

Sexual offences against young children

Information sheet 0011

Both in Australia and overseas, there have been substantial increases in the number of rapes being reported to the police (Walker, 1994). It has been suggested that this increase in reporting is significantly affected by a greater number of adults reporting offences which had occurred some time earlier, particularly intra-familial rape, and rape by an authority figure. (Ross and Bereton 1994:13). Reasons for the increase in reporting include the existence of a greater number of support devices for survivors of sexual assault, a greater acceptance and understanding of the reasons why children and young women do not speak about sexual assault at the time of the offence, and an increased demand on police in most states by women who want to see the men who assaulted them as children going to trial.

There has been a corresponding demand that the legal system be made more responsive to victims/survivors of past sexual assault, and a recognition of the importance of formal justice to both the victim/survivor and the offender. However most of the changes in the legal system are detectable in areas of civil litigation or Crimes Compensation, as more victim/survivor seek redress or compensation through civil action. Despite this demand, change has been slow, and the determination to proceed through the criminal justice system with a report of a sexual assault which occurred as a child, is a demanding option for the victim/survivor and her network. However this option is not to be discouraged on this count. Rather it requires full preparation and understanding of both the legal options and the implications of a decision to report the crime and make a full complaint. Successful prosecutions of sexual assault offenders against children forms an important part of community sanctions against male violence. The timing of the report should not impact on the victim/survivor right to seek justice.

As part of the decision to report, it is important to check with a lawyer or the police as to whether time limitations exist for the prosecution of any of the offences. This is due to the existence of some time limitations on the ability to prosecute some changes, if the offences are not reported within a certain period of time after their commission.

The law specifies a range of categories of sexual offences against children and young people.

Incest

Incest or intra-familial rape occurs when members of the same family, or step family, sexually penetrate a child or young person in that family by putting a penis or other object into the vagina, anus or mouth of the child or young person. Incestuous assault where there is no penetration falls within the indecent assault category and is also a criminal offence.

Indecent acts/sexual intercourse with children or young persons

Each state makes specific provision for rendering sexual intercourse, indecent acts, and gross indecency with children and young people unlawful. Some states have also enacted specific provisions for making sexual relationships between children or young people, and those in positions of authority over them, unlawful.

Generally, consent is no defence, except where there is a reasonably held belief that the person was over the specified age (generally 16, though there is some variation between States), or the person was married to the other person.

Offences against young people with impaired mental functioning

In some states, as part of the introduction of mandatory reporting, there are now specific guidelines to be followed for reporting allegations of physical or sexual assault against people with impaired mental functioning who are in the care of State institutions. These guidelines are readily available. The guidelines require that all allegations of physical and sexual assault must be reported to the police - in the case of clients in the care of relevant Government departments, even if the client does not consent to the matter being reported.

However the client may choose not to pursue the matter upon questioning by the police. If the client is not in the care of the relevant Department and is able to make an informed decision, then an allegation of physical or sexual assault will not be reported to the police against their expressed wishes.

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These guidelines have been developed in recognition of the powerlessness which often accompanies the experience of institutionalisation. In particular, it is well recognised that women in institutions are extremely vulnerable to sexual violence by staff and other residents. Mandatory reporting of these crimes has been introduced in an effort to formalise the way in which women are treated following a disclosure. It is critical to ensure that access to justice is not denied on the basis of disability.