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**YOUR PRACTICAL GUIDE TO THE LAW IN NEW SOUTH WALES**

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# Sexual Offences

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**[35.10]** Since the 1980s extensive changes have been made to NSW laws about sexual offences. These early reforms led to the crime of rape being abolished and replaced with categories of sexual assault, and changes were made to protect victims giving evidence in court. Reforms in the 1990s, 2001 and 2003 introduced new offences, increased penalties, removed discriminatory provisions dealing with young homosexual men and introduced further protection for complainants in court.

Most recently, the law has taken steps to assist children and vulnerable witnesses to give their evidence with the assistance of

specialised professionals, known as “child witness intermediaries” in pilot sites in Sydney and Newcastle. Newly appointed sexual assault judges are another important recent change. These provisions build on changes since 2006, including, for example, the creation of a statutory definition of consent, additional protections for victims giving evidence, changes to the warnings given to a jury and the directions about delay in reporting sexual assaults, and further protections for the confidentiality of complainant’s counselling records.

## Types of sexual offence

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**[35.20]** The relevant law is the *Crimes Act 1900* (NSW), which distinguishes between various sexual offences, including sexual assault, indecent assault, acts of indecency, child sexual assault and voyeurism offences. There are associated offences for attempting to commit the “primary offence”, for example, attempted sexual assault; there are also specific aggravated offences, for example, the offence of *Aggravated Sexual Assault in Company* (s 61JA), commonly referred to as “gang rape”, carries a penalty of life imprisonment. More generally, after conviction, a court can take the aggravating circumstances of an offence into account when sentencing.

### **Aggravating circumstances in sexual offences**

Aggravating circumstances in sexual offences increase the seriousness of the crime and the potential penalty. Aggravating circumstances vary for different sexual offences; however, they generally include circumstances where there is actual bodily harm caused; there is a weapon used; there is more than one offender; the victim is under 16 years, the victim is under the authority of the offender, or the victim has a serious physical disability or a cognitive impairment.

The offences are outlined in more detail below.

### **[35.30] Sexual assault**

*Sexual assault* (s 61I) occurs when someone has sexual intercourse with another person knowing that the other person does not consent. The maximum penalty is 14 years’ imprisonment.

#### **Sexual intercourse under the Crimes Act**

The *Crimes Act* defines sexual intercourse to include:

- penetration of the genitalia (including surgically constructed genitalia) of a female person (including transgender) or anus of any person by any part of the body of another person, or an object manipulated by another person
- placing any part of the penis into another person’s mouth
- cunnilingus.

This wide definition includes sexual assault on males and transgender persons, and recognises the harm that can be done to a person by, for instance, inserting other body parts and objects into the vagina or forcing a penis into the mouth or anus. It also recognises that no one type of sexual act is inherently more serious than another.

### **[35.40] Indecent assault**

*Indecent assault* (s 61L) occurs when a person assaults another person, and at the time of, or immediately before or after the act of indecency that commits an *act of indecency*.

An assault that is itself indecent or has a sexual connotation (such as touching a person's genitals) constitutes the offence.

The maximum penalty is five years' jail. Aggravated indecent assault (s 61M) carries a maximum penalty of 7 to 10 years depending on the age of the victim.

### [35.50] Acts of indecency

An *act of indecency* is an offence in which the offender does not touch the victim – for example, when someone exposes their genitals or masturbates in public.

The offence is also committed when a person incites someone else to an act of indecency with another person.

The maximum penalty is:

- 18 months' imprisonment if the victim is aged 16 or over
- two years if the victim is aged under 16 (s 61N).

If there are aggravating circumstances the maximum penalty ranges from three to seven years, depending on the victim's age (s 61O).

### [35.60] Child sexual assault

Child sexual assault offences generally relate to offences perpetrated against victims under 16 years of age. There are a couple of exceptions that are detailed later in this section. Offences specifically covering child sexual assault include:

- sexual intercourse with a child under 10 (s 66A) which carries a standard non-parole period of life imprisonment.
- attempting to have sexual intercourse with a child under 10 or assaulting a person under 10 with intent to have sexual intercourse (s 66B) which has a maximum penalty of 25 years.
- sexual intercourse with a child between 10 and 16 (s 66C) which has a maximum penalty of between 10 and 20 years depending on the age of the child and whether there were aggravating circumstances.
- attempting to have sexual intercourse with a child between 10 and 16 (s 66D) or assaulting a person with intent to do so is also liable to a maximum penalty of

between 10 and 20 years depending on the age of the child and whether there were aggravating circumstances.

### Persistent sexual abuse of a child

The offence of *persistent sexual abuse of a child* (s 66EA) occurs if a person commits three or more separate sexual assaults on a child over separate days. The maximum penalty is 25 years' imprisonment. For the offence to be made out, it is not necessary to specify the exact dates or circumstances of the assaults, however, the period during which the assaults took place, and the nature of the separate offences must be specified. A child for the purposes of this offence is someone aged up to 18 years old.

In practice, offenders are usually prosecuted for individual offences under other sections if they number three or more, rather than using this offence, so this charge is rarely used. The charge can only be instituted by or with the approval of the Director of Public Prosecutions.

### Procuring or grooming a child under 16 for unlawful sexual activity

The offence of *procuring or grooming a child under 16 for unlawful sexual activity* (s 66EB) occurs if:

- an adult intentionally procures a child for unlawful sexual activity with themselves or another person
- an adult intentionally meets a child or travels to meet with a child whom the adult has groomed for sexual purposes, or
- an adult grooms a child by exposing the child to indecent material or provides the child with intoxicating substances with the intention of making it easier to procure the child for unlawful sexual activity.

The maximum penalty for these offences is 15 years' imprisonment if the child is under 14 and 12 years' imprisonment if the child is between 14 and 16. There are special provisions that provide for an offence to be established even if the person being "groomed" is a "fictitious child" if the offender believes that person was a child, for

example if the “child” is in fact an undercover police officer (s 66EB(5)).

### Sexual assault of a child between 16 and 18 under special care

The offence of *sexual intercourse with a child between 16 and 18 under special care* (s 73) occurs where the offender has authority over the child, for example where they are a:

- step-parent, guardian or foster parent
- school teacher, and the victim is a student
- person with an established personal relationship with the victim in connection with provision of religious, musical or other instruction
- custodial officer of an institution where the victim is an inmate
- health professional, and the victim is a patient.

The maximum penalty is between four and eight years’ imprisonment depending of the age of the young person.

### Child pornography and child abuse material

There are a range of offences related to child pornography and possession of child abuse material in the *Crimes Act*. For example, it is an offence for a person to produce, disseminate or possess child abuse material, carrying a maximum penalty of 10 years imprisonment (s 91H(2)).

### Child abuse and technology

There are a range of offences that relate to transmitting child pornography and offences relating to using technology. Because the power to make laws about telecommunications lies with the Federal government under the Australian Constitution, these offences are contained in the *Criminal Code Act 1995* (Cth) (the Code). For example, it is an offence under the Code for an adult to use a carriage service to have communications with a person the sender believes to be (whether they are or not) a child under the age of 16, intending to engage in sexual activity with the child (s 474.26(1)), carrying a maximum penalty of 15 years imprisonment. The meaning “carriage service” includes a mobile phone or internet

services such as email, Skype or social media such as Facebook.

## [35.70] Other sexual offences

### Assault with intent to have sexual intercourse

This offence occurs when, with intent to have sexual intercourse, someone:

- intentionally or recklessly inflicts bodily harm on a person or someone else who is present or nearby, or
- threatens to inflict such bodily harm with “an offensive weapon or instrument” (*Crimes Act*, s 61K).

The maximum penalty is 20 years’ imprisonment.

Importantly, this offence does not require proof of the victim’s lack of consent.

### Sexual intercourse with a person who has a cognitive impairment

Someone who has sexual intercourse with a person with an intellectual disability, may be charged with an offence under s 66F if that person intended to take advantage of the person’s vulnerability and/or is responsible for their care. “Cognitive impairment” includes if the person has an intellectual disability, a developmental disorder, a neurological disorder, dementia, a brain injury or severe mental illness that means the person needs supervision or social habilitation in connection with daily activities.

The maximum penalty for the offence or an attempt to commit the offence is eight years’ imprisonment for taking advantage, and 10 years if the person was in a position of authority over the victim. The offence does not require proof of the victim’s lack of consent, unlike the alternative charge of sexual assault in aggravating circumstances.

### Sexual assault by forced self-manipulation

This offence occurs when a person forces someone else, by threats, to engage in self-manipulation – that is, to penetrate their own vagina (including a surgically constructed vagina) or anus with an object (s 80A).

The maximum penalty is 14 years' imprisonment, or 20 years if there are aggravating circumstances.

### Sexual servitude

A person who forces someone into sexual servitude or to remain in sexual servitude can be charged with an offence under s 80D. The maximum penalty is 15 years' imprisonment, or 20 years if there are aggravating circumstances.

### Voyeurism

The *Crimes Act* (NSW) contains offences including filming a person's private parts without consent (s 91L); filming a person engaged in a private act without consent (s 91K); or installing a device to observe or film (s 91M). Unless these offences meet the conditions of the aggravated offence, which are more serious and with more serious maximum penalties, they are summary offences with maximum penalties of 100 penalty units or imprisonment for two years.

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### Sexual assault of males by males

Since the *Crimes Amendment (Sexual Offences) Act 2003* (NSW) there are no longer any specific sexual offences that take into consideration of the sex of the offender nor of the victim, so for example, in cases of sexual assault of boys under 16, the relevant offences are now either: child sexual assault, or sexual assault in

aggravating circumstances. In cases of sexual assault of adult males, the offences are the same as the sexual assault offences described above. Importantly, since that amendment consensual sexual intercourse between males is no longer considered a crime.

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## The meaning of consent

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**[35.80]** Consent, or the absence of consent, is an essential element in most adult sexual assault offences.

### **[35.90] What is consent?**

In 2007, the *Crimes Act* was amended to create a statutory definition of consent in relation to sexual assault offences which states a "person *consents* to sexual intercourse if the person freely and voluntarily agrees to the sexual intercourse" (s 61HA).

#### What is not consent

Under s 61HA the circumstances where consent cannot be obtained or where it can be negated are outlined. The following circumstances are included in s 61HA (but are not limited to):

- the person is unconscious or asleep
- the consent has been obtained by threats of force or terror
- there is a mistake as to the identity of the person, mistake as to marriage or mistake

as to purpose (such as thinking the consent is for the purpose of medical examination)

- the person does not have the capacity to consent because of cognitive incapacity.
- It can also be established that a person did not consent where:
- they were substantially intoxicated by alcohol or any drug, or
  - they had sexual intercourse because of intimidatory or coercive conduct which does not have to involve a threat of force, or
  - the perpetrator was abusing a position of authority or trust over the person (s 61HA(6)).

#### Withdrawing consent

Consent to sexual intercourse can be given and then withdrawn.

If a person continues with sexual intercourse after consent is withdrawn, it becomes an offence of sexual assault.

### [35.100] Proving consent

To prove a charge of sexual assault with an adult victim, the prosecution must prove that: the victim did not consent; and the accused person was aware that the victim did not consent, or was reckless as to whether the victim consented or not, or “has no reasonable grounds for believing that the other person consents” (s 61HA(3)). The legal test is an objective test.

When the jury (or the judge in judge-only trials) consider the issue of consent, they must take into account all the circumstances of the case including any actual steps taken by the accused to find out whether the other

person was consenting. That a person did not offer physical resistance to the sexual assault is not, in itself, to be regarded that consent was given (s 61HA(7)).

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#### **Consent in child sexual assault cases**

Consent is generally not an issue in child sexual assault offences, because children under 16 are considered by law to be incapable of forming a valid consent. There is an exception for sexual acts with a child between 14 and 16 where it is a defence to sexual assault if the child consented to the act and the other person believed that the child was 16.

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## After a sexual assault

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### [35.110] Deciding whether to report to police

It can sometimes be difficult for a person who has been the victim of a sexual offence to decide whether or not to formally report a sexual assault or other sexual offence such as indecent assault or voyeurism to the police.

This decision does not have to be made immediately. Whatever the final decision, however, a person who has been sexually assaulted should consider seeking treatment and counselling as soon as possible after the assault.

### [35.120] Sexual Assault Reporting Option (SARO)

For anyone reluctant to formally report to police, an option is to complete a Sexual Assault Reporting Option (SARO) questionnaire developed by NSW Police. Information is confidential and is entered into a secure and restricted data-base with NSW Police. The questions can be answered anonymously or personal details can be provided.

Completing a SARO questionnaire is an informal reporting option, and will not result in a police investigation and

prosecution. The information is used by the police to gather information on sexual offences and offending.

If a victim completing the questionnaire has had a forensic examination, he or she can consent to the release of the Sexual Assault Investigation Kit (SAIK) and analysis of the samples may help the police to identify an offender (see [35.140] for further discussion of SAIK).

The SARO form is available on the NSW Police website. It seeks detailed sensitive information so confidentiality and support is advisable when filling it out.

A formal report to police can be made at any time if the victim changes their mind.

### [35.130] Sexual assault services

A person who has been sexually assaulted can contact a sexual assault service for specialist counselling, support, information and advocacy. Sexual assault services based in Local Area Health Districts also offer medical and forensic examinations for victims of recent assaults, whether or not the person wants to make a formal report to the police.

NSW Rape Crisis and 1800 Respect operate 24 hour phone and online crisis counselling services for victims of sexual assault.



They can also provide people with information and referral to services in their area. The NSW Domestic Violence Hotline can also assist with counseling for victims of sexual assault committed by a family member such as a partner or spouse.

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See Contact points at [35.420] for details of how to get in touch with these services.

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### The right to treatment and counselling

Where police are involved from the outset, the person has a right to be taken to a sexual assault service for treatment and counselling *before* deciding whether to make a formal statement.

It is also police policy to encourage this.

## [35.140] Medical and forensic examination

Whether the person wishes to make a formal complaint to police or not, they will be offered a medical examination and a forensic examination at a sexual assault service.

### Medical examinations

The purpose of the medical examination is to make sure that any physical injuries are treated, and that other medical concerns, such as sexually transmitted infections and the possibility of pregnancy, are addressed.

### Forensic examinations

The purpose of a forensic examination is to collect evidence. A forensic examination done immediately after a sexual assault may provide important supporting evidence at a criminal trial. A standardised Sexual Assault Investigation Kit (called SAIK) is used for the forensic examination.

A forensic examination will only be carried out with the person's consent, and in consultation with them.

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#### What forensic examination involves

The forensic examination involves:

- taking laboratory specimens, including:
  - anal, oral, vaginal or penile swabs

- sperm samples from the person's body or clothes
  - a blood or urine sample if it is suspected that, for example, the assault involved drugs or drink-spiking
  - getting a history of the assault.
- 

### Implications of having a forensic examination

Having the examination does not mean that the person must report the assault to police.

#### Timing

The critical period in which to collect forensic evidence is up to 72 hours after the assault, and a person who comes to a sexual assault service in this period should be seen immediately.

Depending on the nature of the sexual assault, there may still be physical evidence up to seven days later.

#### Taking time to decide

If the person is still unsure about whether or not to proceed with police action after a forensic examination, they can delay their decision for up to three months, and the sexual assault service will store the forensic evidence for that time.

#### If the person decides to go ahead

If the person decides to release the evidence to police they must sign a release form in the presence of the counsellor or doctor. The service will send the specimens to the police.

#### If the person decides not to go ahead

If the person decides not to proceed, the specimens are destroyed after three months without consultation with the person.

#### Requesting a female doctor or nurse

The person can request a female doctor or sexual assault nurse examiner. In rural areas, however, this will depend on availability.

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#### Examination by nurse examiners

NSW Health allows nurse examiners to conduct forensic sexual assault examinations. The sexual assault nurse examiners model was introduced in 2003. This helps many victims of sexual assault, particularly in rural areas where a person may have to travel a long way for a forensic examination.

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# Reporting a sexual assault to the police

## [35.150] Making a formal report to police

For an offender to be prosecuted, the sexual assault must be reported to the police. This should be done as soon as possible. It can be a difficult decision for someone who has been sexually assaulted to report an offender to the police; however, the level of support available for victims of sexual assault has improved significantly.

There are special reporting and investigative procedures that apply in the investigation of child sexual assault. Investigations are conducted by the Joint Investigative Response Team (JIRT). JIRT is comprised of members of the NSW Police Force and the Department of Family and Community Services. This chapter will not go into detail regarding these investigations.

## [35.160] Making a statement

A person who reports a sexual assault to police will be interviewed to get a detailed statement.

The person may ask to be interviewed by a female (or male) officer, and this request should be complied with where possible. An interpreter must be supplied where one is required, and a person should be able to request an interpreter of their preferred gender. The preferred gender of police or interpreter may not be practical, or it may mean delays in rural areas.

Privacy and anonymity while at the police station should be protected, and the complainant should be offered breaks when required.

Vulnerable people such as children and people with a cognitive impairment may have their evidence recorded by video, a child witness intermediary may also be appointed at the investigation stage.

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### *Complainant and accused*

The person who says they have been sexually assaulted is called the complainant. The person alleged to have committed the assault is called the *accused* (or the *defendant*).

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### Reading and signing the statement

The complainant should read the statement carefully and correct any errors before signing it.

### Getting a copy of the statement

The person has a right to a copy of their statement, unless the police believe on reasonable grounds that releasing the statement would hinder the investigation.

## [35.170] Other evidence

Other evidence collected at this stage may include:

- the clothing worn at the time of the assault, which will be taken by either the police or the sexual assault service
- the results of the forensic examination
- photographs of any injuries.

### Photographs of injuries

A doctor, nurse or suitably qualified police officer may take photographs of injuries. The person can request that it be done at a sexual assault service rather than the police station.

## [35.180] The support person

The person is entitled to have a sexual assault counsellor or other support person stay with them throughout proceedings at the police station.

### Who cannot act as a support person

Someone who may potentially be a witness in a trial cannot be a support person.

### [35.190] If the complainant does not wish to proceed

A person may report a sexual assault and then decide that they do not wish to continue.

The decision to prosecute is ultimately up to the police and the Office of the Director of Public Prosecutions (ODPP), who may still wish to proceed with the case. However, they must seriously consider the views of the complainant in deciding whether to continue. The ODPP have specific prosecution guidelines for dealing with requests to discontinue where the offence is alleged to have been committed in the context of domestic violence.

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#### **If the assault is not recent**

There is no limitation period for reporting serious sexual offences, so a person can report a sexual assault to the police or a sexual assault service even if it occurred many years ago. The decision to investigate and prosecute is ultimately up to the police and the ODPP. Victims of sexual assaults that happened some time ago can report, and there are many examples of successful

prosecutions for offences committed many years in the past. (see also Adults who were victims of child sexual assault at [35.280]).

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### [35.200] The police investigation

Police detectives will investigate the complaint in accordance with usual police procedures for investigating criminal offences.

#### **Interviewing the accused**

The police will also try to interview the accused person. It is a fundamental right of an accused person to stay silent and not answer police questions, however, and the accused may or may not agree to speak to police.

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#### **Investigating child sexual assault**

There are now special procedures and mechanisms to deal with investigating and prosecuting child sexual assault offences (see Child sexual assault at [35.280]).

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## Going to court

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### [35.210] Laying charges

If a particular person has been accused of the assault, the police will decide, on the basis of the investigation and the evidence collected:

- whether to charge the accused person
- what offence to charge them with.

Sometimes police consult the Office of the Director of Public Prosecutions for advice as to whether the charges are appropriate or whether they are supported by available evidence.

### [35.220] Bail

#### **Decisions by police**

The police decide initially whether bail should be granted, and under what conditions.

Significant changes to the *Bail Act 2013* (NSW) came into effect on 20 May 2014;

further amendments in September 2014 responded to emerging issues with the application of the new provisions. The new *Bail Act* requires an analysis of implements an assessment of bail concern on whether the accused might:

- fail to appear at any proceedings for the offence
- commit a serious offence
- endanger the safety of victims, individuals or the community, or
- interfere with witnesses or evidence.

The accused person's background including criminal history, history of violence, any special vulnerability or needs, whether the accused person has previously committed a serious offence while on bail, as well as matters relevant to the alleged offence, including its nature and seriousness and the strength of the prosecution case, must all be considered (s 18).

There are special considerations for offences of a sexual or violent nature, for example s 18 and certain summary offences — see ss 21(3)(a) and 21(3)(e).

The questions of bail and its conditions are decided in the first instance by police.

### Decisions by courts

The initial police bail decision can be changed by a court. If the accused person is denied bail by police, the court may give them bail on their first court appearance or at any time afterwards.

### Protecting the complainant

Under the NSW Charter of Victims Rights:

- complainants have a right to have their need for protection put before the court by the prosecutor in any bail application
- complainants must be kept informed of the bail status of the defendant by the police and by the Office of the Director of Public Prosecutions, where relevant.

### Bail conditions

The prosecutor can, and should, ask the court for bail conditions that prevent the defendant from contacting or approaching the complainant.

### Apprehended violence orders

Police should apply for an apprehended violence order to protect the complainant if the defendant is released on bail. If the accused is in a domestic relationship with the complainant, an interim (temporary) AVO is required until the charge proceedings are finalised, and, if the accused is convicted, a final AVO must be made for the protection of the complainant.

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For more about apprehended violence orders see Chapter 19, Domestic Violence.

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## [35.230] No-bills

The Director of Public Prosecutions may decide for one reason or another not to proceed further with the prosecution. This is known as a decision to *no-bill* the case: there will be no further proceedings against the

accused person on the evidence available at that time. This can happen at any stage up until the trial.

### Why does it happen?

Some reasons for no-billing cases are that:

- the Director of Public Prosecutions decides that there is not enough evidence to support a criminal conviction
- the complainant is reluctant to proceed with the case
- new information comes to light that undermines the evidence.

The Office of the Director of Public Prosecutions must consult with the complainant before making a decision to no-bill the case, and their views must be taken into account, although these views alone will not determine whether the prosecution proceeds.

## [35.240] Which court?

Sexual offences are dealt with in either the Local Court or the District Court. Two specialist judges were appointed in 2015 for a specialised sexual assault court pilot in Sydney and Newcastle District Courts.

Appeals may be heard by the NSW Supreme Court.

### Cases heard in the Local Court

Less serious sexual offences such as adult indecent assault can be heard by a magistrate in the Local Court where the maximum jail sentence that can be given is two years. There are some more serious offences where the Office of the Director of Public Prosecutions can choose (“elect”) whether it should be heard in the District Court or in the Local Court.

Police prosecutors may appear in the Local Court where the complainant is over 16.

The Office of the Director of Public Prosecutions prosecutes child sexual assault offences in the Local Court.

### Cases heard in the District Court

More serious charges, such as child sexual assault, sexual assault and aggravated sexual assault, are heard by a judge in the District Court.

The Office of the Director of Public Prosecutions is responsible for prosecuting all sexual offences in the District Court.

### Cases heard in the Children's Court

The Children's Court in its criminal jurisdiction must hear committals for children and young persons accused of serious indictable offences, including a number of sexual offences. Charges for serious offences against accused people aged under 18, can be committed for trial or sentence in the District court or, in other instances the case will be heard and/or sentenced in the Children's Court. This decision is up to the Children's Court magistrate, not the Office of the Director of Public Prosecutions.

## [35.250] The committal hearing

More serious ("indictable offence") charges must first begin with a committal hearing in the Local Court. At the committal hearing, a magistrate hears the prosecution case to determine whether there is enough evidence to bring the matter to trial.

The accused person can waive their right to a committal, the committal can go ahead "on the papers" or, less commonly, there can be a defended committal.

### Evidence at committal hearings

In all committal proceedings:

- evidence for the prosecution must be given in the form of written statements
- the complainant need not give evidence except in specific circumstances (see below)
- the defendant does not have to give evidence.

#### **Evidence from the complainant**

In sexual offence proceedings, magistrates can only call a complainant to give oral evidence if the magistrate is satisfied that there are "special reasons" why, in the interests of justice, the complainant should be called (*Criminal Procedure Act 1986 (NSW)*, s 93). This provision was introduced to protect sexual assault complainants from having to give evidence of the assault and

being vigorously cross-examined by the defence twice: first at the committal hearing and then again at the trial.

Magistrates have a positive duty under s 93 to ensure that the interests of the complainant are protected, if either the defendant or the prosecution argue that the complainant should appear. It is now rare for complainants to give oral evidence in committal hearings and provisions for alternative means of giving evidence such as via audio visual link still apply.

#### **Evidence from child complainants or people with cognitive impairments**

Section 91(8) of the *Criminal Procedure Act* specifically prohibits complainants under 18 from being called to give evidence in committal proceedings where the charge is child sexual assault. Section 91(7A) has the same effect if the complainant is cognitively impaired.

### Committal for trial

If the magistrate decides that there is enough evidence (whether by way of written statements or oral evidence), they will commit the accused person for trial to the District Court and specify the charges.

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#### **If the defendant pleads guilty**

If the defendant pleads guilty at the committal hearing, or at any stage before the trial begins, the penalty is decided not by the magistrate but by a District Court judge.

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### When the trial is likely to take place

The trial should take place approximately four months after the committal or not more than six months in country areas.

It is common for a case to be listed for hearing on several occasions before it actually begins, especially in rural areas.

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#### **Before the trial**

Usually, the complainant will not even meet the Crown prosecutor until about a week before the trial. Instead, they will have contact with the Office of the Director of Public Prosecutions solicitor, the police or, in some instances, the Witness Assistance Service. Vulnerable or child witnesses may also have contact with a child witness intermediary.

**The Witness Assistance Service**

The Office of the Director of Public Prosecutions has a Witness Assistance Service, staffed by trained professionals, to assist complainants and witnesses with information about the progress of the matter and the court process in general. These officers are also based in rural and regional offices to support witnesses at courts outside Sydney. There are also Aboriginal Witness Assistance Service Officers.

**Court preparation**

Many sexual assault services offer court preparation for complainants to make sure you understand the process, are getting appropriate support and how to manage the stress of going to court.

**[35.260] The trial**

The *indictment* sets out the charges against the accused person in terms of the provisions of the offence and also the place, time and manner of the commission of the offence.

Juries normally decide on the guilt or otherwise of the accused in the District Court. In jury trials, the judge manages the trial, gives information to the jury, makes decisions on procedure and evidence, and passes sentence if the accused is found guilty.

An accused person can elect to have an offence determined by a judge alone, without a jury, if the prosecutor agrees. This is called a “judge alone trial”.

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Court process is discussed in detail in Chapter 14, Criminal Law.

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**Evidence by the accused**

A person accused of sexual assault can decide not to give sworn evidence during the trial. This is part of the accused person’s right to silence – a fundamental right in our legal system – and it means they cannot be cross-examined.

The prosecutor can cross-examine a defendant who chooses to give sworn evidence.

**Evidence of previous convictions**

Evidence of previous convictions cannot usually be raised during the trial, but it will be considered by the judge in determining the sentence if the accused is found guilty (see Sentencing at [35.270]).

**The complainant in court****The complainant as a witness**

When a sexual offence case comes to court, the state prosecutes the accused person on behalf of the community. This means that the complainant is not a party to the case, but will be the main witness for the prosecution. Because of this, they are not represented in court by their own lawyer – the Crown Prosecutor is the lawyer representing the State. It is very important that complainants understand this: they may have different expectations, and be distressed to find that their interests and those of the State are not always the same. Crown Prosecutors and solicitors for the ODPP have Guidelines setting out their expected standards of impartiality and conduct. These are in addition to the responsibilities of lawyers as “officers of the court”.

**The courtroom experience**

A sexual assault trial puts great pressure on the complainant. A courtroom can be an unsympathetic environment, and it can be distressing to give evidence (in a way that satisfies the legal requirements of the offence) and to be cross-examined about personal matters, and about the assault itself.

Adult complainants can request that they be able to give evidence using closed circuit television. A complainant can also ask the prosecutor to organise a screen to be placed between them and the accused person, and for a support person such as a counsellor, friend or family member to be with them while they give evidence. The court will be closed which means the public is excluded when they give evidence unless there is a special reason to allow this.

Vulnerable complainants and witnesses which are defined as children or people with cognitive impairment (intellectual disability, developmental disability including autism spectrum disorder, neurological disorder, dementia, severe mental illness or a brain injury). Vulnerable witnesses can give their evidence in chief by way of their pre-recorded video interview with the police. A child witness intermediary may also be involved to assist that witness to give evidence through a wide range of measures, for example by interrupting a lawyer’s questioning when a question would not be understood by the witness or if the witness needs a break.

**Cross-examination**

Complainants are usually subject to detailed cross-examination in which all aspects of their evidence may be challenged. The types of questions that will be asked depend on the facts in issue in the case, commonly this would involve the issue of consent, but it may also include identity or the complainant's credibility. Most sexual assaults are deliberately committed at times and in places where there are no witnesses, so the complainant is usually the main witness, and it is often a case of the complainant's word against that of the accused.

**Re-examination**

Re-examination can take place to address new issues that have arisen in the course of cross-examination.

**Effect of the trial on the complainant**

Despite the stress it may cause, some complainants find that the process of reporting the sexual assault and giving evidence at the trial, whatever the final outcome, helps them to feel strong and allows them to begin moving on. Others, however, after going through the trial process, feel that they have only been abused again. Seeking sexual assault counselling and help to understand the criminal trial process can be very effective at empowering complainants in this process.

**Evidence Issues****Sexual experience**

Questions or evidence about the complainant's or other witnesses' sexual experience can be asked or admitted only in limited circumstances, and they must be restricted to relevant matters (*Criminal Procedure Act 1986*, s 293).

**Application to use evidence of sexual experience**

Whichever party (defence or prosecution) wishes to use the evidence must apply formally to the court to have it admitted. In general, it is usually the defence that applies to cross-examine the complainant about these issues – where matters such as the complainant's sexual activity on the night of the offence or a previous relationship with the accused may be considered a fact in issue. The prosecution may then object.

The judge must hear arguments about the admissibility of the evidence from both sides, while the jury is absent (this is called a *voir dire*).

**Questions about sexual reputation**

Questions and comments by either prosecution or defence relating to the complainant's sexual reputation are forbidden in all circumstances.

**Questions about sexual activity**

Questions about the complainant's sexual activity or experience are restricted and are allowed only if they fall within a number of limited categories. This is to prevent irrelevant information about a complainant's history being raised in court. The categories

of questions allowed can only be about:

- sexual activity that:
  - took place at, or about the time of, the alleged offence, and
  - forms part of a connected set of events
- a recent or existing relationship between the accused and the complainant
- where the accused disputes that sexual intercourse occurred, the presence or absence of semen, pregnancy, disease or injury.

If the prosecution raises evidence about the complainant's sexual experience or activity (for example, by asking a woman about her virginity), the restriction no longer applies.

In this case the defence can cross-examine the complainant about this evidence (but not about other aspects of sexual experience).

**Proof of physical injury**

It is not necessary for the prosecution to prove that the complainant suffered physical injuries. In many sexual assaults, there are no physical injuries, or no visible physical injuries.

Even so, the law still allows a lack of physical injury to be raised by the defence, and it may be the subject of cross-examination and of comment by defence lawyers when addressing the jury.

**The judge's discretion to admit the evidence**

Following a *voir dire* about sexual reputation evidence the judge must still balance the value of a question of evidence against the distress that may be caused to the complainant before deciding whether or not to allow it. The final decision in a *voir dire* about whether or not to allow a question or other evidence on sexual reputation in the trial is up to the Judge.

A voir dire can be held in relation to objections to other kinds of evidence or to procedural issues, this important process can sometimes result in delays.

### Cross-examination of the complainant

As a witness, the complainant can be cross-examined on their evidence by the defendant's legal representative, if they have one. A child witness intermediary may be involved in relevant cases. A legal representative must not ask questions that are unduly harassing, intimidating, offensive, oppressive or repetitive. The parties can object to this type of questioning and the judge can also stop a lawyer or make a decision about whether a question is appropriate.

#### Where the defendant has no lawyer

In the past, a defendant who had no lawyer could cross-examine a complainant directly. This was intimidating, and greatly increased the complainant's distress (in fact, it is thought that some defendants chose not to be represented so they could continue to abuse and gain advantage over the complainant at the trial). This is now not allowed.

The *Criminal Procedure Act*, s 294A states that if a defendant is unrepresented, the court must appoint a person to ask questions on their behalf. This appointed person must not give any legal advice, and must ask only questions proposed by the defendant.

#### If there was a delay in, or absence of, complaint

If the defence cross-examines a complainant or witness and suggests, by this questioning, that there was a delay in, or absence of, complaint about the sexual assault, the judge must warn the jury that:

- any such delay or absence does not necessarily indicate that the complainant's allegation that a sexual assault took place is false, and
- there may be good reasons why the complainant may have hesitated in, or refrained from, making a complaint.

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### Uncorroborated evidence

Corroboration means support of a witness's evidence by other independent evidence. In a trial for sexual assault it could be, for example, the evidence by an eyewitness, the findings of a doctor who examined the complainant, or evidence of torn or stained clothes.

In 2006, a provision was introduced that prohibits a judge from warning a jury that it is dangerous to convict on the word of the complainant alone (*Criminal Procedure Act*, s 294AA). This provision also prohibits a judge from stating or suggesting to a jury that complainants in sexual offence proceedings are, in general, a class of unreliable witness.

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### Protecting privacy

Complainants and other witnesses in sexual assault trials are not required to disclose their address and phone numbers in any written statement that might be used in evidence in court. The identity of people making risk of harm notifications about children is protected under Ch 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

#### Sensitive evidence

Accused persons in sexual assault proceedings are not entitled to copies of *sensitive evidence* (*Criminal Procedure Act*, s 281C). The term covers images of a person that are obscene or indecent, and images where providing the image would interfere with the privacy of the person depicted. For example, photographs of a sexual assault victim in a state of undress, taken in connection with a criminal investigation, constitute sensitive evidence.

#### Restricting access to the court

When a complainant in sexual assault proceedings gives evidence the court will be closed to the public and the media unless the court orders otherwise. This also applies if the complainant gives evidence by closed circuit television or by way of pre-recorded evidence. The court can allow evidence to be given in open court if the complainant consents or there are special reasons in the interests of justice to allow part of the proceedings to be open (s 291).



**Prohibiting publication of evidence**

The court can make orders prohibiting the publication of evidence given in a sexual offence trial (s 292), and the complainant can

ask the prosecutor to request such an order. This covers publication or broadcast by radio, television, the internet or by any other electronic means.

**Confidential counselling records**

Counsellors keep records of the counselling they give to sexual assault victims. Defence lawyers may subpoena these records looking for information they could use. The practice causes distress to victims, families, other witnesses and counsellors themselves. The sexual assault communications privilege may apply to protect the confidentiality of the records. In some cases the police may request this information or the Office of the Director of Public Prosecutions, in these instances the sexual assault communications privilege still applies and it is important for a complainant to seek independent legal advice about their rights and options.

**The sexual assault communications privilege**

A “privilege” is a special category of legal protection over certain types of information. The confidentiality of sexual assault complainants counselling records is protected by the *Criminal Procedure Act 1986* (ss 295–306), which establishes the *sexual assault communications privilege*.

The privilege applies to criminal cases (whether sexual assault cases or not) and proceedings for apprehended violence orders (AVOs). It also applies under the *Evidence Act 1995* (NSW) in limited non-criminal proceedings that are closely related to the sexual assault criminal proceedings.

The *sexual assault communications privilege* recognises that there is a public interest in preserving the confidentiality of counselling notes in order to encourage people to seek help, treatment and support if they have been sexually assaulted.

The privilege applies to a broad range of counselling-type records and while specific sexual assault counselling is protected, the privilege applies to counselling that took place before a sexual assault and in relation to a range of health or emotional concerns may also be included. Records such as those written by drug and alcohol services, mental health services, school counsellors and doctors may also be protected.

The privilege is absolute in preliminary criminal proceedings (s 297) such as committal or bail proceedings: this means that records that is covered by the privilege cannot be used at all in the proceedings unless the complainant waives the privilege.

In other criminal or AVO proceedings, the privilege is “qualified” (s 298). This means that once it is established that a record could be covered by the privilege, the court can hear arguments from the interested parties and decide whether or not the record can be used. The complainant (or in some cases other witnesses) whose counselling records are being requested, has standing to

argue against their disclosure in court (s 299A). This is one limited example where a complainant may have their own lawyer on this limited issue if it arises in the trial.

To order the disclosure of the protected records, the judge needs to be satisfied (s 299D) that:

- the material would substantially assist the case
- the evidence cannot be obtained from other sources, and
- the public interest in protecting the victim’s confidentiality is substantially outweighed by the public interest in allowing the evidence to be admitted.

Once the court decides that the privilege applies, the evidence is not required to be produced or admitted as evidence (whether it is sought by the police, the Office of the Director of Public Prosecutions, or the defence), except with the complainant’s written consent.

**Who is a counsellor?**

Under the Act (s 296(5)), the word *counsellor* includes someone, paid or unpaid, who:

- listens to sexual assault victims
- provides verbal and other support
- has relevant training or experience (not necessarily formal training or qualifications).

**Keeping records and files**

It is important that health and other services take steps to be able to identify those records that may be subject to the sexual assault communications privilege. All counselling records and files should be stored separately and marked with a warning about the sexual assault communications privilege. Staff should be trained about the privilege.

**If a subpoena is received**

If a subpoena is received the service should contact the client immediately and check the file. The service should get legal advice about how to respond to the subpoena and oppose the production of the records because of the privilege or other grounds that may be applicable.

The privilege belongs to the victim of sexual assault who received the counselling and can only be waived by them with their express written consent. There is also a requirement that the victim be given notice of a subpoena being issued and may appear in court to object to the production of the counselling records.

This is a complex area of the law and legal advice should be obtained if a subpoena is received. Free legal advice and representation for victims about the privilege is available from Legal Aid NSW Sexual Assault Communications Privilege Service (SACPS).

Because this is NSW law it does not apply to Family Court proceedings.

## [35.270] Sentencing

### What is taken into account

When an offender pleads guilty or is convicted after a trial, the magistrate or judge has the discretion to decide the appropriate sentence. Factors considered include:

- the circumstances of the offence
- the nature of the offence
- the offender's criminal record, if any
- the suitability of sentencing options.

### Mitigating factors

*Mitigating factors* submitted to the court may be taken into account, and have the effect of reducing the sentence.

Mitigating factors may include:

- the offender's age
- the offender's state of health
- the offender's family circumstances
- an early plea of guilty.

Evidence of prior good character cannot be relied upon as a mitigating factor where the good character has been a factor in enabling the offender to commit the offence.

### The victim impact statement

If the offender has been convicted and is being sentenced the judge or magistrate may call for, or accept, a *victim impact statement*. This is a statement prepared by the victim, which outlines the personal harm suffered as a direct result of the sexual assault. It relates only to physical injury, mental illness or shock suffered by the victim. If the court accepts the statement the victim is entitled to read it out, or have someone else read out part or all of it in court. The victim is not obliged to prepare a victim impact statement.

The victim impact statement can only refer to those offences for which the offender is being sentenced. The final decision about whether or not to submit the victim impact statement to the court lies with the prosecutor. If a statement is submitted to the

court, both the offender and the offender's legal representatives will read it. There is some complexity regarding the potential use to which a victim impact statement can be made.

### Who can prepare a statement

The victim impact statement can be prepared by the complainant, a victim's representative, or a qualified person such as a counsellor, social worker, psychologist or medical specialist. Both the complainant and any person who prepared or helped to prepare the statement may be called to be cross-examined on its contents, however this is very rare.

NSW Victims Services has produced a *Victim Impact Statements: Information Package* which is available from its website and provides a guide to preparation of the statement.

### In the Local Court

Victim impact statements are only admissible in the Local Court in relation to certain acts of sexual assault (listed in the *Criminal Procedure Act 1986*, Sch 1, Table 1).

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### The Victims Register

The Department of Corrective Services keeps a register in which victims of sexual assault can register their name when the offender is sentenced for those crimes. The department will then contact the person about:

- changes to the offender's imprisonment
- parole decisions
- release dates.

The Department of Corrective Services also coordinates registers kept by the Mental Health Review Tribunal for forensic patients, and the Department of Juvenile Justice for juvenile offenders.

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Contact Victims Services or the Department of Corrective Services Victims Register for more information.

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## Child sexual assault

**[35.280]** In recent years, the awareness about the extent of child sexual assault has been recognised and specific measures have been put in place by police, child protection authorities and the Office of the Director of Public Prosecutions to try to improve the investigation and prosecution of such offences.

There are particular challenges to detecting and prosecuting sexual offences against children due to:

- the inequality between offender and victim
- the level of denial maintained by most offenders
- the fact that many offenders are family members of the victim
- the age of the victims
- the use of threats and promises to secure victims' silence
- other tactics used by the perpetrators that make it difficult for children to disclose the abuse or the full extent of the abuse.

In order to minimise the delays and distress experienced by children through the process of reporting and the trial process, the District Court gives priority to listing child sexual assault trials.

### **[35.290] Difficulties with prosecution**

Complaints by children (particularly very young children) of sexual interference can be difficult to investigate and prosecute.

It can also be difficult for children to distinguish between specific incidents of abuse. There has been some recognition of these difficulties by the courts. For example, to help the jury put the charges into context or show that there was a pattern of sexual abuse, the prosecution may call evidence that there was a history of sexual assault over a period of time (*R v AH* (1997) 42 NSWLR 702). However, the prosecution must specify particular offences as precisely as it can.

### **[35.300] Taking statements from children**

Children who report sexual assault offences, will be interviewed by specialist police officers and officers from the Department of Family and Community Services working in *joint investigation response teams (JIRTs)*.

Officers are specially trained in forensic interview procedures, and interview children carefully so as not to contaminate their evidence. These interviews are electronically video recorded and will be played to the court as the child's evidence in chief. Child witness intermediaries will be appointed to assist with communication issues during questioning at investigation stage and during the trial process. These intermediaries are not support people, they are impartial specialised professionals and appointed as officers of the court.

### **[35.310] Preparation for court**

Children should be put in touch with specialist child sexual assault counselling services or the Director of Public Prosecutions' Witness Assistance Service (see Before the trial at [35.250]).

These can help prepare and familiarise the child for court, and set up appropriate support for them while they are giving evidence.

### **[35.320] Giving evidence**

#### **When children can give evidence**

A court can receive evidence from a child unless:

- the child does not understand the difference between the truth and a lie, or
- the child is not able to respond rationally to questions.

The court's acceptance of the child's evidence depends only on these criteria, not on the child's age (*Evidence Act 1995* (NSW), s 13).

Both issues are presumed in favour of the child until the court is satisfied to the contrary.

### How children can give evidence

#### **Recorded evidence**

Electronically pre-recorded interviews with the child in sexual assault offence matters are to be admitted as the child's evidence-in-chief.

#### **Closed-circuit television**

Child-friendly remote witness rooms, at the courthouse or separate from the court building, are available so that children can give their evidence under cross-examination through closed-circuit television.

#### **Corroboration**

Evidence of a child complainant can be supported ("corroborated") by other inde-

pendent witnesses (see Uncorroborated evidence at [35.260]). However, the lack of corroboration need not prevent a matter being prosecuted and other types evidence may be available.

#### **Evidence by the spouse of an accused**

The law contains some general protections that prevent a person being compelled to give evidence about their spouse. However, the defendant's spouse can be compelled to give evidence in cases where the child:

- lived in the defendant's household, or
- is a child of the defendant and the spouse (*Criminal Procedure Act 1986*, s 279).

In some very limited circumstances the spouse may apply to a magistrate or judge to be excused from giving evidence.

### **Adults who were victims of child sexual assault**

Adults who were victims of child sexual assault may decide many years later that they want to report the abuse. There can be particular challenges in successfully prosecuting these offences due to the length of time that has passed. However, there is no time limit for reporting sexual offences to police, so it is possible to report offences many years later. The police or DPP will decide if a prosecution is possible.

#### **Getting help**

A sexual assault counsellor, lawyer or community legal centre can be approached to discuss reporting the abuse to police.

#### **Reporting to police**

The person should provide a statement to police outlining what happened.

In instances where there have been more than one, or many, instances of abuse or grooming, it may be beneficial to concentrate on a few incidents that can be clearly identified, rather than trying to describe incidents over the duration of the abuse. Police can take many hours to take the statement and in some cases this can be done on a number of different occasions.

#### **Deciding whether to prosecute**

After taking the statement, the police will decide if there is enough evidence to support a prosecution. The police

may also consult with the Office of the Director of Public Prosecutions to get further advice on whether or not to charge the offender.

It can be very difficult within the current legal system to prosecute for actions that took place years ago, but these matters are often prosecuted.

The decision to prosecute or not will be based on many factors, such as:

- the victim's clarity of memory
- the quality of the evidence
- whether there is corroborating evidence
- the age of the alleged offender
- the length of time since the abuse occurred.

It is useful, but not necessary if there is medical evidence or independent witnesses who saw something or were spoken to about the sexual assault at the time.

Police or prosecutors can give guidance on what a witness or complainant should do after the report, for example, steps to avoid a witness "contaminating" their evidence or somebody else's.

#### **What laws apply?**

If the police do lay charges, the accused will be tried under the law that existed at the time of the offence.

## Evidence of sexual history and reputation

### *Sexual reputation*

Evidence relating to the sexual reputation of the child is inadmissible.

### *Sexual experience*

Evidence relating to any sexual experience of the child is admissible only in limited circumstances (see Evidence of sexual experience at [35.260]).

## [35.330] Royal Commission into Institutional Responses to Child Sexual Assault

A Royal Commission is currently investigating how institutions like schools, churches, sports clubs and government organisations have responded to allegations of child sexual abuse.

A free legal service, “knowmore”, has been established to advise people wishing to engage with the Royal Commission. Free counselling is also available.

## Victims support

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### [35.340] Victims support claims

A victim of sexual assault that occurred in NSW has a right to seek victims support from Victims Services NSW under the *Victims Rights and Support Act*. Free counselling, financial assistance for immediate needs, financial assistance for economic loss and recognition payments are available for eligible persons. There are special categories of recognition payment for sexual assault. Court-based victims support payments of up to \$50, 000 are also available at the initiation of the court or an aggrieved person at any time following conviction. To date, these court-based orders have been little-used, however, victims of sexual offences may seek legal advice as to their options and the merit of considering this course of action.

### [35.350] Time limits for victims support and other remedies

No time limits apply for counselling.

Immediate needs applications: there is a time limit of two years from the date of the offence or within two years of a child turning 18 years for.

Financial assistance applications: there is a time limit of two years from the date of the offence or within two years of a child turning 18 years; there is no time limit for victims of sexual assault if they were a child at the time of the offence to claim for justice related, or out of pocket expenses.

Recognition payment applications: there is a time limit of 10 years from the date of the offence to claim for recognition payment for sexual assault. There is *no time limit* for victims of sexual assault if they were a child at the time of the offence.

Legal time limits also apply for making civil claims in relation to sexual abuse through the courts. Recent amendments mean that there is *no time limit* for making a civil claim regarding child sexual abuse or certain related claims.

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For further information see Chapter 39, Victims Support.

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# Complaints

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**[35.360]** A person who wishes to complain about their treatment should try to raise the matter first with the specific person or agency concerned.

## **[35.370] About police**

Someone wishing to complain about police should write directly to the Local Area Commander or the NSW Police Customer Assistance Unit.

If the matter is not dealt with satisfactorily, the person should contact the NSW Ombudsman (see Chapter 9, Complaints).

## **[35.380] About Director of Public Prosecutions staff**

Complaints about staff and solicitors from the Office of the Director of Public Prosecutions should be made initially to the Director of Public Prosecutions.

See Chapter 9, Complaints, for information about how to proceed if the matter is not dealt with satisfactorily.

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### ***Victims' rights***

Under the *Victims Rights and Support Act 2013* (NSW), victims have rights, including the right to:

- have access to information about the investigation and prosecution process
- be treated with courtesy, compassion and respect
- have their identity protected
- be protected from contact with the accused
- be given information about and have access to services
- receive information about the offender's release.

For further information about victims' rights contact NSW Victims Services.

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## **[35.390] About lawyers**

Complaints about solicitors and barristers (including lawyers from the Office of the Director of Public Prosecutions) can be made to the Law Society of NSW, the Bar Association of NSW or the Legal Service Commission (see Chapter 9, Complaints).

## **[35.400] About magistrates and judges**

Complaints about magistrates and judges should be made directly to the Judicial Commission of NSW.

## **[35.410] About sexual assault and health services**

To make a complaint about a sexual assault service or health service, first contact the service directly to ask about their complaints process.

If this is unsatisfactory, contact the Health Care Complaints Commission.

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The process of making a complaint about government agencies, lawyers and police is considered in detail in Chapter 9, Complaints.

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## Contact points

**[35.420]** If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number). For more information, see [www.relayservice.gov.au](http://www.relayservice.gov.au).

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online see [www.tisnational.gov.au](http://www.tisnational.gov.au).

### Counselling and Advocacy for victims of sexual assault

#### NSW Health Sexual Assault Services

Sexual Assault services provide crisis support, counselling, support and assistance to both adult (female and male) and child victims of sexual assault.

[www.health.nsw.gov.au/sexualassault](http://www.health.nsw.gov.au/sexualassault)

#### Metropolitan Sexual assault services

Bankstown Sexual Assault Service: 9828 4844 or 9828 3000 (24 hrs)

Blacktown/Mt Druitt Sexual Assault Service: 9881 8700 or 9845 5555 (24 hrs)

Blacktown/Mt Druitt Forensic Medical Unit (via main switch) 9881 8000

Eastern & Central Sexual Assault Service, Royal Prince Alfred Hospital, Camperdown: 9515 9040 or 9515 6111 (24 hrs)

Liverpool/Fairfield Sexual Assault Service: 9828 4844 or 9828 3000 (24 hrs)

Macarthur/Bowral Sexual Assault Service, Campbelltown: 4633 4100 or 9828 3000 (24 hrs)

Nepean Sexual Assault Service, Penrith: 4734 2512 or 4734 2000 (24 hrs)

Northern Sydney Child Protection Unit (0-16 years only): 9926 6060 or 9226 7111 (24 hrs)

Northern Sydney Sexual Assault Service: 9462 9477 (Adults only) or 9926 7111

Westmead Sexual Assault Service: 9845 7940 or 9845 5555 (24 hrs)

Child Protection Unit Sydney Children's Hospital, Randwick: 9382 1412 or 9382 1111 (24 hrs)

Child Protection Unit Children's Hospital - Westmead: 9845 2434 or 9845 0000 (24 hrs)

#### Regional Sexual assault services

Albury Sexual Assault Service: 6058 1800 or 6058 4584 (24 hrs)

Armidale Sexual Assault Service: 6776 9655 or 6776 9500 (24 hrs)

Bathurst Sexual Assault Service: 6330 5677 or 6339 5217 (24 hrs)

Bega Valley Sexual Assault Service: 6492 9620 or 6492 4416 (24 hrs)

Bourke Sexual Assault Service: 6870 8899 or 6870 8888 (24 hrs)

Broken Hill Sexual Assault Service: (08) 8080 1554 or (08) 8080 1333 (24 hrs)

Central Coast/Gosford Sexual Assault Service: 4320 3175 or 4320 2111 (24 hrs)

Clarence Valley Sexual Assault Service: 6640 2402 or 6621 8000 (24 hrs)

Coffs Harbour Sexual Assault Service: 6656 7200 or 6656 7000 (24 hrs)

Cooma Community Health Centre: 6455 3201 or 6455 3222 (24 hrs)

Coonabarabran Community Health Centre: 6842 6404 or 6885 8632 (24 hrs)

Coonamble Sexual Assault Service: 6827 1163 or 6827 1150 (24 hrs)

Cowra Sexual Assault Service: 6340 2356 or 6342 1411 (24 hrs)

Deniliquin Community Health Centre: (03) 5882 2925 or (02) 5882 2800 (24 hrs)

Dubbo Sexual Assault Service: 6885 8999 or 6885 8632 (24 hrs)

Eurobodalla Sexual Assault Service: 4474 1561, 1300 139 887 or 6492 4416 (24 hrs)

Forbes Sexual Assault Service: 6850 2233 or 6393 3000 (24 hrs)

Glen Innes Community Health Centre: 6739 0100 or 6739 0200

Goulburn Sexual Assault Service: 4827 3913 or 4827 3111 (24 hrs)

Griffith Sexual Assault Service: 6966 9900 or 6938 6666 (24 hrs)

Gunnedah Sexual Assault Service: 6741 8000 or 6741 8031 (24 hrs)

Inverell Sexual Assault Service: 6721 9600 or 6721 9500 (24 hrs)

Lismore - Richmond Sexual Assault Service: 6620 2970 or 6621 8000 (24 hrs)

Lower Hunter Sexual Assault Service: 4931 2000 or 4921 3888 (24 hrs)

Moree Community Health Centre: 6757 0200 or 6757 0000 (24 hrs)

Moruya Sexual Assault Service: 4474 1561 or 6492 4416 (24 hrs)

Mudgee Sexual Assault Service: 6378 6236 or 6885 8632 (24 hrs)

Narrabri Community Health Centre: 6799 2000 or 6799 2800 (24 hrs)

Newcastle Sexual Assault Service: 4924 6333 (24 hrs)

Nowra Sexual Assault Service: 4423 9211 (24 hrs)

Orange Sexual Assault Service:  
6393 3300 or 6393 3000 (24 hrs)

Parkes Sexual Assault Service:  
6862 1866 or 6339 5311 (24 hrs)

Port Macquarie Sexual Assault  
Service: 6588 2882 or 6581 2000  
(24 hrs)

Queanbeyan Community Health  
Centre: 6298 9233 or 6298 9211 (24  
hrs)

Southern Sydney Sexual Assault  
Service: 9113 2494 or 9113 1111  
(24 hrs)

Tamworth Community Health  
Centre: 6767 8100 or 6767 7700  
(24 hrs)

Taree Community Health Centre:  
6592 9315 or 6592 9111 (24 hrs)

Tweed Valley Sexual Assault  
Service: (07) 5506 7540 or (07) 5506  
7416 (24 hrs)

Upper Hunter Sexual Assault  
Service, Musswellbrook: 6542 2725  
or 4924 6333 (24 hrs)

Wagga Sexual Assault Service:  
6938 6411 or 6938 6666 (24 hrs)

Wingecarribee Sexual Assault  
Service: 4861 8000 or 9828 3000 (24  
hrs)

Wollongong Sexual Assault  
Service: 4222 5408 or 4222 5000  
(24 hrs)

#### **NSW Rape Crisis Centre**

Rape & Domestic Violence  
Services Australia delivers a  
number of counselling services for  
those affected by sexual assault,  
domestic and family violence in  
Australia

24 hour phone counselling line  
ph: 1800 424 017 (24 hrs)

24 hour online counselling: [www.  
nswrapecrisis.com.au](http://www.nswrapecrisis.com.au)

1800RESPECT

ph: 1800 737 732 (24 hrs)

24 hour online counselling: [www.  
1800respect.org.au](http://www.1800respect.org.au)

Sexual Assault counselling  
Australia

ph: 1800 211 028 (8am-11pm,  
Monday to Friday)

#### **NSW Rape Crisis Centre Community Based Counselling Services**

These provide counselling for  
women who have experienced

sexual assault (either as an adult  
or a child) based within the  
following Women's Health  
Centres:

[www.nswrapecrisis.com.au/Home.  
aspx](http://www.nswrapecrisis.com.au/Home.aspx)

#### **Central Sydney**

Leichhardt Women's Community  
Health Centre: 9560 3011

NSW Health Sexual Assault  
Services, Royal Prince Alfred  
Hospital: 9515 9040 or 9515 6111  
(24 hrs)

NSW Rape Crisis Centre,  
Drummoyne: 9819 7357

Sydney Women's Counselling  
Centre, Campsie: 9718 1955

Women's Health NSW Leichhardt:  
9560 0866

#### **Northern Sydney**

Northern Sydney Sexual Assault  
Service, RNS Hospital: 9462 9477  
or 9926 7111 (24 hrs)

#### **South Eastern Sydney**

St George Hospital: 9113 2494

#### **South Western Sydney**

Bankstown Community Health  
Centre: 9780 2777 or 9828 3000  
(after hours)

Bankstown Women's Health: 9790  
1378

Immigrant Women's Health  
Service: 9726 4044

Liverpool Hospital: 9828 4844 or  
9828 3000 (24 hrs)

Liverpool Women's Health Centre:  
9601 3555

Rosemeadow Sexual Assault  
Service: 4633 4100 or 9828 3000  
(24 hrs)

WILMA Women's Health Centre,  
Macarthur Square: 4627 2955

#### **Western Sydney**

Bessie Smyth Foundation: 9649  
9744

Blacktown/Mt Druiett Sexual  
Assault Service: 9881 8700 or 9845  
5555 (24 hrs)

Blacktown Women's & Girls  
Health Centre: 9831 2070

Cumberland Women's Health  
Centre, Parramatta: 9689 3044

Westmead Hospital: 9845 7940 or  
9845 5555 (24 hrs)

#### **Wentworth**

Blue Mountains Women's Health  
Centre: 4782 5133

Penrith Women's Health Centre:  
4721 8749

Springfield Cottage, Governor  
Phillip Hospital, Penrith: 4734 2512  
Ph: 4734 2000 (24 hrs)

#### **Central Coast**

Central Coast Women's Health  
Centre, Gosford: 4324 2533

NSW Health Sexual Assault  
Services, Gosford Hospital: 4320  
3175 or 4320 2111 (24 hrs)

#### **Mid North Coast**

Coffs Harbour Community Health  
Centre: 6656 7200 or 6656 7414 (24  
hrs)

Coffs Harbour Women's Health  
Centre: 6652 8111

Grafton Sexual Assault Service:  
6640 2402 or 6621 8000 (24 hrs)

Port Macquarie Community  
Health Centre: 6588 2882 or 6581  
2000 (24 hrs)

Taree Community Health Centre:  
6592 9315 or 6592 9111 (24 hrs)

#### **Hunter**

Lower Hunter Community Health  
Centre, East Maitland: 4931 2000  
or 4921 3888 (24 hrs)

Hunter Women's Centre, Mayfield:  
4968 2511

Newcastle Sexual Assault Service,  
Wallsend: 4924 6333 or 4921 3888  
(24 hrs)

Upper Hunter Sexual Assault  
Service currently covered by  
Newcastle Sexual Assault Service:  
4924 6333

#### **Far West**

Bourke MH&C, Bourke: 6870 8899  
or 1800 665 066 (24 hrs)

Broken Hill Sexual Assault Service,  
Broken Hill: (08) 8080 1333 (24 hrs)

Lightning Ridge Sexual Assault  
Service, Lightning Ridge: 6829  
9900 or 6829 9999 (24 hrs)

Mallee Sexual Assault Service,  
Mildura: (03) 5025 5400 (24 hrs)

#### **Illawarra**

Bowral Sexual Assault Service:  
4861 8000 or 4861 0347

Illawarra Women's Health Service  
Warilla: 4255 6800



Nowra Sexual Assault Service:  
4423 9211 (24 hrs)

Wollongong Sexual Assault  
Service: 4222 5408 or 4222 5000  
(24 hrs)

#### **Greater Murray**

Albury Community Health Centre:  
6058 1800 or 6058 4444 (24 hrs)

Griffith Community Health Centre:  
6966 9900 or 1800 800 944(24 hrs)

Murray Sexual Assault Service  
Deniliquin: (03) 5882 2900

The Women's Centre  
Albury-Wodonga: 6041 1977

Wagga Women's Health Centre:  
6921 3333

Wagga Sexual Assault Service:  
6938 6411 or 6938 6666 (24 hrs)

#### **Macquarie**

Coonabarabran Sexual Assault  
Service: 6842 6402 or 6885 8632  
(24 hrs)

Dubbo Sexual Assault Service:  
6885 8999 or 6885 8666 (24 hrs)

#### **Mid Western**

Bathurst Sexual Assault Service  
Bathurst Base Hospital: 6330 5677  
or 6330 5311 (24 hrs)

Forbes Sexual Assault Service:  
6850 2233 or 6850 2000 (24 hrs)

Parkes Sexual Assault Service:  
6862 1866 or 6393 3000 (24 hrs)

Orange Base Hospital: 6393 3300  
or 6393 3000 (24 hrs)

#### **New England**

Armidale Community Health  
Centre: 6776 9600 (24 hrs)

Glen Innes Community Health  
Centre: 6739 0100 or 6739 0200  
(24 hrs)

Inverell Health Service: 6721 9600  
or 6721 9500 (24 hrs)

Moree Hospital: 6757 0200 or 6757  
0000 (24 hrs)

Narrabri Community Health  
Centre: 6799 2000 or 6799 2800  
(24 hrs)

Quirindi Health Service: 6746 0200  
(24 hrs)

Tamworth Community Health  
Centre (including Gunnedah): 6767  
8100 or 6767 7700 (24 hrs)

#### **Northern Rivers**

Indigo House, Lismore: 6620 2970  
or 6621 8000 (24 hrs)

Lismore and District Women's  
Health Centre: 6621 9800

Tweed Valley Sexual Assault  
Service: (07) 5506 7540 or (07) 5536  
1133 (24 hrs)

#### **Southern**

Bega Community Health Centre:  
6492 9620 or 6492 4416 (24 hrs)

Cooma Community Health Centre  
Victoria Street, Cooma: 6455 3201  
or 6455 3222 (24 hrs)

Eurobodalla Sexual Assault  
Service, Moruya: 4474 1561 or 6492  
4416 (24 hrs)

Goulburn Community Health  
Centre: 4827 3913 or 4827 3111  
(24 hrs)

Queanbeyan Sexual Assault  
Service: 6298 9233 or 9298 9211  
(24 hrs)

Shoalhaven Women's Health  
Centre: 4421 0730

Waminda Women's Health &  
Welfare Aboriginal Co-op, Nowra:  
4421 7400

Young Community Health Centre:  
6382 8729 (direct) or 1800 677 114  
(24 hrs)

#### **Women's Health Centres**

Most women's health centres in  
NSW offer counselling, support  
and advocacy for women who  
have experienced sexual assault  
(either as an adult or a child). See  
above list, or for a complete list of  
women's health centres go to:

Women's Health NSW (WHNSW)  
www.whnsw.asn.au

ph: 9560 0866

## **Services for victims of crime**

#### **Child Protection Help Line (24 hour)**

ph: 13 21 11

#### **Lifeline (24 hour)**

ph: 13 11 14

#### **NSW Victims Services, Department of Justice and Attorney General**

www.victimsservices.justice.nsw.  
gov.au

NSW Victims Assistance Line

ph: 1800 633 063 or 8688 5511

*Victims Services Aboriginal & Torres  
Strait Islander Contact Line*

ph: 1800 019 123

#### **Office of the Director of Public Prosecutions (ODPP)**

www.odpp.nsw.gov.au

Head Office – Sydney: 9285 8606

Campbelltown: 4629 2811

Dubbo: 6881 3300

Gosford: 4337 1111

Lismore: 6627 2222

Newcastle: 4929 4399

Parramatta: 9891 9800

Penrith: 4721 6100

Wagga Wagga: 6925 8400

Wollongong: 4224 7111

#### **Victims Register**

NSW Government Corrective  
Services NSW Restorative Justice  
Unit

www.correctiveservices.justice.nsw.  
gov.au

ph: 8346 1054

#### **Victims Register, Department of Corrective Services**

Co-ordinator Victims Register:  
8346 1374

Victim Support Officer, Victims  
Register: 8346 1112

email: restorative.justice@dcs.nsw.  
gov.au

Correspondence to: The  
Co-ordinator, Victims Register  
Corrective Services NSW

PO Box 31, GPO Sydney NSW  
2001

#### **Witness Assistance Service, Office of the Director of Public Prosecutions (WAS)**

There are witness assistance  
officers in each office of the ODPP.  
There are also some specialist  
Aboriginal WAS Officers.

www.odpp.nsw.gov.au/witness-  
assistance-service

Campbelltown WAS: 4629 2811

Parramatta WAS: 9891 9800

Penrith WAS: 4721 6100

Sydney WAS: 9825 8606 or 1800  
814 534

email: enquiries@odpp.nsw.gov.au

**Victims Access Line**

ph: 1800 633 063 or 8688 5511

**Other useful services and organisations****Australian Centre for the Study of Sexual Assault**

[www.aifs.gov.au/acssa](http://www.aifs.gov.au/acssa)

**Australian Domestic and Family Violence Clearinghouse**

[www.anrows.org.au](http://www.anrows.org.au)

**Community Legal Centres NSW**

ph: 9212 7333

**AIDS Council of NSW (ACON)**

(incorporating the Gay and Lesbian Anti-violence Project)

Sydney ph: 9206 2000 or 1800 063060

email: [acon@acon.org.au](mailto:acon@acon.org.au)

*The Gender Centre*

ph: 9569 2366

**QLife — Gay and Lesbian Counselling Service**

online chat: [www.qlife.org.au/](http://www.qlife.org.au/)

ph: 1800 184 527 (3pm – 12am)

**Twenty10— Gay and Lesbian Counselling Service of NSW**

ph: 8594 9555 (9:30am – 5pm) or 1800 184 527 (3pm – 12am)

**Health Care Complaints Commission**

[www.hccc.nsw.gov.au](http://www.hccc.nsw.gov.au)

ph: 9219 7444 or 1800 043 159

**Kids Helpline (24 hour and online counselling)**

[www.kidshelpline.com.au](http://www.kidshelpline.com.au)

ph: 1800 551 800

**LawAccess (for legal help)**

[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

ph: 1300 888 529

**Legal Aid NSW**

Sexual Assault Communications Privilege (SACP) Service

[www.legalaid.nsw.gov.au/what-we-do/civil-law/sexual-assault-communications-privilege-service](http://www.legalaid.nsw.gov.au/what-we-do/civil-law/sexual-assault-communications-privilege-service)

ph: 9219 5888 or 1300 888 529 (LawAccess)

**NSW Family and Community Services Domestic Violence Help Line**

ph: 1800 65 64 63

**NSW Health Education Centre Against Violence**

[www.ecav.health.nsw.gov.au](http://www.ecav.health.nsw.gov.au)

ph: 9840 3735

**NSW Ombudsman**

[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

ph: 02 9286 1000 or 1800 451 524

**NSW Police Customer Assistance Unit**

Police Assistance Line

ph: 1800 622 571

**NSW Police Gay and Lesbian Liaison Officers**

Contact through your local Police Station.

**NSW Victims Services**

[www.victimsservices.justice.nsw.gov.au](http://www.victimsservices.justice.nsw.gov.au)

**Sex Workers Outreach Project (SWOP)**

[www.swop.org.au](http://www.swop.org.au)

ph: 1800 622 902 or 9206 2166

**Warringa Baiya Aboriginal Women's Legal Centre**

ph: 1800 686 587 or 9569 3847

**Women's Health NSW**

[www.whnsw.asn.au](http://www.whnsw.asn.au)

ph: 9560 0866

**Women's Legal Service NSW**

[www.wlsnsw.org.au](http://www.wlsnsw.org.au)

*Women's Legal Contact Line*

ph: 1800 801 501 or 8745 6988

*Domestic Violence Legal Advice Line*

ph: 1800 810 784 or 8745 6999

*Indigenous Women's Legal Contact Line*

ph: 1800 639 784 or 8745 6977

*Working Women's Legal Service*

ph: 8745 6908

*Care and Protection Legal Advice Line*

ph: 8745 6908

*Evening Telephone Advice Service*

[www.wlsnsw.org.au/evening-telephone-advice-service](http://www.wlsnsw.org.au/evening-telephone-advice-service)

**Services for people from culturally and linguistically diverse backgrounds****Services for Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)**

[www.startts.org.au](http://www.startts.org.au)

ph: 9794 1900

**Transcultural Mental Health**

[www.dhi.health.nsw.gov.au/tmhc/default.aspx](http://www.dhi.health.nsw.gov.au/tmhc/default.aspx)

ph: 1800 648 911 or 9912 3851

**Translating and Interpreting Service (TIS) National (24 hrs)**

[www.tisnational.gov.au](http://www.tisnational.gov.au)

ph: 131 450