

Case study: Sexual offences

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For this reference, the Victorian Law Reform Commission was asked to review all legislative provisions relating to sexual assault and to consider ways the justice system could become more responsive to victims of sexual offences.

The project was a large undertaking for the Commission, requiring comprehensive consultations with the community and experts in the field, both legal and non-legal. The Commission's final report contained 201 recommendations for widespread reform of the justice system.

Why change the law?

Rape and other sexual offences* are serious crimes with often devastating effects for the victims and their families and friends. At the time the reference was given to the Commission (2001), there was a widely held perception within the community that the criminal justice system did not always deal fairly with complainants (victims) in sexual offences cases. People who alleged that they had been sexually assaulted were the least likely of all crime victims to report the offence to the police, and of those who did make a report to police, only a very small number had their matters brought to court.

There was also concern about the difficulties complainants faced when giving evidence in sexual offence cases if their matter did proceed to court. This concern applied especially to children and cognitively impaired complainants.

In 2001, the rate of reporting of, and conviction for, sexual offences had been falling in Victoria. It was considered unlikely that this was due to a reduction in the incidence of sexual assault but rather that it reflected a lack of confidence by victims in the criminal justice system, its processes and its likely outcomes.

While concerns were widespread, there were differing views about the need to change the existing laws and practices. Those supporting change included crime victims and support groups working with women, and some lawyers and academics. In contrast, many defence lawyers and some police thought the laws were adequate and provided necessary safeguards to ensure that accused people received a fair trial.

In developing its recommendations, the Commission aimed to balance these interests—fair treatment of complainants and a fair trial for those accused—which at times appeared to be in conflict.

The Commission's 201 recommendations covered the entire criminal justice process, from disclosure and reporting, through to the decision to prosecute, the committal hearing[†] and the trial.

* At the time of the reference, sexual offences included the crimes of rape, incest, sexual assault, sexual penetration of a child (under 17 years), indecent acts with or in the presence of a child (under 16 years), and maintaining a sexual relationship with a child (under 18 years).

† A committal hearing is a pre-trial hearing before a magistrate to determine if there is enough evidence for the case to go to trial.

Terms of reference

The terms of reference, given to the Commission by the then Attorney-General, the Honourable Rob Hulls MP on 27 April 2001, set the scope for the project:

1. To review current legislative provisions relating to sexual offences to determine whether legislative, administrative or procedural changes are necessary to ensure the criminal justice system is responsive to the needs of complainants in sexual offence cases, having regard to the findings of the:
 - Victorian Parliamentary Drugs and Crime Prevention Committee's 1995 report on *Combating Child Sexual Assault* and 1996 report on *Combating Sexual Assault Against Adult Men and Women*;
 - Rape Law Reform Evaluation Project's 1996 report into the *Crimes (Rape) Act 1991*; and
 - Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General's 1999 report on *Sexual Offences Against the Person*.
2. To develop and/or coordinate the delivery of educational programs which may be necessary to ensure the effectiveness of existing and proposed legislative, administrative and procedural reforms.

Commission, Division and research team

For most references, the Chairperson of the Commission will appoint two or more Commissioners to work intensively on a project. The Chairperson and the chosen Commissioners are together called a Division of the Commission.

Commission staff are appointed to a research team for each reference. Teams usually consist of a team leader, research officers and research assistants. The research team undertakes research and consultations, and produces draft publications for consideration by the Division.

The Division meets regularly with the research team to give direction to their work and to provide feedback on report drafts, in particular the recommendations contained in final reports.

The Division for the sexual offences reference was the Commission's Chairperson at the time, Justice Marcia Neave (then Professor), Justice David Harper (then Supreme Court Judge), Judge Jennifer Coate (then Children's Court President) and Judge Felicity Hampel (then Professor and SC).

Advisory committee

To help understand the different experiences of sex offence victims with the criminal justice system, the Commission established a sexual offences advisory committee. The committee provided advice to the Commission during the writing of the discussion paper and interim report. While the committee members provided useful advice, the Commission alone is responsible for the recommendations in the report.

The committee members were:

- Antoinette Braybrook, Aboriginal Family Violence Prevention and Legal Service
- Gary Ching, Sexual Offences Unit, Office of Public Prosecutions
- Marg D'Arcy, CASA House
- Maria Dimopolous, MyriaD Consultants
- Phil Grano, Office of the Public Advocate
- Karen Hogan, Gatehouse Centre, Royal Children's Hospital
- Sgt Sandra James, Victoria Police
- Therese McCarthy, TMA Consult
- Inspector Lisa McMeeken, Victoria Police
- Pam O'Neill, Barwon CASA
- Her Honour Judge Margaret Rizkalla, County Court
- Her Honour Judge Meryl Sexton, County Court
- Dr Caroline Taylor, University of Ballarat
- Dr Alison Young, University of Melbourne.

Discussion paper

The sexual offences discussion paper was released in December 2001 and 75 submissions were received in response to the paper.

The paper included research conducted by the Commission into changes in the number of rape prosecutions and convictions. It found that fewer people were being convicted of rape and fewer people were pleading guilty when charged with rape. It also examined:

- previous proposals for reform
- information and research about sexual offences generally
- information and research about sexual offences against children
- information and research about sexual offences against people with a cognitive impairment
- court procedure and evidence
- alternatives to the trial process.

Research

The Commission found early on in the project that the statistical information it needed to underpin its recommendations wasn't available, so it conducted its own research into the outcomes of rape cases in Victoria and the relationship between the victim and the accused.

Researchers examined all rape cases that reached trial in the two years between 1997 and 1999, using the Office of Public Prosecutions' database. The outcome of this research is set out in Appendix 1 of the final report.

Focus groups

Focus groups with police and sexual assault counsellors were held in five areas of the state to understand police attitudes and the experiences of people who dealt with police after an attack.

The police who were interviewed worked in criminal investigation or sexual offences and child abuse units and were typically the first people who victims come into contact with when reporting a sexual assault. Sexual assault counsellors interviewed were from regional Centres Against Sexual Assault (CASAs).



Interim report

The sexual offences interim report was tabled in Parliament on 4 June 2003. The report made over 100 interim recommendations for changes to police practices, court procedures and rules of evidence to improve the experience for complainants, including:

- allowing children to have their evidence and cross-examination prerecorded
- changing the test applied to decide whether a child is capable of giving evidence
- allowing judges to admit children's hearsay evidence
- allowing complainants in sexual assault cases to give evidence via closed-circuit television
- placing further restrictions on defence lawyers asking questions about a complainant's sexual history, and
- preventing accused people from personally cross-examining complainants.

Submissions

The Commission received 56 submissions in response to the interim report from a variety of organisations and individuals.

There was support for the interim recommendations from organisations that worked with victims of sex offences and community legal centres. Many emphasised the need to improve the treatment of complainants in sex offence cases. Some in the legal community expressed concern that some of the recommendations would increase the chance that people would be wrongly convicted of offences. The Commission felt that evidence from other parts of Australia where similar changes had been made did not support that argument.

Consultations

The Commission met with many people involved with sexual assault cases to gather information about their experiences and opinions on how to improve the system.

The Commission also undertook research into the attitudes of key players in the justice system who deal with victims of sexual offences. Fourteen support services dealing with sex offence victims were surveyed about their assessment of the level of cooperation with police, the adequacy of the police Code of Practice, and how breaches of the code were dealt with.

Commission staff visited Mildura and Warrnambool and met with local sexual assault support services, police, court staff, ethnic community representatives, schools and health services to ensure regional issues were taken into account. Follow up briefings were held in both towns following the release of the interim report. Police and sexual assault counsellors operating in regional areas were included in focus groups and other meetings.

Around the same time as the interim report was released, Commission staff visited Perth where prerecording of children's evidence and the use of closed-circuit television had dramatically improved the justice experience for sexual assault victims.

Expert roundtables

Expert roundtables were held to gather information that otherwise would not have been readily available. Roundtables are often held at the beginning of a reference to scope out possible issues, and during the reference to provide further information about written submissions or to test interim recommendations.

Early in the project, a roundtable involving people from non-English speaking communities was held with the Victorian Multicultural Commission to discuss strategies for improving sex assault reporting. The Commission also held roundtables on children's evidence, specialist courts and committals at the beginning of 2004 when it had begun writing the final report.

People who attended the roundtables included magistrates, court registrars, lawyers and researchers.



Commission and Division meetings

A reference Division will usually meet a number of times during the course of a reference to develop recommendations. With complex issues, recommendations may be discussed over a number of meetings before a final version is agreed on.

The sexual offences report was discussed in meetings during February, March and April 2004, with researchers constantly finetuning the substance and wording of recommendations under the Commissioners' guidance. This process was in addition to the discussion and debate undertaken when the Commission developed its interim recommendations in 2003.

Once the recommendations were agreed, the researchers completed a draft report that provided background to the project and the reasoning behind recommendations, based on the results of consultations, submission content and additional research.

The Commissioners on the Division then gave their feedback on the draft report and amendments were made as required. After the report was approved by the Division, it was presented to the full Commission for final sign off.

Final report

The sexual offences final report was tabled in Parliament on 25 August 2004.

The final report took into account the 55 submissions in response to the interim report as well as the outcomes of further consultation to test the workability of the Commission's preliminary recommendations.

The recommendations in the final report aimed to balance the need for fair treatment of complainants and a fair trial for those accused. They included:

- better education and training for police, lawyers and judges
- improved police responses to all complainants, but particularly Indigenous people and people from non-English speaking backgrounds, children, and people with a cognitive impairment
- reducing the time taken to get to trial for complainants who are children and people with a cognitive impairment
- introducing a specialist approach to the listing of sexual offence cases in the Magistrates' Court
- reducing the number of times children and people with a cognitive impairment must give the same evidence
- tightening cross-examination regulations and barring the accused from questioning the complainant or other vulnerable witnesses in person
- making testimony by closed-circuit television routine and allowing prerecorded testimony for children and people with a cognitive impairment
- restricting access to the complainant's counselling records
- widening the definition of allowable evidence and who can give it
- the establishment of a working party to examine potential responses to young sexual offenders.



Media coverage

The *Sexual Offences: Law and Procedure Final Report* was released at a time (August 2004) when sexual assault was front-page news.

Rugby and AFL footballers had been accused of numerous sex assaults, causing widespread discussion of players' behaviour and perceived cover-ups.

In July 2004, a man was given a 33-month suspended sentence for breaking into an apartment and raping a woman who was sleeping inside. This resulted in a backlash against suspended sentences and culminated in a rally outside Parliament House in early August, which attracted a crowd of 5000–10,000 people.

At the same time, the sexual assault case against Gavin Hopper, a sports teacher at a coeducational private school in Melbourne, was heard in court. Hopper was found guilty of indecent assault and gross indecency and was sentenced to three and a half years in prison, with a nonparole period of 27 months. His case was followed by the trial of teacher Karen Ellis, who was found guilty of sexual penetration of a child under 16 and was given a suspended sentence of 22 months that was later changed on appeal to two years and eight months, with six months served in prison.

The Commission's report, tabled on 25 August 2004, received widespread media coverage, including the majority of TV news bulletins, the front page of *The Age* and an editorial, articles in the *Herald Sun* and major regional daily newspapers, and radio news coverage.

A number of feature stories in newspapers and magazines and on radio followed in the months after the report was released, including *The Age*, *Law Institute Journal*, Radio National, SBS's *Insight* show and *Madison* magazine February 2006 issue.

Plain English summary

The Commission published a plain English summary of its final report to ensure that as many people as possible could understand the recommendations that were being made and the reasons behind them.

Some of the Commission's reports are long and detailed because the issues they are about

are complex and need a lot of explaining. The Commission understands that most people do not have the time or understanding of the subject area to read long reports and so tries to produce summaries if it thinks the general public will be interested in the recommendations.

Response to the final report

In September 2006, the Commission released an implementation report on the progress of the recommendations, highlighting the fact that the government had been quick to implement many of the legislative reforms.

The government responded to the release of the final report by setting up a dedicated unit in the Department of Justice to investigate which of the 201 recommendations in the report it would implement.

In June 2005, the Attorney-General told a forum of international experts that the government would establish a specialist sexual offences list in the Magistrates' Court, along the lines of the Commission's report recommendations 53–58.

In September 2005, the County Court announced it would also introduce a specialist list for sexual offences, starting in October 2005. The specialist list involved specific judges hearing sexual offence cases, and trials being held as quickly as possible to reduce the trauma for victims.

The Crimes (Sexual Offences) Bill, (passed 8 February 2006) implemented most of the Commission's recommendations about children and people with cognitive impairment or mental illness. The Attorney-General in his [second reading speech](#) on the Bill said that it was one component of the government's attempts to make the justice system fairer for victims.

The new legislation introduced the crimes of persistent sexual abuse of a child under the age of 16, sexual penetration or an indecent act with a child aged 16 or 17 by an adult who cares for, supervises or has authority over the child (including teacher, employer, foster parent, sports coach and other roles) and expanded the offences of soliciting and procuring children.

The government then introduced the Crimes (Sexual Offences) (Further Amendment) Bill, which was passed by Parliament on 3 October 2006. This Bill implemented most of the other recommendations from the final report, including the use of jury warnings and alternative arrangements for the giving of evidence in proceedings that relate to a charge for a sexual offence. You can look at the [second reading speech](#) on the Parliament of Victoria website.

Responses from other parties were also generally positive, with the Law Institute of Victoria throwing its support behind the report's general aims and agreeing with the need to modernise processes for sexual assault victims.

Victoria Police recognised the need to improve police officers' responses to sexual assault victims and in [2005 released a new Code of Practice](#), partly based on the Commission's recommendations.

Other case studies

More case studies on our projects can be found on our website www.lawreform.vic.gov.au.