is still angry with me because of what [P] said.

Yesterday Saturday 20th April 2002 I was at home in I didn't ring John at all because he doesn't have a phone at home and he has lost his mobile phone. I rang [P] at about 6.00p.m. I rang him because I still hadn't heard from John and [P] had caused so many problems because of what he had said. I wanted [P] to come over so we could talk word for word together. [P] said he would come over, but I waited and waited and he didn't come.

No one else was at home, DL and ZL went camping and the others are staying at friends' places.

I was cleaning my house. I was cleaning my toilet and I think it was about 9 o'clock, but I am not sure. I remember there was a music show on TV. I hadn't been drinking at all yesterday.

I then heard a knock on the door and I went to answer it. I saw [P] standing there on two crutches. He was wearing black jeans and a black T shirt and black boots. I was surprised that he wasn't in a wheelchair.

I said, "Oh [P] it's good, you're on crutches."

He said, "Yeah, it's good, I feel better now."

I opened the door for him to come inside. I told him to come and sit in the living room.

He said straight away, "I can't sit down. I'll fuck you today with my friends."

We were still standing near the front door. I then saw a person who looked like they were trying to hide by the side of the door.

I said, "[P] did you bring some people around?"

He didn't answer my question he just walked inside, I locked the door behind him.

He then said, "Don't worry, you're my girl" and he started walking to my bedroom and lay down on my bed. He put his crutches down. He started taking his clothes off.

I said, "What are you doing?"

He didn't say anything. He had taken his T shirt off at this time.

I then went to the toilet to finish my cleaning. I was only in there for about one minute. I then went back to my bedroom to talk to him. When I got to my bedroom I saw [P] had taken off all of his clothes and boots.

He held onto his dick with his hand and said, "I'm going to fuck you today with my friends."

I said, "why are you doing this, why do you bring your friends over."

He said, "I want to fuck you."

I said, "If you want to fuck me why did you bring people around."

I said, "You say I'm your girl, well why do you have others here. If you have a Greek girl do you friends come over when you have sex."

I didn't want to have sex with him when there were other people around. If it was just me and [P] and if he had been nice then maybe I would have had sex with him, I don't know.

He said, "Don't worry."

[P] then grabbed me by the hair. He has very strong arms for a young boy. My hair is all plaited with lots of little plaits. He pulled me by the hair onto my bed. Some of my plaits were pulled out and it hurt a lot.

[P] was pushing me down on the bed. I was wearing a red and black sarong which tied up around my waist and a blouse which was the same colour and matched the bottom. The top was like a T shirt with no sleeves. I was wearing white underpants and a white bra. I tried fighting with [P]. He held me against his body and we were rolling around. He wiped his dick across my mouth. His dick was hard and he put it in my mouth a little bit. I pushed him away. I still tried fighting with him. He then put one arm around me and took off my underwear with the other hand. He was trying to put his dick inside me, but it didn't go inside my body, I was screaming, but not too much.

I told him that I didn't want to have sex with him.

He said, "You're an ugly girl."

I said, "Why do you want to fuck an ugly girl?"

He said, "I like to fuck ugly girls."

We fell onto the floor. My bedroom is at the back of the house. One side has windows with louvres and a security screen. My bed is alongside the wall with the windows. We fell on the floor on the other side of the bed.

When we fell down [P] got on top of me. He put his dick inside me. I don't know the English word, but in my language it is "mur" It is in the front bit, not the bum. He started having sex with me. *Then I wanted to have sex because the dick was already in my body. When we were fighting I didn't want to have sex, but then when he started it felt all right.*

[P] then made a noise (whistle) and I then saw another boy come into my room through the bedroom door. As soon as I saw the other boy I threw [P] off me. I was crying and screaming. I thought the other boy was going to have sex with me.

I had never seen the other boy before. I didn't check him properly. I think he was a Greek boy like [P]. He was a fat boy and tall. I don't know how old he was, but he was young, maybe around the same age as [P]. He had short black hair, but no moustache or beard. I can't

remember his eyes. He had a round face. I didn't see any scars or tattoos. I think he was wearing trousers and a t shirt and I think they were light coloured but I'm not sure.

[P] then got up on the bed. The other came over to me. I had all my clothes on except for my underwear. I stood up. He didn't say anything.

I said, "[P], you called that boy over here to come and fuck me, now I'm going to call the police."

The other boy came in a couple of steps inside my bedroom.

The other boy went to hug me, but I pushed him out of the way.

I ran to the living room to the phone. The other boy followed me, but [P] stayed in my room.

I started pressing "000" The receptionist asked me if I wanted police, fire or ambulance. When I said police the other boy yelled out, "[P], she ring the police."

He opened the front door and ran out and left the door open. I started talking on the phone to the police. The police said that they would be about 20 minutes. I started going back to speak to [P]. I didn't know where the other boy got in because the doors were all locked after I let [P] in. I went to check where he got in.

I walked past my son's room which is next to the living room. The door was open and I saw the louvres from the window had been taken out and were lying on the floor inside my son's room. I didn't touch them.

I went to the bedroom. [P] was getting dressed. He put his underwear in the pocket of his jeans. He didn't have his T shirt on. He tried to put his shoes on. I didn't want him to leave, so I took his shoes and crutches and put them in the living room. He then sat on the floor because he couldn't stand up and he was moving along on his bum using his arms to move along to the living room to get his crutches.

I said, "Wait for the police, I'm not giving you your crutches."

He said, "Why do you keep my crutch, let me go from your house."

I said, "We have to wait for the police, I don't know that boy was coming in my house, you have to tell the police."

He said, “When you don’t give my crutch, you’ll break my leg.”
When the police come and put me in gaol when I get out I’ll come
and kill you and kill your children.”

I said, “Wait for the police.”

He said, “Okay the police will come. They won’t put me in gaol
because you fucked me and I’m younger than you.”

I said, “You are young but I didn’t go to your place to fuck you. You
came to my place with the other boy.”

I was worried that he would break his leg again, so I gave him his
crutches.

He went to leave then and as he walked past me he spat in my eyes.

He said, “I can’t come again here.”

He then left through the front door.

When [P] was in my house after the other boy left his mobile phone
rang three times. It rang twice when he was in my room. He
answered it, but he was talking in Greek and I didn’t understand.
When he went out the door it rang again, I think it must have been
his friend, but I don’t know.

The police came after that and I looked around my house and took
my clothes. I looked for my wallet, but I couldn’t find it. It is a
brown wallet and had \$500 cash in it. I took the money out of the
bank in the morning to go shopping, but I ran out of time. I think I
put it on the sofa in the living room. I tried to find it when the police
asked me for my driving licence. I don’t know if it is missing
because I haven’t looked for it properly yet. It has my cards in it and
the money. The wallet costs \$20.

I looked at the window. The glass wasn’t broken but the screen was
cut a little bit and the louvres were taken out.

I only let [P] into my house. I did not say it was okay for anyone
else to come in. I think [P] had talked to his friend and arranged for
them both to have sex with me. I didn’t want him to put his dick in
my mouth or to pull my hair and hurt me. I think something is wrong
with his head. While he was in my house I asked him if he was
drunk and he said he had been drinking whiskey. I didn’t fight him

too hard because I was scared of hurting him. He had lots of operations on his legs, his head and stomach.

After we fell on the floor and [P] put his dick in me my body felt like it wanted to have sex, but my head didn't want to have sex because [P] wasn't respecting me and because of the way it happened and because the other boy came in. I never told [P] that I wanted to have sex with him.

[P] hurt my hair, but I don't hurt anywhere else. [P] didn't use a condom at all. I'm not sure if he came or not."

28. And here are RL's individual corrections to the statement, from paragraphs 61-67 of her affidavit:

"There are many aspects of this statement that are so wrong I cannot understand why the police constable came to these conclusions and put the information in my statement. First of all, I did not visit [P] in hospital. I did go in to see that he was in hospital after I was told about the accident and I looked at him in the intensive care unit but I did not go and visit him in the ward nor did my friend PO.

[P] did not come to my place in his wheelchair and in fact the first time I did see him after the accident was when he came to my house on the night of the rape.

The next section of the police statement that I find quite inexplicable is the two paragraphs dealing with the relationship between my former boyfriend John and [P]. John had told me what [P] and his friends had said to him at Casuarina Shopping Centre but I did not engage in a discussion with about that conversation. At no time did I ring [P] to discuss what he said to my boyfriend John. I note that in his statement he makes no claim that I did ring him to discuss these matters.

I reject the suggestion that I greeted [P] in a light-hearted and friendly manner even though my last meeting with him was when he and his friends assaulted me in the street at Casuarina. I do not know how the police officer got the impression that this was a jolly conversation and particularly persisted with that tone in the statement after he apparently declared that "I can't sit down. I'll fuck you today with my friends".

I strongly deny that I got into a discussion with [P] about whether or not I wanted to have sex with him. I do not remember a lot about the

detail of what happened when I was being interviewed by the police officer but I presume that she put various propositions to me and I simply answer yes or no, not having a complete understanding of what she was talking about. I strongly deny that there was any sort of discussion about the rights and wrongs of having sex with him or his behaviour with other girls.

The most disturbing part of the statement is the third last paragraph at **EB Page 16**. Where it suggests that once he penetrated me then I started to enjoy it. I cannot possibly understand how the police officer could have drawn this conclusion from our discussion. It is obvious from the medical report that I suffered an internal injury as a result of this event and I was sore for some days afterwards.

The statement persists with this ridiculous proposition at **EB Page 18** in the second last paragraph. Again, I strongly refute that there was anything enjoyable about the assault.”

(4) Counselling with Gail Bowker

29. The next statement by RL, via her English teacher, MN, was the first complaint to police concerning the first offence, mentioned in paragraphs 10 & 11 above. Meanwhile, RL had been receiving counselling from Ms Bowker of SARC. Ms Bowker first spoke to RL about the matter on 21/04/02, when RL was at SARC for her medical examination by Dr Huffam. Indeed, it appears from a letter that Ms Bowker wrote in support of RL’s application to transfer her housing (EB52) that Ms Bowker was present during the examination. Ms Bowker recorded on 21/04/02 (EB41):

“RL has been living in Australia for nearly three years. She stated that she had been raped by a male friend of her brothers. RL had known him for a while and had visited him in hospital when he was sick.

He came to the door and told her he would “fuck her”. Two other men came through the window. RL was held by the two men, while the other raped her. He threatened to kill her and her children if she reported it to the Police.

Advised RL about the procedures for the medical, and the normal police/legal response. RL became teary when I told her about Crimes Compensation and stated that she could never accept any money

because she and her children have such a better life since moving to Australia.”

RL also spoke about her husband in Sudan.

30. Ms Bowker continued to counsel RL. A note of a session on 02/05/02 includes a mention of the first offence, some days before the police were told of it on 07/05/02. At EB 46-47 Ms Bowker records:

“RL spoke about an incident about 2 years ago when she had been drinking and he had offered her a lift [sic – I assume she was offered a lift] and wanted to have sex with her. She was definite about telling him to go away, but woke up in her bed. Her son told her the offender brought her home. She tried to ring him, and eventually 3 days later his sister answered the phone and said he was in hospital.

Since then he has said they had sex over the past 2 years. This is the only incident that RL remembers, and she has no memory of any sexual encounter in the past 2 years. RL was concerned about what to say in court about this. I explained to say the truth, but that VSU and public prosecution lawyer will advise her if it does get to court.”

31. “About two years ago” is not easily reconciled with the alleged date of the first offence of August 2001. Perhaps Ms Bowker or RL has confessed that date with P’s claim of a two year relationship.
32. On 15/05/02 Ms Bowker notes (EB49):

“RL is still finding things very difficult since her assault. She has given up going to English classes. However she has mobilised a network of support. Her neighbour has given her two personal alarms should she get into trouble, and has been parking her car in RL’s place.

RL stated that she wants to move. Even though she is fond of her neighbour, she has many bad memories of what happened in her house.”

33. Also, apropos of the first offence, from the same note:

“Spoke to Jacqui Meggitt, who stated that two other people had rung her about RL’s case, and she had received a letter about another

incident. RL stated that she knew about the letter, but did not realise it had been delivered to the Police, however, she also stated she had not objection because she didn't want to hide anything from them."

34. Finally, as mentioned above Ms Bowker wrote a letter to the welfare officer at the Department of Lands, Housing and Local Government, dated 23 May 2002. This letter contains an outline of what I take to be Ms Bowker's then understanding of RL's account of the second offence. From EB52:

"RL presented SARC following a sexual assault for a medical and forensic examination between 1:30am and 4:00am on 21 April 2002. RL stated that she had been raped by a male acquaintance that she believed to be a family friend. The offender used to be friendly with her young sons. I supported RL during her examination, and have provided her with on going counselling for sexual assault.

On the night that RL was assaulted the offender came to her door whilst RL was cleaning the bathroom. She greeted him, then left for a moment to remove her protective gloves and to wash her hands. The offender went into her bedroom and removed his clothes and lay down on the bed. RL tried to get him to leave and was physically assaulted in the scuffle. The offender whistled for another male who gained entry to the house by slashing the flyscreen and removing the louvres. She was held down by one male whilst the other raped her.

RL reported the incident to the Police, however they have not laid charges yet."

35. Plainly Ms Bowker's understanding had changed since 21 April. "A male friend of her brothers" has changed to "the offender used to be friendly with her young sons." The second version is correct, and it is impossible to imagine that RL ever meant to convey the first, incorrect version, which must have resulted from a slip, either in RL's expression, or of Ms Bowker's understanding. Nothing turns on that change.
36. The "two other men" who "came through the window" in the first account have become one in a second. This is a change which is much less likely to be the result of a slip – Dr Huffam also recorded two others in her notes of 21 April, see above and there were the "three old boys" in the 000 call. The

statement made to police later on 21 April spoke of one other (but not of that other holding her down while P raped her).

(5) Report from Dr Marcou.

37. RL was interviewed by Dr Petros Markou, psychiatrist, on 12/12/03, in order that he might prepare a medico–legal assessment. He did, and a copy of it is the last document in the Applicant’s Exhibit Book at EB121-129. Dr Marcou chose not to use an interpreter during the interview (EB121-122):

“RL was not seen with the help of an interpreter. Interpreting services were available should they be required, RL’s knowledge of English and her ability to convey important concepts were not impaired, and my view was that she was able to clearly understand what we were discussing and to meaningfully respond to the questions that I put to her.”

38. The account of the second offence that RL gave to Dr Marcou is recorded by him as follows (EB124-125):

“RL relates on one particular evening in 2001, she was at a party of an African friend at their home nearby to her own. At around 7 or 8pm, she began walking home as she needed to get back to her children. The older children were essentially minding the younger ones, though she still felt that she needed to be at home at a reasonably early hour. While she was walking home (her house was close by), [P] came by in his car, offering to drive her home. She refused, saying that she enjoyed the walk and was somewhat fearful by his approach. He was apparently in a car or van and had a friend with him. She stated that he got out of the car and said something like “today I’m going to have sex with you and my friends”, or words to that effect. When she resisted he apparently hit her in the head, and she was knocked unconscious. The next thing that she remembers was that she woke up at home, with pain in the head and some discomfort in the vaginal area. This occurred on a Friday night, and because she knew his telephone number she called him on Monday to try and obtain some clarification as to what occurred that night. When she called his home, she was informed that he was involved in a major vehicle accident, and as it happened he was actually in hospital for a six or eight month period. She heard nothing of him during this period of time. Some eight months later, when he was discharged from hospital, she states that Anastasi came

around to her home and was on crutches at the time. She stated that he was there with another individual who was not apparent to her until later on. As it happened, her children were not present at her home when he arrived on that day (April 2002) as they were attending a Police Club camping program.

[P] came around on this day, with the pretext of wanting to retrieve a computer game that her children had taken from him over eight months previously. When he knocked on the door he again said something to her like “today I have sex with you and my friends”. This was something that he had said to her some eight months previously, and which resulted in her being knocked unconscious. At this point, RL was extremely upset and angry that he should put this request to her again, and she was also extremely scared about what he might do. She motioned to him to go and retrieve the computer game in the children’s bedroom, and left him by moving into another room. When she walked back in the direction of the house where [P] was, she found him completely naked in her bedroom motioned to her to come to him. She was shocked when she saw him, but he lunged towards her and grabbed her hair, actually pulling off some of her hair in the process. A scuffle ensued and she fought with him. He began whistling and after that whistle the other person came into the house, grabbing her while [P] pushed her down to the floor. She was scared and crying at this point and she states that [P] entered heard vaginally from behind, as she was wearing only loose clothing. Given the fact that he still had his crutches, she was eventually able to fight him off, and went to the phone to call the police. Thankfully, she was able to connect with the Police Operator and as soon as this was apparent to [P] and the other assailant, the other assailant ran out of the house. [P] couldn’t run because of the crutches that RL had taken away from him in order to apprehend him. She stated that she wanted the police to see him naked so that it could be proven that he assaulted her. [P] however eventually escaped and left the house prior to the police arriving. The police arrived some 20 minutes later, and RL was taken to the hospital where she underwent an examination. She also provided police with a statement not long after that.

39. I think this is the first mention of the computer game in connection with P’s arrival at RL’s house.

(6) RL’s Affidavit

40. In her affidavit, Ex1, RL recounts the second offence as follows:

“Second Assault (Case No. 20316651)

30. I did not speak to [P] for about 8 months after he assaulted me in August 2001 and was in hospital. In April 2002 when I was at work he went to my house but I was not there. My son Zak told me that [P] had come to my house and taken my telephone number and that he had left his telephone number.
31. On the evening of the 20th April 2002 I telephoned [P] and told him not to come to my house or telephone me and I said to stay away from my kids. At this time he told me that my son DL had a computer game that belonged to him and he was coming to collect it.
32. [P] told me that he did not want to come to my house. He just wanted his computer game back. I told him that DL was not home at the moment. He said he would come and collect his computer game and he would not come back again. My children were at a police came at Berrimah this night.
33. [P] told Police and the Court in case no. 20218509 that I rang him about 10 times that night (**EB Page 66 and Page 99**). My telephone records show that I only called his mobile phone once. (**EB Page 97**).

Perpetrators Arrival

34. Later this night about 9.00pm I was cleaning my house when [P] knocked on my door. I opened the door and saw him standing alone. I was wearing my gloves from cleaning and [P] was on crutches so I asked him to sit on the couch, which was next to the door. It was my intention to take off my gloves in the toilet and give him his computer game.
35. While I was in the toilet [P] apparently went into my bedroom and took off his clothes. I then heard him shout out “Tonight you’re going to have sex with me and my friends”. When I heard that I was furious. I took off my gloves. I walked towards my bedroom and I said “What are you saying, are you telling them what you did to me before?”
36. In his statement to the Police at **EB Page 70** he denied that he asked me to have sex with his friends but at **EB Page 100**, line 4, [P] admitted that he said he wanted me to have sex with his friends.

Assault and Rape

37. Then I saw him on my bed with no clothes and his penis erect. I went to grab him and pull him off the bed. But at this time I had long

artificial plaited hair extensions and he grabbed my hair from the back of my head and pulled my head down to his penis.

38. He pulled my plaits so hard that it pulled a big chunk of my hair out by the roots. [P] tried to tell the Police and the Court that my hair was pulled out because I was hit in the head by the ceiling fan (**EB Page 73 & EB Page 114**). At **EB Page 74** he admits to pulling my hair out himself.
39. He then attempted to put my mouth on his penis. I was struggling and pulled him down off the bed on to the floor. I tried to press him down. [P] then made a sign to his friends who were apparently waiting outside. Up until this point, I did not know his friends were outside.
40. The window in my bedroom was louvres. I saw people outside. Then one of the men got into my house. I am not sure how. Later I found the screen on one of the windows of my children's room had been cut so I think he came through the window. I had never seen this person before.
41. When I saw these people outside and the person inside my bedroom I became terrified. I had been holding [P] down but the other man in the room then grabbed me and turned me round so I could not hold [P] down. This other man had hold of me and then pressed me down on top of [P] and [P] was then in a position to do what he wanted.
42. At this time, I was wearing a piece of material around my waist which I call a Katanga which is like a sarong. [P] pulled my Katanga right off me and then he raped me by putting his penis inside me. He was hurting me and, at this point, I was screaming so loud I could not believe that no one heard me.
43. I was injured during the assault, I had my hair pulled out and suffered an internal injury (**EB Page 26**). This internal injury persisted for several days (**EB Page 47**).
44. I screamed and screamed until I could not hear myself. I was scared because there were those men outside and [P] and this other man inside that I was frightened they were going to gang rape me. I started to fight for my life. I struggled and kicked [P] off and pushed the other man into the wall.
45. I ran to the telephone and dailed. The other man in the house knew I was going to ring emergency so he called out to [P] that I was phoning the police. The other man ran out of the house. By this time I was

talking to the police and I did not want [P] to leave as I wanted the police to find him here and arrest him.

Calling the Police

46. When I was talking to the police, [P] was trying to get his clothes and crutches but because he was disabled he was too slow. When I got to him, he had got his crutches and clothes. I took his crutches and his boots and took them to the kitchen.
47. [P] was still naked at this point. I told [P] he was not going anywhere, that I wanted the Police to find him here naked. [P] then said if that is what you want the police will not find me naked in your room, I will kill myself and they will find my body in your room and you will be responsible.
48. When I was arguing with him, his mobile phone rang twice and he answered it and spoke in Greek. My telephone then rang and it was the police wanting the correct address for my house. While I was on the phone to the police [P] used his crutches to get out of the house. He had his clothes with him but he was still naked at this point.”
41. I think this (in paragraphs 39-41) is the first mention of RL’s being aware of – seeing – “people” outside. As I read paragraph 41 in particular it seems that RL is speaking of there being not less than four altogether – “these people outside and the person inside my bedroom” and P. Similarly in paragraph 44 “...there were these men outside and P and this other man inside.”

P’s Statements

(1) Record of interview

42. Police – Detectives Anthony Henrys and Jacqueline Meggitt - interviewed P on 22 April 2002, a day after Detective Meggitt took RL’s statement. He was interviewed under caution, but not under arrest, and his sister sat in the interview with him in compliance with the Juvenile Justices Act requirements, P then being 17. The tapes of the interview were transcribed

by two of Ms Spurr’s secretaries, Eva Balaton and Melissa O’Grady (see EB60), as was the tape of RL’s 000 call and of Nickolas Saroukos’s interview with police. I don’t know whether Ms Balaton and Ms O’Grady have much experience in transcribing this sort of material. P’s interview in particular must have been a challenge. Yet the transcripts on their face seem to be pretty good, at least up to the standard of those I see emanating from the DPP’s office, where the transcribers are very experienced. All the same there are some words and phrases that I suspect are not quite right, and a few where I am fairly confident I can see an error and correct it. This is above and beyond minor slips such as spelling Detective Meggitt’s surname as Magott here and there, no doubt something that officer has had to put up with all her life.

43. P did not want an interpreter at the interview (EB62) and the police had little choice but to accede to his wish. P certainly spoke English poorly. Examples abound in the transcript, but a reader may wonder how many of the errors are P’s and how many the transcribers’. It may assist to bear in mind what Mr Saroukos had to say in his interview concerning his friend P’s ability in English. At EB 86-87 (“TH” is Det Henrys):

NS	Aaah well we had the stereo on and he said turn it down a bit so I can call her he called her said babe I’m coming I think yeah something like that he said and um I mean I can’t remember anything else like exact words ‘cause [P] doesn’t speak very good English
TH	No I know
NS	If you’ve noticed and so even I have trouble like trying to
TH	I appreciate that fact
NS	L`ike every time he wants to say something to another person I try to tell him what you wanna say and I’ll say it for you in the proper words and sometimes that happens

44. And at EB 87 again, describing P and RL together:

TH	So what were you thinking when you went there you were gonna have sex with her you might have sex with her
NS	No as soon as I saw her I thought no like that's why I was silent the whole time I was sitting there they were talking I mean both of them had trouble understanding each other the way they were speaking I mean I had trouble understanding what they were trying to say so

45. A further gauge of P's English may be a comparison of his account in his own words at the start of the body of his interview, with that of Mr Saroukos, which is reproduced in paragraph No 61 below. The reader should bear in mind that Mr Saroukos is not a native English speaker either. He came to Darwin from Kalymanos in 1997 (EB81). P has been here a little longer – six or seven years as at April 2002 (EB63). Some are quicker studies than others. Of his own educational attainments P says (EB63 – the asterisks here and elsewhere indicate noises incomprehensible to the transcribers; AH is Henrys):

AH	Working?
P	I am working because I go to school before I am not good at school and I don't know why I go to school to spending my time to go find girlfriends to go in *** to fight stuff like that, I don't want to do nothing **** cos my fathers ****

46. One of the peculiarities of his spoken English is an erratic use of personal pronouns. At times in the interview P uses “he” and “him” and “his” to refer to RL, a pattern of speech more often found among Aboriginal speakers of English as a second, third, fourth language. Other pronounal unorthodoxies bring to mind the sort of thing one hears from old-fashioned linguistic stereotypes on stage and screen, the Hollywood Mexican, for example. One could hardly improve on this, from EB71, where P is speaking of RL's children.

AH	You obviously realise she has children because you said before that you didn't want to leave anything behind?
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	How many children does she have, do you know?
P	I've seen, shes have four in the house.
AH	Four in the house?
P	Shes not shes not four is shes. I think the two is shes and the other two is shes sister. She not say to the kids I'm not his mum.

47. So with that preparation, and bearing in mind that P was stupid and unworldly enough to be concerned at the start of the interview more, apparently, that his mother might take a turn if should found out about the matter (EB62) than with his own interests, he explained in his own words the background to, and the night in question (EB 65-66):

AH	You understand that its your choice whether you wish to talk? Okay. If you wish, very slowly , can you talk to me through Saturday evening prior to any contact or no, in fact, can you describe your relationship wit RL for me?
P	*** for two years because I don't wanted to *** I am young *** 50 years old and she like to come around, go around and do sex ** want ** good, even more better I like they are all girls all big like me because the young girls make any trouble and I don't want *** and *** making boy happy, like you and how you make it to understand me.
AH	Uh-huh. So what can you tell me about what happened on Saturday night?
P	See I go clubbing, more clubbing, some party and then McDonald's so I don't know what time it was *** City there. I took my friend ***, he said to me I want you to come. I said I can't come by myself need someones help. I said to him if you wanna come come my friend *** He said nah I want you to come he never call me ten times if you no come.
AH	How many times did she call you sorry?
P	Nearly 10 times.
AH	10 times? On your mobile phone?
P	Yep.
AH	Can you tell me what your mobile phone number is.
P	Yep. 0421 967 695.
AH	Thank you. So go on.
P	And *** I can't wait I will see what I am doing and I

	will call you back. I talk to my friend he said I wanna go to have fun. He wanted to take me there to ***. And I said I called her and she ** and wait for me *** can to finish. So alright I go there and after *** and I say to him *** She said to me I want you, I want, I want, she wanted the boy to leave. I said I can't leave the boy. I have to go to my Uncle's house. I have to look after my uncle's house. So I live closer to him I wanted to go to leave my Uncle's house towards *** and I say I have to go to my Uncle's house and *** I went inside start doing it, she takes her clothes off, she close the door she close everything and after the boy came in to tell me *** have to leave *** shes going crazy. Stand up. *** fan. ***pissed off.
AH	Okay.
P	This girl. Any time I want ***
AH	So you have known RL for two years?
P	Yep.
AH	How long have you been having sex with RL?
P	I don't know. I have nearly before the *** my girlfriend see the young girls if you want them for the sex she don't do everything to you.
AH	Yep but have you been having sex with RL before you had your accident?
P	Yeah.
AH	Uh-huh.
P	*** the Monday ***
AH	So you had sex with her the first time the weekend before you had the accident is that what you are saying?
P	No. Before ***. No by the time I met *** I think two years.
AH	From the time you have met her, you have been fucking her?
P	Yeah.

48. I am fairly sure that P said “15” and not “50” years old”, giving his own age when, he says, his affair with RL began. Otherwise his story is mostly clear enough. The part at the end of one long answer, “Stand up xxx fan xxx pissed xxx off” means that RL, annoyed when Mr Saroukos came into the room, stood up on the bed and was hit in the head by the ceiling fan (see EB73), which might fit in with RL’s complaint that her hair had been pulled

– pulled out in some versions – during the assault on her. But P also said (EB 73-74 ALP is P’s sister):

AH	How did she hit her head on the fan
P	She just jumped off the bed (inaudible)
AH	So the fan was a ceiling fan
P	Yep
AH	Did you pull RL’s hair
P	Inaudible
AH	Did you while you were fucking her did you pull her hair
P	Yep
AH	Did you pull any of her hair out
P	Nup
AH	Her hair is braide like
P	Yeah plaits inaudible fucking I like to get her screaming
AH	Ok did she complain about that
P	She said to me (inaudible) – I liked it
AH	She liked it
P	She said to me she’s sore and I said I like it
AH	So she said her head was sore
P	Yep
AH	And you said you liked that
P	Yep
AH	Do you think she liked it
P	Did she complain and say she didn’t like it – yes or no
AH	You don’t know or you don’t want to tell me
P	I tell you nothing full stop

49. Ater P’s first narration of his account, his interrogator, Dectective Anthony Henrys, took him through the events again. P’s addition of detail involved no material change to the story (EB 68-71):

AH	Okay. So when you got to RL’s house you went to the front door?
P	Yep.
AH	Did Nick go to the front door?
P	Yep.
AH	So obviously you knocked on the door?
P	Yep
AH	RL answered the door?

P	Yep. ***
AH	And when she opened the door what did she say?
P	She said we could come in.
AH	Did she invite Nick inside?
P	Yep. I met him said this is my friend Nick. I said to him she's a darlin and I go inside the room.
AH	You went inside the room?
P	Yep. And *** outside.
AH	Where did RL go?
P	She come inside.
AH	In to the bedroom?
P	Yep.
AH	And then the bedroom door was shut or open?
P	See in the start ** all the lights open, everything open she start then start to suck me and after *** close it from then on the door.
AH	So you are saying that she sucked you dick.
P	Yep a long time she sucked my dick.
AH	Uh-huh. And that was with the light on?
P	Yep start.
AH	Yep. And ten what happened after that?
P	After just *** and I woke up she close the louvres shes closed everything and is taking clothes off and jumped me.
AH	Jump on you? You mean she had intercourse with you? Do you know what sexual intercourse is?
P	****
ALP	****
P	Yeah.
AH	Yes. How long did that last for?
P	Um Saturday and doing here on Monday.
AH	No how long did, how long did you fuck her for?
P	I think 30 minutes, something like that.
AH	Yep. Did you come?
P	Uh?
AH	Did you ejaculate? Um, finish off?
P	No
AH	Nothing?
P	She told me she would do all of it but I'm not finished
AH	Did you use a condom?
P	Yep.
AH	You used a condom?
P	Yep
AH	So your on the bed in the room having sex with RL and somebody opened the door. Is that what you told me

	before?
P	Yep. Not someone my friend come inside to the room and tell me is I have to leave.
AH	So did he open the door right up?
P	No he just did like this *** can see him, can't see in, the boy *** tall ***
AH	So did he walk in the room?
P	Who?
AH	Nick?
P	No.
AH	He stayed at the door?
P	Yep.
AH	What did he say to you?
P	Tis nothing it's the time has come, *** come still *** again.
ALP	Scared.
P	He is scared and he has run away. She ** call the police. ***
AH	So when he come in to the room or he opened the door to the room as you have told me.
P	Yep.
AH	You said RL went crazy.
P	Yep.
AH	What did she. Do you remember?
P	Cos shes think I bring the boy to ** fucking me then him according to his Nick told me ***. The boy not do nothing ***
AH	So when she went crazy what happened. Did you keep fucking her or did she throw you away?
P	No. No keeps going piss off and I said got my clothes to leave because she is calling the police and I don't want to have trouble with police.
AH	Uh-huh.
P	And she grabbed my clothes, grabbed my shoes and my crutches and threw them outside.
AH	Throw your crutches outside and your clothes?
P	Yep and I have all my *** and some are calling and the police ** come faster *** outside and I open the door go outside and she has taken my clothes outside the house *** kitchen.
AH	Okay.
P	And I have to go said to her give me my and I will wait and ** give me everything ** can't do nothing.
AH	Sure.
P	And I can't *** my legs *** something happened to my

	leg I do huge damage.
AH	What happened to the condom?
P	I really forgot.
AH	Did you take the condom off?
P	Yep.
AH	Where did you leave it?
P	****
AH	In her house or outside the house?
P	Never left a condom in *’s house because I don’t want the kids to see it.
AH	So you took the condom with you?
P	I threw it I don’t know.
AH	Do you know where you threw it?
P	No some rubbish ***.

50. As for the louvres which had been removed, P seemed to know something about that, but his knowledge came apparently from RL (the “he” spoken of in this passage from EB 74-75):

AH	So Nick come in the door with you
P	Yep
AH	Did Nick come in the door with you
P	Yep
AH	Did Nick, that means then that Nick didn’t remove louvres and climb in a window
P	No
AH	Because there are a number of louvres missing from one of the bedroom windows in the house
P	Oh I don’t know
AH	And the fly screen’s been broken and it appears that someone may well have removed the louvres and climbed in the house
P	I don’t know anything about this one
AH	That wasn’t Nick
P	No, he said someone broke in the window (inaudible)
AH	So who broke into the house
P	Phillipine boy said no philippine boy (inaudible)
AH	When did this happen
P	I think a week ago
AH	About a week ago
P	Yep and he didn’t want to report him. See the men like him whenever they go to his house and one day he come

	to the house and (dribble inaudible)
--	--------------------------------------

51. As for the threats spoken of by RL, P said (EB75)

AH	Did you say to RL just before you left when you don't give me my crutch I'll break my leg. When the police come and put me in jail when I get out I'll come and kill you and kill your children did you say that
P	Yep
AH	What did you mean by that
P	Because (inaudible) because she said to me I'll something your leg and I said to you if you do this to my leg I will kill you if you do this to me (dribble inaudible)
AH	Were you serious when you said that to her
P	Serious
AH	So I'm asking you a question
P	No I'm not serious
AH	So if she'd hurt your leg and the police had turned up and you ultimately went to jail would you go back and kill her
P	No
AH	Ok
P	If she (inaudible)

52. Whatever else P may be, he cannot be described as guileful in those answers, nor in these (EB77):

AH	Did you spit at RL on Saturday night
P	She did it first to me
AH	She did it to you
P	Yeah first
AH	She spat in your face
P	And you spat back at her
AH	Yeah (inaudible)

53. A further example of his naivety appears at EB 76-77:

P	Because she crazy kinda, she said to me I (inaudible) for the boy and the boy (inaudible)
----------	---

AH	We'll talk to Nick don't worry
P	No to Nick to RL
AH	We will talk to RL again
P	I'll talk to her
AH	No you won't talk to RL anymore let me make that very clear right now ok
P	Why
AH	You will not talk to her anymore not until such time as we have completed this investigation do you understand that
AH	If you do make contact with her ok while this investigation is ongoing I will take steps to make sure you can't make contact with her and should you do that again I'll take steps to put you before a Magistrate and possibly put you in gaol do you understand that
P	Why you put me in jail
AH	Because at the moment she's made a complaint ok about you we'll take everyone's story and we get everyone's side ok and then we'll get a picture together now she's made that complaint regardless of what you think she now has a right to be left alone and not harassed by you do I make that clear because should you continue to call her I'll take steps to stop that from happening now if that means putting you in jail I will do that ok, ok
P	Yeah
AH	So I need your word on that
P	Inaudible
AH	Sorry
P	Inaudible
AH	Well I just need your word that you're not going to contact her
P	Yeah I don't wanna see her

54. I interpret this exchange as indicating that Det Henrys had come to the conclusion that P was hard to reach with words; that by some combination of deep stupidity and linguistic inaccessibility he needed to be told again and again and again as forcefully as Henrys could (remembering that Henrys was a police officer in an electronically recorded interview with a juvenile suspect), in order to drive home a point most juveniles would grasp straight away.

55. P's consistency is, in that context, fairly impressive. With one possible exception, nothing in his interview is impossible, (although much of it seems at first blush unlikely). The possible exception is his claim about the number of telephone calls. If P is claiming that RL rang his mobile phone 10 or so times that night, his claim is untrue, as proved by EB 96 and 97, a record of calls made from RL's phone on 20 and 21 April 2002. There was only one call to 0421 967 695, at 8:43pm.
56. The straightforward reading of what appears in the transcript is that P said there were 10 calls on the night. For all the reasons given above, P's speech is not always going to reveal its meaning by a straightforward reading. The other possibility is that his claim of 10 or more calls relates not to 20 April 2002, but to some longer period, perhaps some days or weeks beforehand, perhaps to the whole length of the relationship P says that he had with RL.
57. The overall impression of the record of this interview is of an unlikely story told by a charmless and stupid adolescent, who, notwithstanding his stupidity and apparent incapacity to appreciate the seriousness of his position, does not trip himself up except, possibly, in the ambiguous statement about the number of phone calls. As for his account of the fan hitting RL's head, which strains credulity, it is to be noted that that detail emerged before P was taxed with any specific question about RL's head or hair, and that P seemed to attach no more significance to it than he did to a host of other details, many of them of an irrelevance that would be patent to the meanest intelligence. Taking those aspects into consideration, credulity remains strained, but much less so than by consideration of the bare story.

2) Cross Examination by Mr O'Connell

58. As touched on above, RL was charged with and later acquitted of, an assault on P. The incident happened on, as far as I can tell, 16 June 2002, and involved some sort of confrontation in the street near RL's house (and not far from P's place) during which RL is alleged to have pushed P. The

Exhibit Book only contains a small part of the transcript of the proceedings before Ms Blokland SM – P’s cross examination and re-examination – and much of the matter is a mystery to me. It seems that Mr O’Connell, counsel for RL qua defendant, was suggesting to P that P had frequently seen RL in the street, laughed at her and made no attempt to avoid her seeing him, in the months after her complaint to police. P admitted laughing, denied that the laughing was at RL, and otherwise did not dispute these matters, saying basically that it was a free country and that he had as much right to use the streets and park as RL and that if she did not like sighting him that was her problem. His answers in this respect are all of a piece with the impression created in his police interview of an insensitive, conceited, selfish and stupid young man. It would not surprise me if he had deliberately put himself in RL’s way in order to make her life a misery; nor would it surprise me if he had found himself in her way by chance, and seen no reason at all to remove himself, or to try to avoid sightings in future.

59. More directly relevant to the present applications, there was cross examination as to the events of 20 April 2002. First at EB99-100:

MR O’CONNELL: Mr P, you were involved in a serious car accident in late 2001; is that correct:---Yes.

When you left hospital you had to remain in a wheelchair; correct?—Yes.

And after some time you then were able to walk around on crutches; that’s so; isn’t it?---Yes.

This would have been in about April of 2002?—I’m not sure about the dates but it was around that time.

Shortly after the time that you started using crutches you went to visit RL at her house; didn’t you?---First I was going with my wheelchair.

And it’s that one time that you went with the crutches that I want to ask you some questions about?---Okay.

You went there on that occasion because you said that RL's son had a computer game of yours; do you remember that?---No, I don't remember. But I remember I gave them that computer.

When you went around with your crutches you spoke to RL's second eldest child, ZL?---No, on that night nobody was there.

Well, the night that you did go around with your crutches you went around with some other people; didn't you, Mr - ?---I went with one friend that I've already told about because she was ringing me and she wanted to see me.

Mr P, in fact you had been rung by her and told not to come around to the house; hadn't you?

THE INTERPRETER: Sorry, can you repeat that.

MR O'CONNELL: You had been rung by RL and told not to come around to the house?---She rang me at least 10 times to go.

This occurs on 20 April of last year; doesn't it?---I don't remember dates.

In any event that night that you did go around, the one time with your crutches, you said to her when you came to the door, 'Tonight you're going to have sex with me and my friends'?---No, I asked her if she wanted my friend as well and if she didn't it was all right.

Mr P, I'm going to repeat the question and I want you to concentrate on it as best you can, please. What's being put to you is this. You said to her, 'Tonight you're going to have sex with me and my friends'?---But I did not force her at all.

So it is very likely that you said the words, 'Tonight you're going to have sex with me and my friends'?---Yes, but nothing happened.

Who was the friend?---Nick Saroukos(?).

Where is Nick?---I don't know where he is.

Did you tell the police that Nick was there on this night?

Sorry, I want you to try and answer the questions as best you can, but the simple question here is, did you tell the police that Nick was there on the night?---Yes, I did tell them.

That night, Mr P, you did have sex with her, didn't you?---Yes.

And you forced her to have sex with you, didn't you?---No.

It was clear to you at the time you had sex with her that she did not want that to happen?---If she didn't want to she wouldn't ring me.

For some reason this relationship ended on that night, didn't it, Mr P?---Yes.

For some reason RL rang the police — I haven't finished the question yet.

For some reason RL rang the police and you ran away or at least you left the house before the police arrived, didn't you?---Yes.

Is that so or not, please?---It is true. Because I got scared.

And you had good reason to get scared, Mr P?---I did have a reason to be scared, but because it was the first time I was a bit - - -

You didn't want to speak to the police about what happened that night, did you?---When you are at a certain and you don't want to have trouble with the police even if you were in my place you wouldn't like to do that.

You were worried, I suggest, because you knew that you had forced her to have sex with you. Now that's so, isn't it?---No.

But for some reason the police are called and the relationship ends of this night; is that right?---Yes.

Mr P - - -

HER WORSHIP: Sorry, the answer was 'Yes,' was it?

THE INTERPRETER: Yes.

MR O'CONNELL: Sorry, your Worship.

Mr P, perhaps you can tell her Worship what's your understanding of why the relationship ended?---Because I didn't expect her to ring the police and then when she brought the police I didn't want to see her again.

You were very angry that she had rung the police, weren't you?

---Yes.

Indeed you rang her a couple of days after this event, didn't you?—
She rang me and she asked me not to get my cousin involved in this.

Mr P, you rang the police — sorry, you rang RL a couple of days
after this event; now is that so or not, please?---Don't remember.

Well, let me help you refresh your memory. You rang RL and you
said to her that — perhaps if that could be translated — that even if
you went to prison you would still come and kill her and her children
when you got out?---Never said that.

You see you were never involved in a relationship with this woman
for 2 years at all, were you?---I did.

I suggest to you that's absolute nonsense, Mr P; that's right, isn't it?
---I did — I did go with her.

You must have told all your friends about what happened on the
night that RL called the police; is that right, Mr Pikos?---I didn't tell
all my friends.

You certainly told some of them, didn't you?---To my family.

You told your cousin; correct?---Yes.

And you told Eric Anderson; correct?---Yes.

And you told them how much you hated RL, didn't you?---I don't
hate her, not even now.

Well according to you she rang the police to have you charged with
rape for no reason at all; isn't that right?

Sorry, is that right or not?---Yes.

For no reason at all; correct?---Can I say something?

HER WORSHIP: Well, just try and answer the question.

MR O'CONNELL: According to you she rang the police for not
reason at all?

---Because my friend came in to help to see us.

Because you invited another man in to have sex with her, that's what you did? That's right, isn't it?---No, it's not true.

Now, Mr Pikos, you were very upset, as you have already told her Worship, that RL had reported you to the police; that's so, isn't it?---Yeah, I did — I did feel scared. I didn't expect her to - - -

You felt more than scared, I suggest. You were angry with RL?---I can't answer this whether I was angry or what.

You can answer the question, Mr P. You knew that you were angry and that's the case, isn't it?---At that time I was taking a lot of medication and I wasn't thinking too well and I wasn't even recovered from my accident.

60. Again there is the dubious claim by P that RL telephoned him to invite him around "at least 10 times". In this context it seems to me that that claim does not clearly so relate to 10 times on a single day, but reads rather as extending over a larger period. Otherwise P's account does not substantially differ from his story given to police. Mr O'Connell returned to the events of 20 April at EB113-114:

Mr P, I want to take you back to 20 April for a moment, which is the night that RL said that you raped her. Did anything happen to her hair on that night?

THE INTERPRETER: To her?

MR O'CONNELL: Her hair?---I think she hurt herself on the fan.

HER WORSHIP: On the?

THE WITNESS: Fan.

THE INTERPRETER: Fan.

MR O'CONNELL: On the what, sorry?

MS NOBBS: Fan.

MR O'CONNELL: Fan. How do you say she hurt herself on the fan, Mr Pikos?---Well, when she — when we were having sex and she

was on top of me and my friend opened the door, she jumped off me and she hurt herself on the fan.

You didn't pull out a large chunk of her hair?---I had no strength to pull anything.

You told us this relationship ended on that night; correct?---Yes.

You told us it ended because you brought a friend around to have sex with her; correct?---I can't — it's not exactly that, but I can't answer that. I didn't bring my friend to have sex. Because I could not go by myself.

She didn't want to have sex with your friend, did she?---Yes.

She didn't want to have sex with you either, did she?---She did because she was ringing me.

You just decided to bring a friend round to have sex with her without asking her first; that's so, isn't it?---If you're in town how can you go there by yourself?

You lived around the corner, didn't you?

Sorry, did you live around the corner or not?---Yes.

And you were on crutches?---Yes.

61. Again, and allowing that differences must arise from P's use of an interpreter on this occasion, very much the same account as the police interview.

Nickolas Saroukos's Record Of Interview

62. Mr Saroukos, also aged 17, was interviewed as a suspect by Det Henrys, on 27 April 2002, 5 days after P's interview. Also present was his brother Ioannis, an adult, present because Nickolas was a juvenile, and Det Michelle Gavin. Mr Saroukos, as mentioned above, spoke much better English than P. Here is his first account of events at the interview (from EB 84-85):

NS	There was a good friend of ours who was gonna leave Darwin so she decided to have a party in a private club so she hired the club so she
-----------	--

	<p>could have a party. My brother was actually the DJ that night so he was there. We went to the party around 8.30ish around that time and it would have been around ten o'clock could be earlier not sure of the time I can't remember the time well she called P on his mobile I wasn't with him when she called him I was actually sitting in some other guys and ah and then cause me and P went to the party together so and ah she called P and then P came up to me and said she just called he didn't tell me the name I don't even know the name at that moment he said ah a girl just called she wants me to go over to her house for sex. So he said can you give me a lift to there cause since we went there if I want to give him a lift because I was gonna take him around anyway so I said alright so we went there to the house we parked outside we both of us went in he knocked on the door she opened the door she was all happy alright. We went in I sat on the couch that was on the left as soon as I walked in the couch was there I sat there, she said sit down, she told me sit down so I sat down and she sat on the couch that was on the left as I was sitting on the couch and P sat there as well. And then they were talking saying P said alright we'll go and have sex and that.</p>
	<p>And then P gets up with his crutches he walked in he went in the room the light was on the door was open she gets up she actually asked me a couple of questions she said what's your name I said my name is Nick. P actually introduced myself to her before and she got introduced but I couldn't remember her name afterwards and she said where do you come from and I said from Greece. And then she gets up she goes like P come on in so she gets up and she went in the room, she turned the light off first,, she closed the door and then as I was sitting on the chair the TV was on just straight opposite from me and the louvres she closed the louvres after it would have been after about 2 or 3 minutes can't really exactly remember after.how long.</p>
	<p>Well after about 5 10 minutes I was getting bored so I wanted to leave because I to tell you the truth I didn't like that place their house so all just sitting there I didn't like sitting there while they were in there and P only lives well he lives about 5 minutes away from her house. I can't really pronounce the name of his street so I was going to tell him I'm leaving if you wanna come. And I knocked and as soon as I opened the door-I said P let's go I said it in Greek at that moment I said P let's go.</p>
	<p>I didn't even walk in the room it was all dark like the lights were out everything there was no light in there no light beams or anything and I said P let's go. And then she just jumped out of the bed and (inaudible) I walked back I was frightened she really went psycho at that moment and then I went to the car P came and we left and then I took him home to his cousin's house and that's it and</p>

	then I went home and slept and then John after the party the party finished at 12 o'clock so I went there around 11.30 I went back home 11.30 12 o'clock can't remember and around 12.30 ish because the party was to finish at 12 because that's the time that we were gonna finish the party and John came home around 12.30 year.
	Like the whole time I would have been around a meter away from her the whole time I didn't get close or anything nothing I was just being polite to her like I didn't say anything bad I didn't offend her or anything yes

63. Det Henrys then commenced to go over that account, and at the start of that phase of the wider view, Mr Saroukos said some interesting things (EB86):

TH	We'll go back to the start you told me you were at a party in the city your brother was a DJ
NS	Yeah~~you know the place Circles
TH	Circles Nightclub and you said that P said that she rang up
NS	Yes
TH	Did he say to you how many times she might have rang up did he say that she rang more than once
NS	Oh he didn't say anything like that he just said she rang
TH	Did you know who he was referring her
NS	Sorry
TH	Did you know who he was referring to when he said she rang up
NS	Well he said the African girl I think he said like it would have been around a year ago we were sitting outside his house and she was walking past and P said oh I know her he said we've had sex before he said I said ok good on you and like the rest the last Saturday he said that she called me and when we went there she was actually happy because that was the first time she saw him after he got out of the hospital
TH	What last Saturday night
NS	Yeah oh well I'm not sure if that was the first time but she was like oh you got out she was all happy I'm not sure about if that was the first time they saw each other again but yeah
TH	So you took P to her house Yeah
NS	Yeah
TH	You said that you couldn't get back there again how did you get there in the first place I mean you drove there but
NS	Yes
TH	Well how did~p~ know how to get there
NS	Because he was right next to me yeah

TH	Did P take any phone calls while you were in the car
NS	While we were in the car yes he did call her I don't know how many times he called her
TH	He called her
NS	Yes he said I'm coming and she said yes good come and on the way we actually went to MacDonalDs got one sundae each and he called said we were coming and yeah
TH	You said to me that he said that she wanted sex is that the words he used
NS	Aaah well we had the stereo on and he said turn it down a bit so I can call her he called her said babe I'm coming I think yeah something like that he said and um I mean I can't remember anything else like exact words 'cause P doesn't speak very good English
TH	No I know
NS	If you've noticed and so even I have trouble like trying to
TH	I appreciate that fact
NS	Like every time he wants to say something to another person I try to tell him tell me what you wanna say and I'll say it for you in the proper words and sometimes that happens

64. As to their departure, Mr Saroukos said (EB92):

TH	So you never heard P whistle because RL said P whistled
NS	P
TH	Hm ah ha
NS	No
TH	Alright so you went to the door and you knocked on the bedroom door is that correct
NS	Yep
TH	You opened that door
NS	I mean P said open
TH	Hmm h
NS	And ah and then I opened the door and then I just stayed back
TH	Hmmm so could you see into the bedroom you said there was no light
NS	Nothing it was all dark
TH	And then all of a sudden something happened
NS	Yeah she jumped up I think I mean I didn't see anything she jumped up and straight away I walked
TH	Did she jump up on to the floor or did she jump up and stand up

	on the bed
NS	I couldn't say I can't remember yeah
TH	And after she jumped up you said she sort of went psycho was she saying anything
NS	No
TH	Then why use the word psycho if she wasn't screaming and yelling
NS	Well when I say psycho to my understanding that like like she jumped up and I think she started crying and you know like she was going oh can't remember I mean there was a voice coming out of her mouth but she wasn't saying anything
TH	Did she try coming running out of the room, did she come out of the room while you were still there
NS	When I was at the door no she didn't I walked back and then she did came out
TH	Did she touch you
NS	No
TH	Did you try and touch her
NS	No, like I said I was trying to stay away from her you know
NS	When she came out
TH	Was she wearing anything when she came out
NS	Like the way I saw her when I walked in that's how she came out

65. Det Henrys also questioned Mr Saroukos about his subsequent contact with P, at EB92-93:

TH	Have you talked to P about this business since I spoke with him on Monday
NS	Well he said the police picked him up and he went to the interview
TN	Yep he come in here exactly the same room with me
NS	And he said ah I said to him what I told you and he goes what'd you say to them I said to him that's what I told em like the last Monday on Monday you didn't ask me anything about whistling or anything 'cause
TH	No I didn't ask you very much at all not very much detail I think the only question I asked you last Monday basically was whether you were invited into the house or not
NS	Yeah I was yeah and ah he aid what did you say and I said to him the story exactly the story I told you and he said oh it's exactly what I said but he said he called you before he had the interview with me he said that's what he said to me yeah

66. And in relation to the louvre windows that may have been removed, Mr Saroukos said (EB93-94):

TH	Nick there were some louvres removed from one of the bedrooms one of the other bedrooms in the house do you know anything about that
NS	Well P told me a story 'cause I actually told him that you said to me that
TH	Do you know anything about the removal of those louvres basically what I'm asking did you remove those louvres
NS	I didn't touch any louvres nothing
TH	Cause what I have to tell you is that we've recovered those louvres the fly screen was ripped off and three or four louvres were pulled out and I dare say without being rude to you but because of your size I don't honestly think you could fit through the gap that was there either but you have no knowledge of removal of those louvres
NS	Nothing, nothing
TH	Fingerprints were found on those louvres we don't know whose those fingerprints are so far so
NS	Are you saying the ones in the room
TH	Not in her room in another bedroom not in RL's bedroom there's another bedroom one of her kids use some louvres were removed from there you don't know anything about that so if I were to take your fingerprints and match them against the fingerprints on those louvres they wouldn't be yours
NS	I don't think so
TH	I mean well you should know yes or not
NS	Well alright when I was walking in and I looked at one of the kids room I can't remember any louvres missing
TH	Alright but you didn't take any louvres out of any windows there
NS	No I didn't
TH	Alright you don't have anything to worry about then so you would have no problems giving me a set of your fingerprints
NS	I wouldn't mind but again I didn't I might have accidentally
TH	Did you go in any other bedrooms
NS	No
TH	So you stayed in the lounge room
NS	In the lounge room
TH	And you opened the door to RL's bedroom and then you went back out of the house is that right basically in a nutshell
NS	Well as I was walking in the corridor and I looked this way to one of the rooms and ah like I looked outside I looked outside I don't know if I touched them 'but I mean I didn't take ?????? I'm sure

	about that, I mean if I touched them maybe I did but I didn't take any out
TH	So you are telling me now you went into another bedroom
NS	No I just looked out of the
TH	Well that wont make your fingerprints be on the louvres then
NS	No it wouldn't

67. This transcript gives me the impression that Mr Saroukos was rather young for his age. His apparently frank revelation to police of his conversations with P evidences naivety and, I think, honesty. At other parts of his interview he seems to be at pains to provide police with every detail he can, and to have no idea what might be material and what not.
68. That then is the evidence in relation to the 2002 assault. Section 17(1) of the Act prescribes that:

“A fact to be proved by an applicant in proceedings under the Act shall be sufficiently proved where it is proved on the balance of probabilities.”

69. In *Briginshaw v Briginshaw* (1938) 60 CLR 336, Dixon J (as he then was) said, of proof on the balance of probabilities at (p361-362):

“The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to

the question whether the issue has been proved to the reasonable satisfaction of the tribunal.”

70. The seriousness of the allegation made against P could hardly be higher. There is, it might be thought, an inherent unlikelihood that an adolescent so handicapped by his injuries would be unable to overpower and dominate RL. In order to be persuaded on the balance of probabilities I would need to be persuaded, first that RL’s account of events is basically correct. It would be possible to be so persuaded, notwithstanding the grave inconsistencies between the various accounts, because allowance must be made for cultural and linguistic factors. However it must be recognised that these inconsistencies exist, and that they are material: as to how many men were involved, directly or peripherally; as to how they got into the house; as to whether RL was or was not held down. It is hardly surprising that the police did not charge P. In the light of these inconsistencies alone it is unimaginable that he would have been found guilty beyond reasonable doubt, even before his counsel went through the customary exhibition of every innuendo that could imaginably arise from the inconsistencies: “Was it just a coincidence that you, RL, were moved to telephone P at a time when your boyfriend had argued with you (or gone to Indonesia)? Was it a coincidence that you, RL, were moved to ask P to come to your house on a night when all your children were away?” to give just two examples. The really powerful evidence tending to create belief in RL’s claims is the 000 call and her statements to Dr Huffam. After that, the more accounts there are, the more doubts one has.
71. Secondly I would need to be persuaded that P’s accounts are untrue. This would not be a difficult conclusion to come to. His assertion that he, at the age of 15, commenced an affair with a woman aged 35, a mother of four, while not inconceivable, is not likely either. He may have lied about the number of telephone calls. He did flee the house as soon as he could after RL mentioned the police. He seems to be a nasty young man.

72. Thirdly, I would have to be persuaded that Nickolas Saroukas's account is untrue. It might be, of course – anyone can tell a false story to protect himself, or his friend, or both. But I cannot find anything in Mr Saroukos's account to give me reason to think that he was lying.
73. On all the evidence I am not satisfied that P committed an offence against RL on 20 April 2002.

The 2001 Assault

74. The "statement" uploaded on Det Meggitt's instructions, after being handed in at the police station by, apparently, RL's English teacher Ms Nova, reads (EB11,12):

Police Statement

RL
19

...
Wagaman

In early August 2001, around 10am. I visited my Sudanese friends, MO and PO at Moil. We were celebrating the arrival of a new refugee family in Darwin.

At around 6pm. They opened a bottle of wine and offered me a drink, I refused. They insisted several times that I celebrate with a drink, together with them. I agreed to drink one glass, but it was hard for me because I had not tried alcohol before.

After the glass of wine I felt quite dizzy and also quite embarrassed, and decided to go home. PO said her friend would drive me when she returned from dropping the new family home. I said I didn't want to wait, and around 7pm. I started to walk home.

When I was walking down Parer Drive a van pulled up beside me. It was P. P asked where I was going and offered me a ride home. I said; "No, I want to walk", and I continued walking. P got out of his van and grabbed me. He said "Get in the van, I'll take you home".

At that time a white car pulled up behind P's van. There were four or five young men in the car. P walked up to the car and spoke to someone in the car. One man got out and stood by the car watching me. At that stage P said to me; "Would you like to have sex with my friends?" I said to him; "Why do you bring your friends to have sex with me?" "Now take your friends to fuck your mother and sisters".

P shoved me backwards onto the road. My head bashed hard against the road and I blacked out. •

The next thing I remember is waking up in the morning in my bed. I had, a terrible headache, and a lump at the back of my head. I felt nauseous and my vagina and pelvic area was very painful.

I called to my son DL, I asked him when and who brought me home. DL said P had brought me to the door at 10pm. and left straight away.

All that day I stayed in my room feeling sick in my body and sick in my mind because I knew someone had had sex with me, but I had no recollection of what took place. I was in pain and wanted to go to the doctor but I also felt shame and embarrassment at what must have taken place, so I did not go to the doctor.

I talked to PO that morning (Sunday) about everything. PO said to contact P, but I didn't know what to do.

From when P first met my brother and my children he visited our house everyday, but after that incident he didn't visit again for six months.

After the second incident, (for which I have made a statement) I can never trust him again.

It was only through my brother and my children that I met P, and only about them that I spoke with him about.

I did not at any stage have a personal relationship with P.

75. In her affidavit, Ex1, RL reproduces that statement, pretty much word for word, in paragraphs 9-19. She goes on in paragraphs 20-23 to speak of her failure to report the matter to police:

I did not make a complaint to the police at the time because I felt shame and embarrassment. In Sudan and in the refugee camp there

was no point in reporting rape to the authorities. They would treat you with disrespect. I also told the SARC Counsellor about the first rape and she recorded it in her notes (**EB Pages 46 & 49**). The SARC counsellor also recorded that she had spoken to the Police Officer Jacki Meggitt and Jacki said that “she had received a letter about another incident.”

On the 20 August 2001 P was involved in a serious motor vehicle accident and was hospitalised. I had wanted to tell P not to come near me, my children or my house again. I telephoned him for this reason. When I telephoned his house his sister told me he had been in an accident and they did not know if he would live. I went to the hospital to see for myself that he was injured as I thought maybe they were lying I saw him in intensive care.

After I saw him in hospital I thought that he was not in a position to hurt me anymore so I decided not to do anything about it and to try to forget it. This was not possible of course as I still had the shame and hurt to live with.

After P assaulted me I was very upset and cried for days in my room. I changed my telephone number because of what P did to me. I felt that God had punished him for what he did to me. I was very upset and confused as I never expected such a thing to happen in Australia.

76. She then goes on in paragraphs 24-26 to speak of those whom she did tell the matter:

Doctor Markou reported that I did not tell him of significant symptoms from this assault (**EB Page 128**). He must have misunderstood me because I did. The second rape was the cause of the illness that I was suffering when I saw him, but I was still deeply disturbed by the assault in August 2001 and I tried to tell him about it.

My English teacher Javara Nova at NTU helped me write a letter of complaint about this assault and rape. I told her about it after the second rape and she said I should report the first one too. She handed it to the police.

77. By the time the applications were being prepared, RL’s friend PO had left Australia to go to live in the United States, and RL had lost contact with her (Ex 1 paragraph 19). So there is no statement from her. Apart from PO, the earliest recipient of any account of this assault would appear to have been

either Ms Nova, or Ms Gaskell, and both of them were told in 2002, after the second event. One contemporaneous witness of events relating to the 2001 matter was DL, d.o.b, RL's eldest son, who swore an affidavit on 10 March 2005 speaking of these events. He would have been just 13 at the time of the events, nearly 17 when he swore his affidavit, which recites (in part):

“There was this older boy who I believe was of Greek origin that lived in a house on the corner of Jansz Street and Banka Street just opposite the park. His name was [P]. He came over and played soccer with us at the park. He then befriended us children and spent some time at our house at

We used to swap computer games and play soccer together. He came to our house quite often and we thought of him as a family friend.

In August 2001 (I cannot remember the exact date), my mother had gone to a party at her friend PO's place in Moil. The party was to welcome some new members of the African community to Darwin. I stayed at home at with my younger brothers.

Later in the evening, after my younger brothers had gone to bed, there was a knock on the door and P was there. He was very friendly as he always was and he said to me that he found my mother walking home and it appeared that she had had too much to drink. He suggested that I come to the car, get her and help her to come inside.

I went outside into the street and P white Mitsubishi van. It had the normal front driver's doors and passenger door, plus a sliding door on the left hand side behind the passenger door. There was a bench seat in the back of the car inside the sliding door.

P opened the sliding door and I saw my mother lying on the backseat. She was not unconscious but she did not say anything so I just pulled her up, put her arm over my shoulder and supported her as I walked inside. She did not say anything and just looked straight ahead. When I asked her whether she was alright she just grunted.

My mother did not smell as though she had been drinking. In fact, I have never seen her drunk or even drink alcoholic drinks.

P drove off and I took her into her bedroom and put her in bed fully dressed.

My bothers and I got up the next day and I recall my mother came out shortly afterwards, went to the bathroom and then came out to ask me who brought her home the night before. She said she did not remember coming home, I told her what P had said.

For the next few days she was very quiet. She did not say anything about what had happened that night, nor was she her usual busy self, running around helping me and my brothers.

Many months later after the incident in April 2002 when P assaulted my mother in our house my mother told me what had happened that night when she was walking home from PO's place in Moil to our place in Wagaman.

78. RL asserts in paragraph 29 of Ex1 that “the Police did not investigate this assault and rape”, and, as far as I can tell they did not. There would have been some lines of enquiry open: PO was still then in Darwin (she is mentioned in one of Ms Barker's notes – see EB58 - on 04/07/02. DL's account would have been less stale. Had they interviewed P again he may have remembered the night and might have provided some names of his friends if he was with anyone that night. And there was P's cousin of the same name (mentioned in the 2002 interview) who might know something about the matter.
79. All the same, no one could be optimistic that an investigation commenced in May 2002 (Meggitt received Ms Nova's handwritten note on 07/05/02) into an event in August 2001, the details of which were more or less unknown even to the victim, would be likely to lead anywhere, especially given that P could be expected to persist in his claim of having had an affair with RL. I have no doubt that the delay in bringing the matter to the attention of the police is a major reason why the complaint was not investigated. Another large reason is likely to have been that the police had by then concluded that RL's complaint about the 2002 matter was hopeless, if not false. A third reason may be that Ms Nova's document was not regarded by the police as a complaint sufficient for them to commence investigations – it not being written or signed by RL.

80. Even though there is no evidence to the contrary, it seems to be that it would be difficult, consistent with the *Briginshaw* test, to be satisfied that RL had been raped on this night in 2001, and her failure to satisfy me about the 2002 incident, where there was evidence to the contrary, notably from Mr Saroukos, makes it even more difficult.
81. If I were so satisfied (and I am not) there remains the matter of RL's not reporting the offence, and the question of the application of s 12(2) of the Act. Mr Garton argued powerfully that "circumstances existed which prevented the reporting of the commission of the offence", stressing RL's lack of familiarity with and confidence in the authorities, which was natural enough for anyone who had come through the ghastly circumstances that had driven her from Sudan to the camp in Kenya and finally to Australia. He also stressed her problems with the English language which would without doubt have redoubled her lack of confidence in taking the matter to the authorities.
82. All of this carries a good deal of weight, although it does not explain equally well RL's failure to report the matter to a doctor, or to any of her support people, or to anyone else except her friend PO. I have no difficulty accepting that the social, cultural and linguistic matters argued by Mr Garten accounted for RL's initial reluctance to come forward. It must be remembered that many victims of crime – women whose drinks have been spiked, for example – are equally reluctant to report events which they are unable to recount in any detail. In my opinion s12(2) would not foreclose victims assistance to such a victim who hesitated for a few days before coming forward.
83. In RL's case, however, there is another factor, unusual if not unique. This factor is the serious accident suffered by P soon after the event in 2001. I refer again to what RL wrote in paragraphs 21-23 of her affidavit, reproduced above. In the face of what she says there, I conclude that RL

made a decision that she would not take the matter any further, to police or anywhere else. The accident left her satisfied that P's punishment could be left to God, and also that she was safe from P. It seems to me that this was not an unreasonable decision, indeed, one that many victims would make in the circumstances. But I am not of the opinion that these are circumstances that "prevented the reporting of the offence". In my opinion, even if I were satisfied of the commission of the offence in 2001, s12(2) would operate to direct me not to issue an assistance certificate in respect of that offence.

84. Both applications are dismissed. I will hear the parties as to costs.

R. J. WALLACE
STIPENDIARY MAGISTRATE