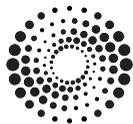


The Law Handbook

YOUR PRACTICAL GUIDE TO THE LAW IN NEW SOUTH WALES

15th EDITION



THOMSON REUTERS

REDFERN LEGAL CENTRE PUBLISHING

Published in Sydney
by Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668

19 Harris Street, Pyrmont NSW 2009
First edition published by Redfern Legal Centre as *The Legal Resources Book (NSW)* in 1978.
First published as *The Law Handbook* in 1983
Second edition 1986
Third edition 1988
Fourth edition 1991
Fifth edition 1995
Sixth edition 1997
Seventh edition 1999
Eighth edition 2002
Ninth edition 2004
Tenth edition 2007
Eleventh edition 2009
Twelfth edition 2012
Thirteenth edition 2014
Fourteenth edition 2016
Fifteenth edition 2019

Note to readers: While every effort has been made to ensure the information in this book is as up to date and as accurate as possible, the law is complex and constantly changing and readers are advised to seek expert advice when faced with specific problems. *The Law Handbook* is intended as a guide to the law and should not be used as a substitute for legal advice.

ISBN: 9780455243689

© 2020 Thomson Reuters (Professional) Australia Limited asserts copyright in the compilation of the work and the authors assert copyright in their individual chapters.

This publication is copyright. Other than for the purposes of and subject to the conditions prescribed under the *Copyright Act 1968*, no part of it may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission. Inquiries should be addressed to the publishers.

This edition is up to date as of 1 October 2019.

The Law Handbook is part of a family of legal resource books published in other states:

Vic: *The Law Handbook* by Fitzroy Legal Service, ph: (03) 9419 3744

SA: *Law Handbook* by the Legal Services Commission of South Australia, ph: (08) 8111 5555

Qld: *The Queensland Law Handbook* by Caxton Legal Centre, ph: (07) 3214 6333

Tas: *Tasmanian Law Handbook* by Hobart Community Legal Service, ph: (03) 6223 2500

NT: *The Northern Territory Law Handbook* by Northern Territory Legal Aid Commission, Australasian Legal Information Institute and Darwin Community Legal Services, ph: (08) 8982 1111

Editor: Newgen Digitalworks

Product Developer: Karen Knowles

Printed by: Ligare Pty Ltd, Riverwood, NSW

This book has been printed on paper certified by the Programme for the Endorsement of Forest Certification (PEFC). PEFC is committed to sustainable forest management through third party forest certification of responsibly managed forests.

Sexual Offences

Kira Levin – Solicitor, Women’s Legal Service NSW

| | | | |
|--|------|-------------------------------------|------|
| [35.20] Types of sexual offences | 1102 | [35.210] Going to court..... | 1110 |
| [35.80] The meaning of consent..... | 1106 | [35.280] Child sexual assault | 1117 |
| [35.110] After a sexual assault..... | 1107 | [35.340] Victims support | 1119 |
| [35.150] Reporting a sexual assault to the police .. | 1108 | [35.360] Complaints..... | 1120 |

[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 to protect victims giving evidence in court.

More 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 program sites in Sydney and Newcastle. Newly appointed sexual assault judges are another important recent change. In 2018, following recommendations by the Royal Commission into Institutional Child Sexual Abuse, the NSW Government introduced further reforms to strengthen child sexual abuse laws.

Types of sexual offences

[35.20] The relevant law is the *Crimes Act 1900* (NSW), which distinguishes between various sexual offences, including sexual assault, sexual touching, sexual acts, 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] Sexual touching

Sexual touching (formerly “indecent assault”) (s 61KC) occurs when a person intentionally sexually touches another person knowing that the other person does not consent. The offence is also committed when a person incites another person to sexually touch the victim or where a person incites the victim to sexually touch another person.

The maximum penalty is:

- five years’ imprisonment if the victim is aged 16 or over (s 61KC);
- Aggravated sexual touching (s 61KD) carries a maximum penalty of seven years;

- 16 years' imprisonment if the victim is aged under 10 (s 66DA);
- 10 years' imprisonment if the victim is aged between 10 and 16 (s 66DB).

[35.50] Sexual Act

A *sexual act* (formerly an "*act of indecency*") (s 61KE) is carried out in circumstances when 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 perform a sexual act with another person.

The maximum penalty is:

- 18 months' imprisonment if the victim is aged 16 or over (s 61KE);
- 10 years' imprisonment if the victim is aged under 10 (s 66DC);
- two years' imprisonment if the victim is aged between 10 and 16 (s 66DD).

If there are aggravating circumstances, the maximum penalty ranges from three years, to five years, depending on the age of the victim (ss 61KF, 66DE).

[35.60] Child sexual assault

Child sexual assault offences generally relate to offences perpetrated against victims under 16 years of age. There are 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) provides that a person who maintains an "**unlawful sexual relationship with a child**", that is a relationship in which an adult engages in two or more unlawful sexual acts with or towards a child over any period, will be guilty of this offence. The maximum penalty is imprisonment for life. For a person to be convicted of the offence, the jury must be satisfied beyond a reasonable doubt that the evidence establishes that an unlawful sexual relationship existed however they do not have to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence. Nor does a jury have to unanimously agree on which acts constitute the unlawful sexual relationship. A child for the purposes of this offence is someone aged under 16 years.

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) now specifically captures behaviours, such as giving a child gifts or money, which can be used to gain a child's trust or to manipulate them. Under this section, an adult person who:

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

The maximum penalty for these offences is between 12 and 15 years' imprisonment if the

child is under 14 and between 10 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)).

Grooming a person for unlawful sexual activity with a child under the person's authority

This offence (s 66EC(2)) covers situations where a person provides material or financial benefit to an adult with the intention of making it easier to access a child in that adult's care for unlawful sexual activity. The maximum penalty for this offence is six years if the child is under 14 and five years in any other case.

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 of "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

A person who, with intent to have sexual intercourse with another person:

- 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) is liable to 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 8 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* contains offences including observing a person who is engaged in a private act for the purpose of sexual arousal or sexual gratification without the consent of the person being observed and knowing the person is not consenting (s 91J); 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.

Sharing intimate images without consent

Advances in information and communication technology together with increased access to such technology have led to a rapid rise in technology-facilitated domestic violence (also known as technology-facilitated stalking and abuse). In response, the NSW government amended the *Crimes Act* to introduce new offences that specifically criminalise the behaviour of people who:

- record an intimate image without consent (s 91P);
- distribute an intimate image without consent (s 91Q);

- threaten to record an intimate image without consent (s 91R(1));
- threaten to distribute an intimate image without consent (s 91R(2)).

The Commonwealth Government has also introduced a civil and criminal regime in an attempt to combat the non-consensual sharing of intimate images, see the Enhancing Online Safety (Non-consensual sharing of Intimate Images) Act 2018. The new legislation:

- Prohibits the non-consensual posting of, or threatening to post, an intimate image on a "social media service", "relevant electronic service", or a "designated internet service" (s 44B).
- Establishes a complaints and objections system to be administered by the eSafety Commissioner. Victims will be able to lodge a complaint directly to the Commissioner (s 19A).
- Enables a person who initially consented to an image being posted and then changed their mind and now wishes to have the image removed, by enabling them to give the Commissioner an "objection notice" (s 19B).
- Introduces a civil penalty regime whereby the Commissioner is empowered to issue infringement notices, seek a civil penalty order from a relevant court, enforceable undertakings or an injunction for contraventions of the civil penalty provisions.

Child abuse material

It is an offence to produce, disseminate or possess child abuse material (see Pt 3, Div 15A). There is an exception to an offence of possessing child abuse material if the accused person was under 18 years at the time of possession and a reasonable person would consider the possession of the material acceptable having regards to certain matters listed in s 91HAA(b), such as the alleged offender's relationship with the person depicted in the child abuse material. It is a defence to possessing child abuse material if the child abuse material only depicts the accused. It is a defence to an offence of producing or disseminating child abuse material if the production or dissemination of the material occurred when the accused person was under the age of 18 years and the only person depicted in the material was the accused.

The meaning of consent

[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 61HE, formerly s 61HA).

What is not consent

Under s 61HE, the circumstances where consent cannot be obtained or where it can be negated are outlined. The following circumstances are included in s 61HE (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 consents because they are unlawfully detained
- the person does not have the capacity to consent because of age or cognitive incapacity.

It can also be established that a person may not have consented 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 61HE(8)).

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 61HE(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 61HE(9)).

Following the decision in *R v Lazarus* [2017] NSWCCA 279, the NSW Law Reform Commission is currently reviewing s 61HE of the *Crimes Act* which deals with consent in relation to sexual offences.

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.

Similar age defence

A limited “similar age” defence (see s 80AG) is now a complete defence to the following offences is of or above the age of 14 years and the age difference between the alleged victim and the accused person is no more than 2 years:

- sexual intercourse with a child aged 14 or 15 (s 66C(3));
- sexual touching of a child between 10 and 15 (s 66DB);
- sexual act with or towards a child between 10 and 15 (s 66DD);
- sexual intercourse with a young person between 16 and 18 under special care (s 73);
- sexual touching of a young person between 16 and 18 under special care (s 73A).

The defence does not apply to aggravated forms of these offences.

After a sexual assault

[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 to the police.

This decision does not have to be made immediately. Physical evidence is best collected within 72 hours by specially trained nurse or health practitioners using an examination kit called a SAIK (sexual assault investigation kit) and can be stored until the person is ready to report to police. 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 database 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 1800RESPECT 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 counselling for victims of sexual assault committed by a family member such as a partner or spouse.

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

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.

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.

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.

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 Communities and Justice. 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, and a child witness intermediary may also be appointed at the investigation stage.

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*).

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.

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 [35.320]).

[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.

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]).

Going to court

[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 ODPP 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.

The *Bail Act 2013* (NSW) 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, see s 18 and certain summary offences – see s 21(3)(a) and s 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 ODPP, 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 (AVO)

Police should apply for an AVO 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.

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

[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 ODPP 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. Appeals may be heard by the NSW Supreme Court.

Cases heard in the Local Court

Less serious sexual offences such as adult sexual touching 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 ODPP 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 ODPP 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 ODPP is responsible for prosecuting all sexual offences in the District Court.

A Child Sexual Offence Evidence program was piloted in 2015 in Sydney and Newcastle District Courts and has now been made available until 2022.

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 ODPP.

[35.250] Committal

Following the introduction of Early Appropriate Guilty Plea reforms in 2017, all serious (indictable offence) charges will proceed by way of “charge certification” followed by a mandatory criminal

case conference. During the case conference, the prosecution and defence will negotiate and determine whether there are any offences to which the accused is willing to plead guilty and, if not, what charges will proceed to trial. Victims ought to be kept informed and consulted throughout this process (see Prosecution Guidelines <https://www.odpp.nsw.gov.au/sites/default/files/prosecution-guidelines.pdf>). The role of the Magistrate is to case manage the case conferencing process and commit the accused either for trial or sentence. In some circumstances, a Magistrate may direct the attendance of prosecution witnesses at “witness hearings”.

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 84). 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 84 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 83(2) 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 83(1) has the same effect if the complainant is cognitively impaired.

Committal for trial

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 by a District Court judge.

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 but in reality, this is rarely the case.

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

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 ODPP 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 ODPP 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 they understand the process, are getting appropriate support and know how to manage the stress of going to court.

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

[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”.

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

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 [35.270]).

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) 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*, 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 (eg, 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, and 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 s 294A of the *Criminal Procedure Act* provides for a ban on direct cross examination by a defendant. 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.

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.

The judge is prohibited 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.

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 suppressing or prohibiting the publication of evidence given in

a sexual offence trial (*Court Suppression and Non-Publication Orders Act*, s 8), and the complainant can ask the prosecutor to request such an order. This covers publication or broadcast by written publication, radio, television, public exhibition, the internet or by any other electronic means. A suppression order more broadly prohibits or restricts the disclosure of information, whether by publication or otherwise.

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 will also apply if the request is made by the police or Director of Public Prosecutions. A person who receives a subpoena for counselling records or a complainant who becomes aware that their records have been subpoenaed should 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 ss 295–306 of the *Criminal Procedure Act*, 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 counseling 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 counselors 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 ODPP, 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 and gives support or encouragement to people; or
- advises, gives therapy or treats people; and
- has relevant training, study 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*, Sch 1, Table 1).

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.

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

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 ODPF 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 or try prosecuting under s 66EA of the *Crimes Act*.

[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 Communities and Justice working in *Joint Child Protection Response (JCPR) programs*.

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.

Witness intermediaries

Witness intermediaries (also called children's champions in the legislation) may be appointed to assist the parties and the Court to communicate and explain questions and answers of child complainants (*Criminal Procedure Act*, Sch 2, ss 88–90).

Corroboration

Evidence of a child complainant can be supported ("corroborated") by other independent 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*, 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 ODPP 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.

[35.330] National Redress Scheme

The National Redress Scheme was established in July 2018 to provide access to counselling and psychological services, a direct personal response,

and a redress payment of up to \$150,000 for victims of institutional child sexual abuse. The Scheme is open for 10 years until 30 June 2028. *knowmore* legal service provides free information and advice about the National Redress Scheme and other options that may be available.

Victims support

[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 2013* (NSW). 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.

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.

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

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.

For further information, see Chapter 39, Victims Support.

Complaints

[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 could contact the Law Enforcement and Conduct Commission (see Chapter 9, Complaints).

[35.380] About Director of Public Prosecutions staff

Complaints about staff and solicitors from the ODPP 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.

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.

[35.390] About lawyers

Complaints about solicitors and barristers (including lawyers from the ODPP) 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.

About sexual assault and health services

[35.410] 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.

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

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.communications.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.

Changes are expected to the websites for many NSW government departments that were not available at the time of printing. See www.service.nsw.gov.au for further details.

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/parvan/sexualassault/Pages/default.aspx

Metropolitan Sexual Assault Services

Bankstown Sexual Assault Service: 8738 4844 or 9828 3000 (24 hrs)

Blacktown/Mt Druitt Sexual Assault Service: 9881 8700 or 9881 8000 (24 hrs)

Blacktown/Mt Druitt Forensic Medical Unit (via main switch) 9881 8000 or (emergency line) 9881 8215 or 9881 8216

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

Liverpool/Fairfield Sexual Assault Service: 8738 4844 or 9828 3000 (24 hrs)

Macarthur/Bowral Sexual Assault Service: 8738 4844 or 9828 3000 (24 hrs)

Penrith Sexual Assault Service (Springfield Cottage): 4734 2512 or 4734 2000 (24 hrs)

Northern Sydney Child Protection Unit (0–16 years only): 9462 9266 or 9926 7111 (ages 14–16 and older and adults) (24 hrs)

Northern Sydney Sexual Assault Service: 9462 9477 or 9926 7111 (ages 14–16 and older and adults) Westmead Sexual Assault Service: 8890 7940 or 9881 8000 (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 5646 or 6339 5311 (24 hrs)

Bega Valley Sexual Assault Service: 6491 9999 or 6492 4416 (24 hrs)

Bourke Sexual Assault Service: 6870 8875 or 6870 8888 (24 hrs)

Broken Hill Sexual Assault Service: (08) 8080 1100 or (08) 8080 1333 (24 hrs)

Gosford Sexual Assault Service (Biala Cottage): 4320 3175 or 4320 2111 (24 hrs)

Clarence Valley (Graton) 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)

Cooma Sexual Assault Service: 66455 3202 or 6455 3222 (24 hrs)

Coonabarabran Community Health Centre: 0459 281 480 or 6826 6100 (24 hrs)

Coonamble Sexual Assault Service: 6872 1148 or 6827 1100 (24 hrs)

Cowra Sexual Assault Service: 6340 9170 or 6340 9000 (24 hrs)

Deniliquin Community Health Centre: (03) 5882 2925 or (02) 5943 1000 (24 hrs)

Dubbo Sexual Assault Service: 6885 8999 or 6809 6809 (24 hrs)

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

Forbes Sexual Assault Service: 6850 2233 or 6850 7100 (24 hrs)

Glen Innes Community Health Centre: 6739 0100 or 6730 0200

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

Griffith Sexual Assault
Service: 6966 9900 or 5943 1000
(24 hrs)

Gunnedah Sexual Assault
Service: 6741 8000 or 6741 8000
(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)

Maitland Sexual Assault Service
(Lower Hunter): 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 6204 or 6378 6222
(24 hrs)

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

Newcastle Sexual Assault
Service: 4924 6333 or 4921 3888,
4924 63333 (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:
6861 2400 (24 hrs)

Port Macquarie Sexual Assault
Service: 6588 2882 or 5524 2000
(24 hrs)

Queanbeyan Community Health
Centre: 6150 7150 (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 4921 3888 (24 hrs)

Wagga Sexual Assault Service: 5943
2300 or 5943 1000 (24 hrs)

Bowral Sexual Assault Service: 4861
8000 or 4861 0347 (24 hrs)

Wollongong Sexual Assault
Service: 4253 4977 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 in NSW
24 hour phone counselling line
ph: 1800 424 017 (24 hrs)

24 hour online counselling:
www.nswrapecrisis.com.au
Sexual Assault counselling
Australia
ph: 1800 211 028 (8 am–11 pm,
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

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 Druitt 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: 4253 4977 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 8888 (switch, 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

Australian Domestic and Family Violence Clearinghouse

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 063 060 (Regional outreach)
 email: acon@acon.org.au

The Gender Centre

ph: 9519 7599

QLife – Gay and Lesbian Counselling Service

online chat: www.qlife.org.au/
 ph: 1800 184 527 (3 pm–12 am)

Twenty10 – Gay and Lesbian Counselling Service of NSW

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

Health Care Complaints Commission

www.hccc.nsw.gov.au
 ph: 9219 7444 or 1800 043 159

Kids Helpline (24 hour and online counselling)

www.kidshelpline.com.au
 ph: 1800 551 800

LawAccess (for legal help)

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
 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
 ph: 9840 3735

NSW Ombudsman

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

Sex Workers Outreach Project (SWOP)

www.swop.org.au
 ph: 1800 622 902 or 9206 2166

Wirringa Baiya Aboriginal Women’s Legal Centre

ph: 1800 686 587 or 9569 3847

Women’s Health NSW

www.whnsw.asn.au
 ph: 9560 0866

Women’s Legal Service NSW

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 6954
Care and Protection Legal Advice Line
 ph: 8745 6908

Evening Telephone Advice Service

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

Head Office

ph: 9646 6700

Fairfield

ph: 9646 6555

Auburn

ph: 9646 6666

Liverpool

ph: 8778 2000

Blacktown

ph: 9854 7300

Coffs Harbour

ph: 6650 9195

Newcastle

ph: 4923 7193/4 (counselling)

ph: 4923 7190 (community
development)*Wagga Wagga*

ph: 6921 4403 or 6971 7640

Wollongong

ph: 9057 7380

Armidale

ph: 9057 7390

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

ph: 131 450

