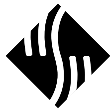

Department for Women

Heroines of Fortitude

The experiences of women in court as victims of sexual assault

REPORT

NOVEMBER 1996

Heroines of fortitude

The experiences of women in court as victims of sexual assault

Gender bias and the law project

department for women

1996

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The title of this report is derived from comments by Judge Madgwick on sentencing an accused person for sexual assault. The Judge in the hearing described the woman victim of sexual assault as a 'heroine of fortitude', saying it was 'a tribute to the human spirit that she has survived' (District Court, Wollongong, unreported, 94/41/1/0177).

Message from the Minister for Women

the Hon Faye Lo Po' MP

This report carries on its cover the symbol of our legal system—the symbol of justice: a woman wearing a blindfold. And the contents under the cover reveal exactly that—justice is blind: blind to the experiences and realities of women's lives, especially women who are complainants in sexual assault proceedings.

I am proud to commend this report to you. I am also proud that this report fulfills another fundamental promise to women given by the Carr Labor Government of NSW—a promise to review existing legislative protections for victims of sexual assault.

This report is the second in a series examining the issue of gender bias and the law. The first of the series, *Women Working in the Legal Profession of NSW*, was released in 1995. A Committee has been overseeing the implementation of its recommendations for the past year.

The present report, *Heroines of Fortitude,* blends quantitative information with case studies of hearings in the District Court of NSW. I am alarmed by the bleak picture it paints of the experiences of women complainants. I am looking forward to working with both my colleague the Attorney General, the Hon Jeff Shaw QC MLC, and the newly established NSW Council on Violence Against Women to look at the changes to the criminal justice system identified as necessary by this research.

I thank everyone involved in producing this excellent report and applaud the courage of women complainants who have endured the court process.

If I may borrow from the words of eminent English barrister, Helena Kennedy, *…while the true symbol of Justice has her wearing a blindfold, I prefer the image of an all-seeing goddess….* May this document, mixed with the voices and spirit of many other women and men in government, sexual assault services, the media or the community, be the catalyst for the removal of this blindfold.

Faye Lo Po'

Faye Lo Po' MP
Minister for Fair Trading
Minister for Women

Director General's Foreword

The Department for Women (DFW) is proud to present *Heroines of Fortitude: the experiences of women in court as victims of sexual assault*. This comprehensive report reflects the work of a two year project assessing women's experiences in the criminal justice system as primary witnesses in sexual assault proceedings. The report has a particular focus on evaluating the legislative provisions which were enacted 15 years ago to protect sexual assault complainants, the majority of whom are women.

The report has been produced by a team of DFW Project Officers and is the second report to be released under the Department's *Gender Bias and the Law Program*, a comprehensive research program established in 1994 to look at the treatment of women working in the legal profession, women as litigants in the civil litigation system and women as complainants in the criminal justice system in NSW. The Program was designed to link in with other initiatives across Australia looking at the issue of women in the law.

One of only a few such studies worldwide, *Heroines of Fortitude* offers a rare insight into the criminal justice system and its treatment of women in sexual assault proceedings by drawing together all sexual assault matters in the NSW District Court over a one year period. The research uses a unique evaluative methodology to assess the effectiveness of our legislation. As such, the report provides a snapshot of women's experiences by quantifying what goes on in court and supplementing this with horrifying, astonishing, enraging and at times progressive comments made by lawyers, judges, witnesses and, of course, by the complainants themselves. The report also includes case studies to highlight particular issues. This report offers a picture of the overall court experience which, for these women, is too often revictimising and abusive.

Without this picture it is impossible to make change. For this reason I am certain that the information contained in the report will contribute to significant changes to the legal system and the legislative provisions which are at its heart. The report will contribute to the continued development of our legal system in a time when gender bias in the law is an accepted and serious issue amongst judges, the legal profession, law makers and government. This research will set the platform for working together, in collaboration and in partnership, with all who are involved or interested in the legal system to achieve one which is equitable and fair in its treatment of women.

The report will be circulated amongst members of the legal profession, the judiciary, law makers, women's groups, victims' advocates and within government for comment until

February 1997 when recommendations will be finalised and work in partnership with other agencies will begin to change the system more adequately to reflect the reality of women's lives.

If you would like to make comments on this report, and in particular, the recommendations it suggests, please address them to:

The NSW Council on Violence Against Women
Crime Prevention Division
Attorney General's Department
Level 20, Goodsell Building
8-12 Chifley Square
SYDNEY NSW 2001

For copies of this report please call DFW's Women's Information and Referral Service on 1800 817 227.

It is the culmination and quantification of all the stories of all women complainants of sexual assault, which forms the backbone of this report and this document is a tribute to the strength and resilience of these women in moving through the court process and, hopefully for most, moving on. They are, as Judge Madgwick describes, the true heroines of fortitude.

Carolyn Bloch
Director-General, Department for Women

Acknowledgements

The Department for Women (DFW) was very fortunate to have had access to various sources of data to undertake research of this quality. For this we would like to thank Bob McClelland, Jason McDonald and Patrick Shepardson of the District Court Criminal Listings Directorate, Phillip Dart, Christine Geihot and Paul Feltenham at the Office of the Director of Public Prosecutions and Judy Somogyi, Kerrie Andrews and all the Transcript Centre Supervisors around NSW who chased sound recordings of matters for DFW staff.

The research was also guided by various assistance from officers of other government agencies such as the NSW Bureau of Crime Statistics and Research and, in particular, its Director, Dr Don Weatherburn; the Judicial Commission of NSW and non-government organisations such as Dympna House who, through Lisa Hayes, assisted the research team. Acknowledgement and thanks also go to researchers from the Victorian Department for Justice, Melanie Heenan and Helen McElvie, who were of great assistance with research design and data analysis. Professor Kathy Daly from the School of Justice Administration at the University of Griffith in Queensland also provided valuable assistance.

The research was overseen by a Steering Committee of experts in this area who attended meetings, assisted with the design of the research, facilitated access to data, were on call to answer questions and read over drafts of the report. The Committee included Daphne Kok, Bob McClelland, Sandra Egger, Megan Latham, Jan Nelson, Judith Fleming, Laura Beacroft, Tania Evers and Jillian Orchiston. These people squeezed this work in amidst their already overloaded schedules.

The DFW would also like to thank the research team involved in the project: Claire Barbato, Shelagh Doyle, Gina Leotta, Kellie Rollings and Pia van de Zandt who, at one time or another, participated in collecting data, writing, analysing and putting together the report. These women dedicated much physical and emotional energy to the production of the report, which is inevitable in research of this nature. Thanks also to the various managers who have been involved in the project such as Jillian Orchiston, Nellie Hall, Dione McDonald, Marilyn Hoey, Carole Ruthchild and Melissa Gibson. Two consultants were brought in to work with DFW on this project, Jenny Bargen from the Law School at the University of NSW, as the Project Director, and Ariadne Vromen from the Social Policy Research Centre who provided advice on statistical analysis. Both women generously offered their time and expertise to this project.

NSW Department for Women

In April 1995 the NSW Government created the Department for Women (DFW), the first specific government department in Australia aimed at addressing women's issues. The DFW works in close cooperation with other government departments, advises the Minister for Women on a diverse range of policy issues affecting women and provides information to women through the Women's Info-Fax (WIF) and the Women's Information and Referral Service (WIRS).

The DFW also provides support for the newly established Premier's Council for Women, 12 women experts in a range of areas.

The DFW has built on past initiatives to continue with the *Gender Bias and the Law Program.* This Program is a comprehensive research program forming part of the DFW's commitment to identifying issues for women in NSW and contributing to productive outcomes for women in all sectors and areas of their lives. The Program investigates whether the legal system in NSW relies on and perpetuates myths and stereotypes about the social and economic realities of women's lives. As part of the *Gender Bias and the Law Program* the DFW is undertaking three research projects. The projects cover these areas:

- women working in the legal profession of NSW, released March 1995;
- women as civil litigants, still to be released;
- women as victims in the criminal justice system.

This report represents the culmination of research looking at women as victims in the criminal justice system.

For information about these projects and publications call the DFW's Women's Information and Referral Service on 1 800 817 227 or TTY 1800 673 304.

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Executive Summary

Study Aims and Methodology

The broad objective of the project was to determine how victims of sexual assault are treated in their role as witnesses in the criminal justice process. The project specifically sets out to examine the effectiveness of legislative provisions to protect the rights of victims/witnesses in sexual assault proceedings.

The study focused on the conduct of sexual assault hearings which included trial and sentence hearings. The study also included data showing conviction rates and imprisonment rates for sexual assault offences.

The research studied **all sound recorded** sexual assault hearings in the District Court of NSW over a one year period[1] where the accused was charged with sexual assault[2] and where the victim was an adult female[3].

This provided a sample for the study of 150 hearings: 77 trials (where the accused pleaded not guilty) and 39 sentence hearings (where the accused pleaded guilty) and 34 hearings which were trial and sentence hearings (where the accused pleaded not guilty but was found guilty by either a judge or jury). In total then the study examined 111 trials and 73 sentence matters.

The data for the study was collected from three sources:

- District Court Justice Information System (JIS);[4]
- Office of the Director of Public Prosecutions (DPP) files;
- sound recordings of sexual assault proceedings.

The research used a coding booklet to collect information. The booklet was originally designed by the Victorian Law Reform Commission (VLRC) and was modified for use by the Department for Women (DFW) in the NSW jurisdiction. The study collected both quantitative and qualitative information. The report relies on statistical information but includes case studies and quotes from Judges, complainants and counsel for the Prosecution and Defence.

---

1 Between 1 May 1994 and 30 April 1995.

2 Sections 61I, J and K (current legislation) and section 61B, C and D (under 1981 legislation amended in 1989) of the *Crimes Act* 1900 NSW.

3 Defined for the purposes of this research only as over 16 years of age at time of the offence.

4 A computer database of the hearings proceeding to the District Court managed by the Criminal Registry Listings Directorate of the District Court.

PROFILE OF HEARINGS

The median age of accused persons in the study was 30 years and over half of the accused lived in the Sydney region. Of accused persons, 44% were employed and a high proportion were Australian born.

The research found a high proportion of accused persons came from Aboriginal communities and the study concluded that Aboriginal men were over-represented as accused persons in sexual assault hearings.

The median age of complainants in the study was 24.5 years and three quarters of complainants were Australian born. Complainants from ethnic communities were under-represented in sexual assault proceedings representing only 5% of complainants in hearings studied by the research. The study found that women with disabilities comprised 9% of complainants.

Of significant concern was the finding that women from Aboriginal communities were over-represented as complainants in sexual assault hearings, comprising 11% of complainants in the study population and making Aboriginal women ten times more likely to be complainants in sexual assault matters in the District Court than non-Aboriginal women.

In 63% of cases in the study, initial contact between the accused person and the complainant was made at a private home and in 78% of cases this contact was not forced. Similarly, sexual assault offences occurred most often (72%) in a private home, and this was more likely to be the home of the complainant.

In the vast majority of cases in the study (90%) the complainant knew the accused. Only 10% of cases involved an accused and complainant who were strangers. Furthermore, in 27% of cases there was some evidence of prior consenting sex between the complainant and the accused.

The study found that in 49% of cases the complainant first told a friend or acquaintance about the assault and the majority of complainants (83%) told somebody about the sexual assault within five hours of it occurring. In relation to reporting to the police, half of all complainants reported the sexual assault to police within five hours of it occurring with over one third of complainants contacting the police within one hour.

Pleas and outcomes of charges

The results of the research were examined by looking at **principal offences** (150) and their outcomes in the hearings and also by looking at the **total number of offences** (310) and outcomes for these offences.

Of the 150 hearings, 39 resulted in a guilty plea (26%). Of the 111 trials (in which the accused pleaded not guilty), 34 resulted in a conviction (31%).

In 59% of hearings, section 61I of the *Crimes Act* 1900 NSW (sexual intercourse without consent) was the principal offence charged, while 19% of principal offences were charged under section 61J(1) of the *Crimes Act* 1900 NSW (aggravated sexual intercourse without consent).

In examining the data and looking at **total number of offences** with which accused persons in the research were charged, the study found that overall a plea of guilty was entered for 22% of charges. Almost half (49%) of the total number of sexual assault offences examined by the research resulted in a verdict of not guilty.

Many accused persons were charged with ancillary offences arising out of the same incident. Of the 115 ancillary charges in the sample, 39% of charges were offences of assault and other personal violence offences, while 28% of charges were indecent assault offences.

Committals

In two thirds (64%) of cases there was a paper committal.

Complainants were present at only 17% of committal proceedings and the Defence made an application to cross-examine the complainant in just over one quarter of cases (28%). This application was successful in only 26% of these hearings. Overall the study shows that women complainants were cross-examined in only 7% of the cases.

The study concluded that section 48EA of the *Justices Act* 1902 NSW was working well to limit the cross-examination of the complainant.

Aboriginal women

The research showed that Aboriginal women were ten times more likely to be complainants in sexual assault hearings in the District Court than non-Aboriginal women. It found that

Aboriginal women have particular needs in the court room and trial process which differ from those of non-Aboriginal women.

Questions about alcohol, victims compensation and promiscuity are regularly asked in relation to the credit of Aboriginal women. Myths and stereotypes of Aboriginal women as unsophisticated, vengeful and morally corrupt are also evident in the court room. The study also found that language barriers and the use of jargon present particular difficulties for Aboriginal women.

Aboriginal women experience shame in giving evidence about the essential elements of the offence such as when they are compelled to talk about their sexual organs. Aboriginal women seemed to experience greater distress during the court process than non-Aboriginal women.

The study documented instances in which a cultural defence argument was raised by Defence counsel in cross-examining complainants from Aboriginal communities about the perceived prevalence of casual sex or personal violence in Aboriginal communities.

In court

Sexual assault trials lasted on average four days and more than half of all trials (56%) were heard in an open court. Of trials which were closed for part or whole of the proceedings, one in ten (10%) were closed for the entire proceedings, 17% were closed for the evidence-in-chief and cross-examination and 7% were closed for the cross-examination of the complainant only. The study also found that some judges took into account irrelevant matters when deciding about whether to close the court. Support persons were normally allowed to remain in the court room with the complainant despite the court closure.

Non-publication orders were granted in 57% of trials, representing all the trials in which an application for a non-publication order was made.

Complainants gave evidence-in-chief on average for about one hour. Complainants were cross-examined on average for about two hours and re-examined for about six minutes on average.

In 65% of trials there were, on average, two interruptions to evidence because of the distress suffered by complainants. This occurred more often for complainants with disabilities and complainants from Aboriginal communities.

Almost every complainant was asked questions about her own sexual organs or the sexual body parts of the accused person, with complainants being asked 16 questions on average about contact with their sexual organs or the accused's sexual organs.

The court rarely provided for alternate mechanisms for the complainant to give evidence even when it was clear that the complainant could not give meaningful evidence because of her disability or language difficulties.

Many accused persons (50%) gave their evidence by way of an unsworn statement (dock statement), a procedure which has since been abolished. The Judge almost always commented on the evidence given by the accused person, whether sworn or unsworn, in his or her summing up. In 85% of trials in which a dock statement was given, the statement was re-read in full to the jury in summing up.

Recommendation 1

That the Witness Taskforce established by the Attorney General:

- **promote the use of section 29(2) of the *Evidence Act* 1995 NSW amongst judicial officers and Prosecution Counsel to allow the complainant to deliver her evidence in narrative form;**
- **develop and encourage alternative mechanisms by which complainants may give their evidence such as through the production of written statements, closed circuit television and computer technology;**
- **examine the provision of amplifiers for all courtrooms throughout NSW to provide ready access for complainants when giving evidence should their audibility be an issue.**

Recommendation 2

In preparing a complainant for court, that complainants be informed by witness assistance officers, court support workers, counsellors, DPP solicitors or Crown Prosecutors of:

- **their entitlement to request breaks during giving evidence;**
- **the requirement, for the purposes of establishing the elements of the offence, to recount in precise detail the sexual assault including the explicit and detailed parts of the act of sexual intercourse and sexual penetration;**
- **their entitlement to request the Crown Prosecutor to make an application to close the court to protect them from undue distress or embarrassment;**

- their entitlement to request the Crown Prosecutor to make an application to have a support person present despite court closure.

Recommendation 3

That the Judicial Commission of NSW provide education to judicial officers which refers to:

- gender issues and gender biased conduct and also looks at experiences of a diversity of women with emphasis on women from Aboriginal and ethnic communities and women with disabilities;
- the need for sensitivity, privacy and the importance of a support person in sexual assault trials to reduce the trauma and difficulties experienced by complainants in sexual assault matters;
- appropriate language and behaviour of Judges which will assist in eliminating gender bias in the courtroom;
- their responsibility as Judges to manage the courtroom and intervene where legal counsel engage in gender biased conduct;
- relevant legislation in sexual assault proceedings and the spirit and intention of such legislation.

Recommendation 4

That NSW Law Schools, the NSW Bar Association and the NSW Law Society include information and research material in professional responsibility, clinical and skills training courses as well as other substantive law courses to make students and lawyers aware of the subtle and overt manifestations of gender bias directed towards complainants.

Recommendation 5

That the Attorney General make legislative change to effect the following:

- that the judicial discretion to close the court in sexual assault proceedings be removed;
- that if the court is closed a support person be always exempted from this order to be available to support the complainant throughout the court process;
- that where in any sexual assault proceedings in the District Court of NSW the complainant gives evidence using alternative mechanisms such as those listed

above, the Judge be required to instruct the jury that the procedure is a routine practice of the Court and that they should not draw any inference as to the defendant's guilt from the use of the procedure.

Credibility

Complainants in the study were discredited and attacked during cross-examination by questions and themes which are biased in their nature and relied on stereotyped views of appropriate behaviour of women complainants of sexual assault.

Half the complainants (52%) in the study were accused of making false reports based on ulterior motives such as vengeance, applications in Family Court proceedings and excuses for adultery.

One of the most common motives about which complainants were questioned related to applications for victims compensation with one third of complainants (32%) being questioned about this.

In one half of trials (57%) the complainant was questioned about behaving in a sexually provocative way. One half of women (59%) were questioned about drinking on the day of the offence. 42% of complainants were asked about the way they were dressed at the time of the offence in cross-examination and 22% of women were cross-examined about their responsibility for the offence.

Just under half of all complainants (43%) were asked about why they were in the location where contact with the accused was made. Almost all complainants were cross-examined about lying (82%). One third of complainants (37%) were cross-examined about their resistance to the sexual assault and over two thirds of complainants were questioned about lack of resistance to the sexual assault.

Recommendation 6

That the NSW Judicial Commission should take an active role in promoting judicial discussion and education in relation to the conduct and control of cross-examination.

Recommendation 7

That the Chief Judge of the District Court strongly encourage Judges to utilise the provisions of the *Evidence Act* 1995 NSW and the Bar Association Rules to limit questions

that are insulting, degrading, humiliating or irrelevant during the cross-examination of the complainant.

Recommendation 8

That the Senior Crown Prosecutor encourage Prosecutors to utilise the provisions of the *Evidence Act* 1995 NSW and the Bar Association Rules to limit questions that are insulting, degrading, humiliating or irrelevant during the cross-examination of the complainant.

Recommendation 9

That the Witness Taskforce established by the Attorney General in conjunction with the Public Defenders Office investigate formalising a Defence opening address to the court explaining to the complainant and the jury the role of Defence counsel.

Corroboration

The research showed that the old-style corroboration warning (words to the effect of 'dangerous to convict on the complainant's evidence alone') was given to the jury by Judges in 40% of trials.

The study found that the new-style corroboration warning ('scrutinise her evidence with great care' or 'assess/evaluate her evidence in light of common human experience') was given to the jury in 59% of trials.

In 19 cases in the study the judge gave both styles of warnings. It was uncommon for the Judge to give no warning of any sort—this occurred in only 14 cases.

The research documented examples of where corroboration warnings were still given by the Judge despite the complainant's extensive injuries being admitted into evidence. Warnings were more likely to be given when the relationship between the accused and the complainant was one of acquaintance, friend, family member or associate.

Recommendation 10

That the Attorney General amend section 164 of the *Evidence Act* 1995 NSW to incorporate a provision similar to section 61(1) of the Victorian legislation stating that the Judge must not warn or suggest to the jury in any way that the law regards

complainants in sexual assualt cases as an unreliable class of witnesses and in this way enact the principles advocated in the High Court case of *Longman*.

Complaint

The study found that complainants took longer to report the sexual assault to police when the accused was known to the complainant.

In 84% of trials evidence of recent complaint was introduced by the Prosecution. This evidence was most likely to be introduced by the Prosecution when the complainant made an early complaint.

Despite the findings that one third of women complainants reported the sexual assault to police within one hour of it occurring and half of women complainants told police about the sexual assault within five hours of it occurring, in 59% of trials the Defence raised the issue of delay in complaint in cross-examination of the complainant. More specifically the study found that the Defence raised the issue of delay in complaint in half of trials in which the offence was reported to someone within five hours.

Delay in complaint was raised in 80% of cases where the complainant and the accused were associates. However the issue of delay in complaint was not raised in any trials where the complainant first reported the complaint to a stranger.

The study found that Judges gave the mandatory directions about delay in complaint to the jury in only half of all trials which, by law, required it. Common law warnings about the fact that delay in complaint could be used to undermine the credibility of the complainant were still given by Judges in 39% of trials. Judges gave both the old common law warning and the section 405B direction to the jury in 41% of trials.

Recommendation 11

That the Attorney General review the law of complaint and the purpose for its admissibility with a view to clarifying the procedure for dealing with the issue of complaint when raised in a sexual assault matter.

Recommendation 12

That section 405B be retained in the *Crimes Act* 1900 NSW and be supported by judicial education about the difficulties in and barriers to reporting sexual assault for

complainants in light of the notion of 'earliest reasonable opportunity' to make a complaint.

SEXUAL REPUTATION AND SEXUAL EXPERIENCE

Despite legislation ruling evidence of sexual reputation completely inadmissible (section 409B(2) of the *Crimes Act* 1900 NSW), evidence of the complainant's sexual reputation was raised in 12% of trials in the present research. This evidence related to the complainant's general promiscuity, allegations of lesbianism, or the complainant's virginity.

In the 111 trials studied in the research, sexual experience material was raised in 95 instances by the Crown and Defence. In some trials there were multiple instances of material concerning the prior sexual experience of the complainant.

Material relating to sexual experience of the complainant was admitted into evidence in 84% of the instances in which it was raised. The material was most commonly admitted (in 35% of instances) without prior application being made in the absence of the jury (known as *a voir dire*), without challenge by either counsel and without justification by the Judge. The other methods by which this material was admitted were through the limited exceptions or 'gates' which are described in section 409B(3) of the *Crimes Act* 1900 NSW.

RECOMMENDATION 13

That the Attorney General amend the *Crimes Act* 1900 NSW to specifically define 'sexual reputation'.

RECOMMENDATION 14

That the Judicial Commission of NSW provide education to judicial officers which includes information and discussion about how to distinguish between sexual reputation and sexual experience.

RECOMMENDATION 15

That the Judicial Commission of NSW through the *District Court Criminal Trials Bench Book* provide guidance about how to apply the tests for admissibility of evidence and interpret the types of evidence which will fall within the gates specified by section 409B(3) of the *Crimes Act* 1900 NSW.

Directed verdicts

Directed verdicts of acquittal represented 8% of the total number of offences (26 out of 310) in the study.

Recommendation 16

That the Attorney General consider the analysis of directed verdicts of acquittal in sexual assault matters contained in this report when considering the proposals contained in the NSW Law Reform Commission's *Directed Verdicts Discussion Paper*.

Sentencing

Of the 150 hearings which were studied by the research, 73 were sentence hearings by way of a guilty plea or a guilty verdict. Of the 39 accused persons who pleaded guilty, 14 pleaded guilty at Sentence Indication.

The research found that Victim Impact Statements were presented to the court in 36% of all sentence hearings and were most often prepared by a psychologist, social worker or sexual assault counsellor.

Pre-Sentence Reports on offenders were prepared in 40% of cases in the current study and were either written by the NSW Probation and Parole Service or by private psychologists or psychiatrists.

The offender's early plea of guilty was almost always looked upon favourably by the Judge and hence brought a sentence reduction for the offender in 34 out of the 39 sentence hearings.

In the current study remarks made by Judges indicated that drug use or intoxication often mitigated sentences for sexual assault offenders.

Most offenders were sentenced to imprisonment with a prison term accounting for 80% of all sentences for sexual assault offences in the study. No offender in the present research received the maximum penalty.

Where the offender received a fixed prison term the duration of the sentence ranged between two months and five years. Minimum/additional terms ranged from six months to nine years for minimum sentences and from five months to three years and six months for additional sentences.

Alternatives to imprisonment included periodic detention for ten offenders and community service orders for two offenders in the study.

Recommendation 17

That the Attorney General await the outcome of the NSW Law Reform Commission's final report on Sentencing prior to enacting a statutory right for victims to present a Victim Impact Statement at sentencing hearings.

Recommendation 18

That the Judicial Commission of NSW include information about the impact of sexual assault on victims and the range of effects of such an assault in education of judicial officers about gender issues.

Introduction

Background

Gender bias in the legal system is currently the subject of much interest, not just within the profession itself, but also among women's groups, lawyers and judges, the media and government. This interest stems in part from the recent release of a number of reports about the issue[1]. These reports identify that gender bias is systemic and inherent within the legal system and describe gender bias as using myths and stereotypes about the economic and social realities of women's lives. Gender bias against women in the legal system not only devalues women's experiences of their world; it also limits women's access to justice.

Professor Kathleen Mahoney defines gender bias as systemic discrimination, saying:

> *To begin to deal with it, one must realise that every decision-maker who walks into a court room to hear a case is armed not only with the relevant legal texts, but with a set of gender and race-based values, experiences and assumptions that are thoroughly embedded, some of which adversely impact and discriminate against women. To the extent that judges labour under certain biased attitudes, myths and misconceptions about women and men, the law can be said to be characterised by gender bias.*[2]

It seems then that as sexual assault is a crime of gender, the fact that the state calls sexual assault a crime means that undertaking studies of the state's treatment of sexual assault, opens an inquiry into the state's position on the status of the sexes.[3] For this reason no inquiry into the issue of women in the legal system is complete without looking at the way in which women as complainants of sexual assault are treated in court.

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1 In January 1994 the ALRC released a two part report entitled *Equality Before the Law: Justice for Women* (Part I) and *Equality Before the Law: Women's Equality* (Part II). In May 1994 the Senate Standing Committee on Legal and Constitutional Affairs released *Gender Bias in the Judiciary*.

2 Professor K Mahoney 'Gender Bias in Judicial Decisions' lecture at the Supreme Court of Western Australia, Perth, 14 August 1992, quoted in *Gender Bias in the Judiciary,* Report by the Senate Standing Committee on Legal and Constitutional Affairs, May 1994 p71

3 CA MacKinnon, *Towards a Feminist Theory of the State*, Harvard University Press, Cambridge USA, 1989.

A history of sexual assault law reform in Australia

Australia's first acknowledgement of the need to address sexual assault law followed a tide of international legal reform in the 1970s which addressed issues relating to women such as rape, abortion and domestic violence. By the end of the 1980s, most Australian states and territories had addressed sexual assault law by focusing on terminology, definitions, grades of offences, issues of consent, laws of evidence, rape in marriage and age of criminal responsibility.

Along with these amendments to substantive law, governments addressed procedural reform and began to provide resources to complainants, such as victim support and counselling services and also initiated police training in sexual assault matters.[4]

However, Australian sexual assault law reform has been scattered and disjointed. Practices, policies and laws vary across jurisdictions. Women's groups argue that despite legislative amendments, true reform can never be achieved until gender bias is eradicated in the law.

The major reforms to sexual assault law are summarised below. Each chapter of this report details the histories and reforms made to those particular areas of the law and court procedure.

Crimes (Sexual Assault) Amendment Act 1981 NSW

- criminalised rape in marriage
- introduced four categories of graded sexual assault offences to reflect the violent nature of sexual assault
- introduced broad definition of sexual intercourse (included oral sex, self-manipulation)
- introduced laws of evidence to prevent evidence of previous sexual experience and sexual reputation being adduced

Crimes (Amendment) Act 1989 NSW

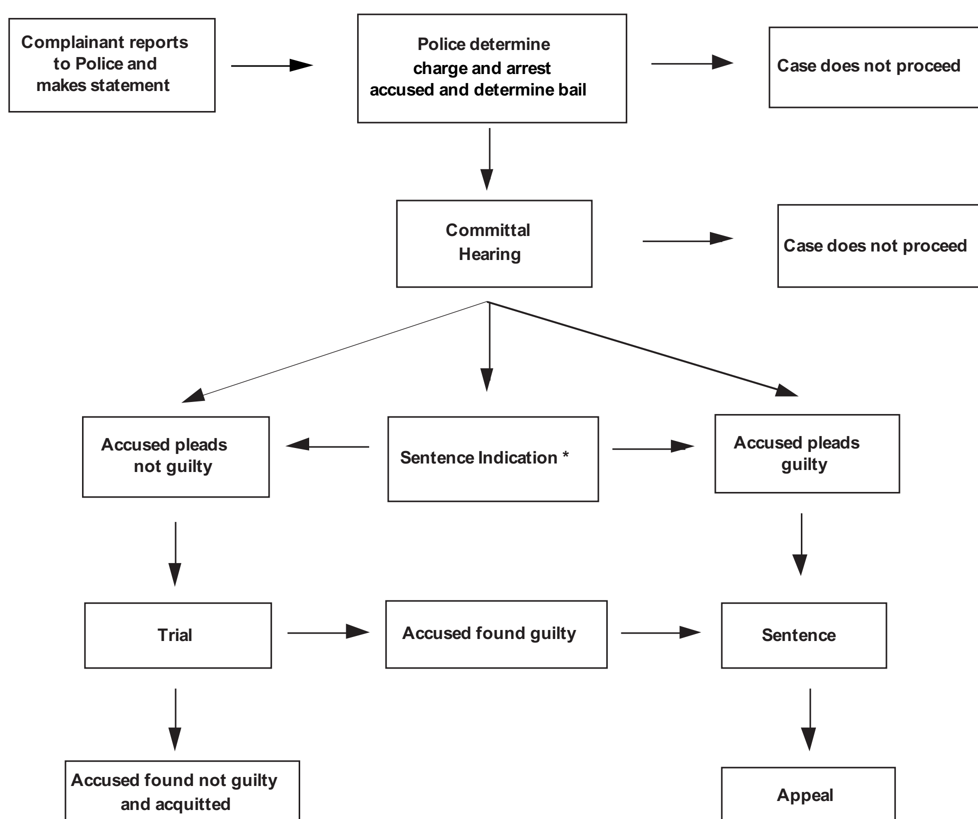
- amended four categories of graded sexual assault offences to offences of sexual assault, aggravated sexual assault and assault occassioning actual bodily harm with intent to have sexual intercourse

4 J Bargen and E Fishwick, *Sexual Assault Law Reform: A National Perspective*, Office of the Status of Women, Canberra, 1995.

The subject of this research is the effectiveness of these reforms as well as a number of other procedural changes that have been made over the last 15 years to the operation of the courts in NSW.

An explanation of the legal process

Figure 1 Flow chart of the criminal justice process



* The Sentence Indication Scheme has now been abolished in NSW.

After a sexual assault, the legal process commences when the complainant reports the incident to police. The police will then obtain a statement from the complainant in which she outlines the series of events leading immediately up to, including and after the offence in as much detail as possible. Based on the information given in this statement, the nature of the alleged offence, other evidence obtainable such as evidence of injuries or damage and medical or forensic evidence, the police will charge the accused.

If the case proceeds, the defendant is interviewed about the incident and charged with one or more sexual assault charges and sometimes also with ancillary charges such as assault, break and enter or property damage. The decision as to what charge to lay in the first instance is primarily up to police discretion, based on the circumstances of the offence, the legal construction of these circumstances and the weight of the victim's evidence and other evidence. The defendant is then detained or granted bail and the police refer the matter to the Office of the Director of Public Prosecutions (DPP) where a prosecution case is prepared.

If the sexual assault is considered by the police to be an indictable offence, the accused will then appear before a Magistrate for a Local Court Committal hearing. At this point the accused may enter a plea of guilty or not guilty. The complainant usually does not have to attend or give evidence at the committal unless the Defence successfully argues that they be allowed to examine her to test her evidence. Under some circumstances this is permitted by the Magistrate, but is heavily restricted under section 48EA of the *Crimes Act* 1900 NSW.

If the defendant pleads guilty, the Magistrate refers him to the District Court for sentence. If he pleads not guilty or enters no plea, the Magistrate then determines, on the brief of evidence before him or her, whether the matter should proceed to trial in the District Court by assessing whether a jury would reasonably be likely to convict the accused.

After committal, the accused may opt for a Sentence Indication hearing before entering a plea, or at any time after entering a plea of not guilty, to determine the likely sentence that would be imposed based on the evidence available and mitigating factors. The Sentencing Indication Scheme was in operation during the research sample but has now been abolished.

Should the matter proceed to trial, the accused person is formally charged before the court (arraigned) and the trial begins by the empanelling of the jury made up of 12 members of the community. Sometimes the accused person can elect to have the Judge hear the trial alone without a jury. This is quite rare.

The Crown case then begins with the Crown Prosecutor giving an opening address. The Crown Prosecutor then begins calling evidence for the Crown case. This often begins with the complainant giving evidence-in-chief, as the primary witness, before the Judge and most often a jury. This evidence is based on the details provided to police in her statement. She is then cross-examined by Defence counsel. Once all the evidence in the Crown case has been given the Defence begins to present their case. Until June 1994 the accused was

able to give his evidence by way of an unsworn statement from the dock about his involvement in the incident. This was known as a dock statement but has since been abolished for all people arrested after 10 June 1994. The accused can decline to give evidence or elect to give sworn evidence and be cross-examined by the Prosecutor.

Sometimes during a trial the Defence and Prosecution counsel will have legal arguments. These are most often conducted in the absence of the jury. Sometimes evidence of witnesses that is the subject of legal argument will be tested first before the Judge in the absence of the jury. This is known as a *voir dire*, meaning trial within a trial.

After all the evidence is heard, the Judge instructs the jury on matters of the law in a summing up. At this time he or she explains the role of the jury, gives warnings based on legal concepts such as corroboration and complaint, and summarises the evidence. The jury are permitted to ask questions or rehear any of the evidence presented during the course of the trial.

The jury then retires to consider its verdict. If the accused is found not guilty of the charges, he is acquitted. If he is found guilty, he proceeds to a sentence hearing in the District Court.

This hearing is usually conducted by the same Judge. The complainant may, on application by the Prosecution, tender a Victim Impact Statement describing the psychological, physical and emotional effects of the sexual assault upon her. These reports are usually prepared by psychologists, social workers, doctors or sexual assault counsellors. At the sentence hearing the accused may also tender reports from psychiatrists, doctors or from the Probation and Parole Service. These are commonly known as Pre-Sentence Reports. The accused person is then sentenced by the Judge.

The complainant is also entitled to Victims Compensation through the Victims Compensation Tribunal (VCT). She can apply for compensation at any time after the alleged sexual assault and entitlement to compensation does not depend necessarily on the accused person's conviction.

Women as victims of sexual assault in court

Personal factors for the woman determine whether she wants the case to proceed. Post traumatic symptoms—including low self-esteem and self-blame, shame and the desire to

withdraw from the ugliness of the assault—and external factors—such as lack of support from family and social networks—influence the woman's decision to report to the police. These factors are exacerbated where the woman is assaulted by her partner. She may also be concerned about children, financial dependency and fear of retaliation if she proceeds.

The barriers faced by women to prove the sexual assault against them often seem insurmountable. Sexual assault involves the violation of the woman's body, but where there is no medical evidence there is often no proof of the crime. These assaults often occur in private—usually in the home and away from independent witnesses.

Women complainants are most often the primary witnesses in the matter. Despite the fact that they may not remember every detail clearly, or may not want to remember, they are required to give accurate, factual evidence devoid of emotion. They are subject to cross-examination by the Defence and are accused of lying, provoking the assault or wanting financial compensation.

The effects of these barriers demonstrate why sexual assault is one of the most under-reported crimes. According to the Australian Bureau of Statistics (ABS) 1994 *Crime and Safety Survey*, just 25% of the respondents who stated that they had been victims of sexual assault in the preceding 12 months had reported their case to the police.[5] Even fewer cases end up in court.

Furthermore the women who come before the court as primary witnesses or complainants in sexual assault matters are from diverse groups. These women are members of ethnic communities, sex workers, Aboriginal women, women with disabilities and lesbians. These women are mothers, married women, single women and women living in cities and in rural or isolated communities. These women have differing values, attitudes and needs, all of which play upon their experience of sexual assault and the court system.

Women from Aboriginal communities

It is essential when assessing sexual assault in Aboriginal communities to consider the social and cultural context of Aboriginal oppression. The history of the treatment of people

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5 Australian Bureau of Statistics, 'NSW Crime and Safety Survey 1994', cited in A Edwards *Criminal Justice Response to Sexual Assault Victims*, NSW Bureau of Crime Statistics and Research, 1996.

from Aboriginal communities and the biases that still exist mean that Aboriginal women often face double discrimination in the criminal justice system.[6] They are subject to stereotypes of women and Aborigines which can be degrading and false. These issues are detailed in the chapter titled *Women from Aboriginal Communities*.

Women with disabilities[7]

The incidence of sexual assault of people with disabilities is estimated to be at least four times higher than that in the population who do not have disabilities[8]. Some researchers claim that between 50 and 99% of all girls and women with intellectual disabilities will be sexually assaulted.[9]

Despite these high estimates, research also indicates that women with disabilities—whether physical, psychiatric, or intellectual—largely do not report acts of sexual violence against them. A contributing factor may be that women with disabilities are more likely to know their abuser than non-disabled women.[10]

Apart from the myriad of usual barriers facing women and the traditional taboos against discussing sexual abuse, women with disabilities often face additional hurdles, including destructive and false stereotypes about people living with disabilities, lack of credibility, lack of knowledge regarding their sexuality, the inaccessibility of information regarding sexual assault and problems accessing appropriate services.[11]

For deaf and hearing-impaired women, English is rarely their first language. Limited access to the mainstream media means that they are often excluded from community education

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6 Standing Committee on Social Issues *Sexual Violence: Addressing the Crime* Part II No. 9, Sydney April 1996; As part of its Justice Statement in 1995 the then Federal Government established Women's Legal Centres in each state and territory in Australia with funding for an Aboriginal Legal Worker for each of the centres and a coordinating position. Furthermore the NSW Attorney General's Department in 1995 funded the establishment of a NSW Aboriginal Women's Legal and Advocacy Service with a grant of $100,000 with continued funding of $200,000 per annum thereafter. This service is well underway and in addition to providing information, conducts legal education for workers in Aboriginal communities and runs a 008 legal advice line.

7 Information on women with disabilities and hearing-impaired women is discussed in greater detail in *Reclaiming Our Rights: Access to Existing Police, Legal and Support Services for Women with Disabilities or who are Deaf or Hearing Impaired who are subject to violence,* Department for Women, 1996.

8 M Muccigrosso, 'Sexual Abuse Prevention Strategies and Programs for Persons with Developmental Disabilities', *Sexuality and Disability*, Vol. 9, No. 3, 1991, 261-271.

9 For example, M Crossmaker, 'Behind Locked Doors—Institutional Sexual Abuse' *Sexuality and Disability,* Vol. 9, No. 3, 1991, 201-219.

10 Ryerson states that 99% of reported incidents of sexual assault against women with disabilities are perpetrated by someone known to the victim: E Ryerson, 'Sexual Abuse and Self Protection Education for Developmentally Disabled Youth: A Priority Need', *SIECUS Report,* Vol 31(1), September 1984, 6-7.

11 D Aiello, 'Issues and Concerns Confronting Disabled Adult Victims: Strategies for Treatment and Prevention', *Sexuality and Disability*, Vol. 7, No. 3/4, 1986, 96-101

about sexual assault and domestic violence. Therefore, women with communication difficulties remain unaware of their rights regarding their sexuality, uneducated about what constitutes abusive behaviour and how to report it.

Women from ethnic communities and immigrant women

Immigrant women and women from ethnic communities are a significant part of Australia's population. Indeed more than one million adult women in Australia today were born in more than 100 ethnic communities countries and among them speak more than 80 languages.[12] Garrett in 1992 noted that:

> *Whilst the prevalence of sexual assault/rape has only been recently recognised in Australia, there is little evidence that this recognition has flowed through to non-English immigrants. Certainly, existing statistics indicate that immigrants of ethnic communities are not equally represented in the client population of sexual assault/rape services.*[13]

NSW Health Department statistics show that, of the number of clients seen at sexual assault services across the state, 14.1% in 1992-93 and 14.2% in 1993-94 spoke a language other than English at home.[14]

Evidence suggests that women from ethnic communities are more vulnerable to sexual violence and less able to seek legal redress because of cultural differences, social isolation, poverty, minimal understanding or knowledge of Australian laws, lack of English skills, fear of racism, and a general distrust of the justice system. Many studies have highlighted the immigration problems that women from ethnic communities face in a new and alien environment which is exacerbated by their lack of knowledge about the systems and services available to them.[15]

Several studies have commented on the difficulties of determining the incidence of sexual violence in non-English speaking background communities and have noted that the

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12 P Garrett, 'Monocultural to Multicultural: Issues of Service Equity for Immigrants' in J Breckenridge and M Carmody, *Crimes of Violence: Australian Responses to Rape and Child Sexual Assault*, Allen and Unwin, North Sydney, 1992, p.196

13 ibid. page 196

14 *Victims of Sexual Assault: 199293 – 1993/94 Initial Contact at NSW Sexual Assault Services*, Women's Health Unit, NSW Health Department, March 1995 p.34

15 For example, *Equality Before the Law: Justice for Women*, Report No.69 Part 1, Law Reform Commission, 1994, p 213–235; *Quarter Way to Equal: A Report on Barriers to Access to Legal Services for Migrant Women*, Women's Legal Resources Centre, June 1994.

prevalence of sexual assault amongst immigrant women is particularly difficult to research.[16] These studies concluded that existing statistics are likely to underestimate the actual incidence of sexual assault amongst non-English speaking background women.[17] These women often do not report sexual assault, and where a report occurs, these women are often misunderstood by police, Crown Prosecutors, Magistrates and Judges.[18]

LESBIANS

Lesbians who appear in court as complainants in sexual assault matters are subject to social and cultural phobias about their sexuality as well as stereotypical attitudes towards their womanhood, or perceived lack thereof.[19]

Because sexual assault is so often a crime perpetrated by men, lesbians who are assaulted by other women are subject to disbelief, and it is assumed that the assault is 'not as bad'. It is also assumed that injuries and damages will be minor when perpetrated by a woman, and therefore of less consequence to the victim.

SEX WORKERS

Sex workers who report sexual assault are, theoretically, afforded the same legislative protection as all other women. However, sex workers are met with stereotypes about their morality, their lack of ethical standards and assumptions that they are emotionally detached where sex work is involved. Therefore, it is commonly believed that sexual assault would not be harmful for sex workers. The misconception that paid sex work is not work, but a habit to indulge in, falsely implies that sex workers are always consenting to sex and therefore cannot be sexually assaulted.[20]

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16 See Standing Committee on Social Issues (1996) op.cit.; *Quarter Way to Equal: A Report on Barriers to Access to Legal Services for Migrant Women*, Women's Legal Resource Centre, June 1994; and Sexual Assault Committee, *NSW Sexual Assault Phone-in Report*, NSW, August 1993.

17 See Standing Committee on Social Issues, (1996) op. cit.; J Alwashewa 'Sexual Assault and non-English Speaking Background Women' in *Not the Same: conference proceedings and a strategy on domestic violence and sexual assault for non-English speaking background women*, Melbourne 1996; and Sexual Assault Committee op.cit.

18 See M Gonzalez, 'NESB (Non English Speaking Background) Women and the Criminal Justice System: Justice or Just a Token?' *Australian Feminist Law Journal,* 1994 Volume 2.

19 G Mason, Violence Against Lesbians and Gay Men, *Violence*, Institute of Criminology, 1993, Canberra, p. 1.

20 Standing Committee on Social Issues op.cit. pp. 298-301.

Women as victims of child sexual assault

Child sexual assault can begin at any age and include a wide range of behaviours. The Women's Research Centre in Canada adapts the definition to encompass incest as well as sexual assault of a child by any person in a position of power and influence over the child:

> *…any manual, oral or genital sexual contact or other explicit sexual behaviour that an older person imposes on a child, who is unable to alter or understand the abuser's behaviour because of her powerlessness in the family and/or in society.*[21]

While the current research does not address child sexual assault, it is important to acknowledge the number of women coming forward to report sexual assaults which they experienced as children.

Like other victims of sexual assault, these women face enormous barriers. Because years have often lapsed since the abuse, women survivors of child sexual assault are berated in court about delay in complaint and their ability to recall minute details of the assault; and face additional difficulties because of lack of corroboration and lack of medical evidence. Many survivors believe that arguments about mitigating circumstances for the abuser are given greater credence in child sexual assault matters because of the fact that child sexual assault is regarded as an aberration or a momentary weakness. Furthermore, therapy used by women to help them cope with the resurgent memories of their child sexual abuse is frowned upon by the court as a tool for exaggeration, vengeance and deceit.

Ironically, many women who report the sexual assault they experience as children go into the legal process believing that, as adults, they are more likely to be believed. Additionally, as incest is common amongst child sexual assault victims, reporting often destroys families. It is not surprising then, that reports of child sexual assault often occur after women have left their family unit.

Statistics are available to highlight the use of services by adult survivors of child sexual assault. For example, the Sydney Rape Crisis Centre saw 283 survivors of child sexual assault during 1993-94, representing 24% of new cases seen by the Centre that year[22]. The

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21 Women's Research Centre, *Recollecting Our Lives,* Press Gang Publishers, Vancouver, Canada 1989.

22 Evidence to NSW Parliament Standing Committee on Social Issues (by Sydney Rape Crisis Centre), March 1994, cited in Standing Committee on Social Issues op. cit. pp. 287-288.

NSW Health Department, through its Sexual Assault Centres saw 1,095 female survivors of child sexual assault during 1993-94.[23] This represents 40% of cases seen that year.

Disclosure of abuse has been further increased by slowly changing attitudes to women through a heightened awareness and intolerance of the prevalence of violence against women and children.[24]

Male sexual assault

The premise that sexual assault is a gendered crime does not mean that sexual assault does not happen to men. Men are also victims of sexual assault as both children and adults. However, as with the sexual assault of women and children, the incidence rate for male sexual assault is difficult to measure.[25] NSW Health Department figures for 1993-94 show that females outnumber males 13:1 as clients of sexual assault services.[26]

Like women, men are often reluctant to report sexual assault. As well as having similar concerns to women, such as fear of reprisals and disbelief, they face additional barriers. Sexual assault is inherently a crime where one person displays their control, or power, over another. One striking similarity between men and women victims of sexual assault is that the perpetrator usually is male.[27] Men who are sexually assaulted often feel that they are weak or vulnerable and that their masculinity has been challenged. Male victims of sexual assault may also fear that they will become homosexual, or that others will label them homosexual.

The law has been slow to accept that men can be sexually assaulted. The offence of male rape was not legally acknowledged until 1981. This has led to male sexual assault being recognised as a serious health and legal issue, with several sexual assault centres receiving funding for counsellors to work with male clients.[28] The NSW Women's Health and Sexual Assault Training and Education Unit recently produced a booklet on male sexual assault and Eastern and Central Area Health Service funded a directory of services for male victims

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23 NSW Health Department (1995) op.cit. p. 48.

24 WISN Submission, p. 14.

25 The National Youth Affairs Research Scheme is funding a national research project to measure the incidence of male sexual assault. This research is being conducted by Queensland University of Technology.

26 NSW Health Department (1995) op.cit.

27 See Australian Bureau of Statistics, 'NSW Crime and Safety Survey 1994' victimisation rates; see also R McMullen *Male Rape: Breaking the Silence on the Last Taboo*, Gay Men's Press, London, 1990, which shows that heterosexual men are more often the perpetrators of male sexual assault than homosexual men.

28 Royal Prince Alfred Hospital Sexual Assault Centre in Camperdown and Guneedoo Sexual Assault Centre in Katoomba both have a male sexual assault worker.

of sexual assault. However, it is still a crime which is not readily acknowledged by the wider community.

Literature review

In their 1995 report on sexual assault law reform, Bargen and Fishwick[29] frequently highlight the inadequacy of Australian research on sexual assault, particularly on the effects of legal reform. The major exception is the research conducted in 1985 and 1986 by the NSW Bureau of Crime Statistics and Research (BCSR), which evaluated the impact of the 1981 NSW sexual assault legislation.[30] The research compared admission of sexual history evidence, use of the corroboration warning and complaint evidence before and after the 1982 legislative amendments to the sexual assault provisions of the *Crimes (Sexual Assault) Amendment Act* 1981 NSW.

A study by the Law Reform Commission of Victoria (LRCV) in 1990 and 1991 investigated and reported on 'the definitions of rape and indecent assault, in particular the issue of consent in these offences; and further measures to reduce the trauma involved in the investigation and prosecution of sexual assault cases'.[31]

Several research projects are underway at the moment which focus on the conduct of sexual assault trials. Edwards and Heenan observed and recorded the proceedings of six rape trials in Victoria.[32] At the University of Tasmania, Therese Henning examined court transcripts for prior sexual history as part of an evaluation of the Tasmanian 1987 legislative reforms. Further analysis is planned in Tasmania on the subjects of consent, recency of complaint, the abolition of corroboration warnings and spousal immunity.

National and state victim surveys and Crime and Safety Surveys[33] have been the main source of statistical data on estimates of incidence rates for women aged 18 or over. The NSW Standing Committee on Social Issues (1993) report on sexual assault examined available Australian and international data including statistics from the International Crime

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29 J Bargen and E Fishwick *Sexual Assault Law Reform: A National Perspective,* Office of the Status of Women, 1995.

30 R Bonney *Crimes (Sexual Assault) Amendment Act 1981: Monitoring and Evaluation, Interim Report No.1, Characteristics of the Complainant, the Defendant and the Offence*, NSW Bureau of Crime Statistics and Research, 1985.

31 Law Reform Commission of Victoria, *Rape: Reform of Law and Procedure: Interim Report,* Vol.2 appendices.

32 A Edwards and M Heenan, 'Rape Trials in Victoria: gender, socio cultural factors and justice', *ANZ Journal of Criminology* 27, (3), December 1994, pp. 213-236

33 Australian Bureau of Statistics, *Crime and Safety Survey New South Wales*, April 1994, Cat.no.4509.1, ABS, Sydney, 1994.

Surveys, official crime statistics, national victims surveys and self-selecting surveys on both the incidence of offences and the nature and characteristics of sexual violence up to 1993.[34]

Statistical data collected by health and sexual assault services are also an important source of data, although subject to a number of problems including the fact that not every victim attends these services and established data collecting systems are lacking.

Data on reporting to police, clear-up rates, charges, prosecution, conviction rates, court outcomes and characteristics of complainants, offenders and offences are routinely collected and analysed from police and court information in each state. The BCSR publication *Adult Sexual Assault in NSW*[35] gives an overview of the major types of recorded sexual assault offences committed against adults and reports on how often, where, and when sexual assaults occur according to police records. The publication also examines characteristics of victims and offenders and the types of penalties imposed.

The Victorian Community Council Against Violence study which profiles rape reported to police in Victoria from 1987-1990 is another example of research based on criminal justice statistics. This study interviewed police officers and surveyed police records and data, including crime reports, criminal histories, victim statements, and sexual offence reports.[36] Brereton's 1992 study on rape prosecutions in Victoria[37] is another example along with the Queensland Police Service study[38] which summarises 18 months of Queensland police statistics on sexual assault incidents and the South Australian Police Department's 1986 study of four years of South Australian Police statistics.[39]

Sexual Assault Phone-ins have been an important source of information about sexual assault and the inadequacies in the criminal justice system. By this methodology, respondents 'self-select' by themselves calling the researchers to participate. The Real Rape Law Coalition 1992[40] and the NSW Sexual Assault Committee 1993 Phone-In[41] identified

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34 NSW Standing Committee on Social Issues, *Sexual Violence – The Hidden Crime: Inquiry into the Incidence of Sexual Offences in NSW*, Part 1, Report No.6, Legislative Council, Parliament of NSW, 1993.

35 P Salmelainen and C Coumarelos, *Adult Sexual Assault in NSW*, NSW Bureau of Crime Statistics and Research, 1983.

36 Victorian Community Council Against Violence, *A Profile of Rapes Reported to Police in Victoria 1987–1990,* a research report undertaken as a part of the Inquiry into Violence in Public Places, 1991.

37 D Brereton, 'Rape Prosecutions in Victoria' in P Easteal and S McKillop (eds) *Women and the Law*, Australian Institute of Criminology Conference, 1993.

38 A Moran 'Patterns of Rape: a preliminary Queensland perspective' in P Easteal (ed) *Without Consent: Confronting Adult Sexual Violence*, proceedings of a conference held 17-19 October 1992, Australian Institute of Criminology, 1993

39 K Weekely, *Rape: a Four Year Police Study of Victims,* South Australian Police Department, 1986.

40 Real Rape Law Coalition, *No Real Justice: The Findings of a Confidential Phone-in on Sexual Assault*, Real Rape Law Coalition, Melbourne, 1992.

41 Sexual Assault Committee, *Sexual Assault Phone-in Report,* held November 1992, NSW Ministry for the Status and Advancement of Women, 1993.

important issues such as the reasons women give for not reporting incidents to the police and traumatic experiences many women have undergone or anticipate having in court. The Victorian Centre Against Sexual Assault also documented the experience of making a report to the police for victims of sexual assault. [42]

The Second Report of the NSW Legislative Council's Standing Committee on Social Issues *Sexual Violence: Addressing the Crime,* examines the issue from three angles: the victim/survivor, the perpetrator and the community's response. The Committee heard evidence from a variety of experts involved in the area of sexual assault and received submissions from advocates, services, government agencies, as well as members of the legal profession and the judiciary. Each section of the report contains a detailed review of the relevant issues and outlines a number of recommendations for government action.[43]

The BCSR recently released a comprehensive report assessing a range of services, through a representative survey of sexual assault complainants whose cases reached finalisation in the courts in the NSW District Court in the period between 19 September 1994 and 30 June 1995. The objective of the study was to evaluate the police, health and court services provided to complainants. Despite the poor response rate for the survey the subsequent report provides a wealth of information about complainant's experiences of reporting and prosecuting sexual assault and is significant in that it is the first survey in Australia where there has been any assessment of the extent to which services actually accord with the protocols developed by criminal justice and allied agencies.[44]

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[42] K Gilmore, J Baker and L Pittman, *To Report or Not to Report: A Study of Victim/Survivors of Sexual Assault and their Experience of Making an Initial Report to the Police*, Centres Against Sexual Assault, 1993.

[43] Standing Committee On Social Issues, (1996) op.cit.

[44] A Edwards, *The Criminal Justice Response to Sexual Assault Victims*, NSW Bureau of Crime Statistics and Research, 1996.

Methodology

The broad objective of this project was to determine how victims of sexual assault are treated in their role as witnesses in the criminal justice process. The project specifically set out to examine the effectiveness of legislative provisions designed to protect the rights of victim/witnesses in sexual assault proceedings.

The study focuses on the conduct of sexual assault hearings involving trial and sentence hearings. The study also includes data showing conviction rates for sexual assault offences.

Conduct of sexual assault hearings

The research investigates whether the NSW sexual assault legislation accords with its stated aims of protecting the rights of victims of sexual assault with respect to:

- the relevance to issues at trial of the questions asked in cross-examination of the victim as to sexual history, activity, behaviour, experience (*Crimes Act* 1900 NSW, section 409B);
- the general content and the manner of cross-examination of the victim;
- the corroboration warning (*Crimes Act* 1900 NSW, section 05C) and its interpretation by the High Court of Australia in the case of *Longman v R* (1989) 168 CLR 79 at 87; and
- the delay in complaint warning (*Crimes Act* 1900 NSW, section 405B).

The research also assesses the general experience of women victims of sexual assault in the conduct of the trial and looks at the beliefs about women that are reflected in comments during the course of the trial by the Crown Prosecutor, Defence counsel or the Judge.

Using data collected in the study and supplementing the data with statistics provided by the BCSR, the research looks at conviction rates for sexual assault offences.

Using data collected in the study and supplementing the data with statistics provided by the Judicial Commission of NSW the research looks at sentencing patterns for sexual assault offences. In addition to this, the research looks at whether Judges express assumptions or stereotyped notions about women which may affect the sentencing of sexual assault offenders. Finally, the research looks at how Victim Impact Statements and Pre-Sentence Reports are currently used in the sentencing process.

STUDY POPULATION

The research studied **all sound recorded** sexual assault hearings in the District Court of NSW[1] over a one year period[2] where the accused has been charged[3] with one or more of the following offences:

Under current legislation (commenced 1989):
- section 61I (sexual assault);
- section 61J (aggravated sexual assault);
- section 61K (assault with intent to have sexual intercourse).

Under 1981 legislation, since amended by 1989 legislation:
- section 61B (sexual assault category 1);
- section 61C (sexual assault category 2);
- section 61D (sexual assault category 3).

and where the victim is an adult female[4].

SAMPLE CONFIGURATION

Using computer generated lists of hearings finalised within the study period according to charge codes and supplied by the District Court Directorate of Criminal Listings, there were 383 hearings that had occurred or were scheduled to occur in the District Court of NSW during the sample period.

Of these hearings:
- 233 hearings fell outside the study sample (for reasons listed in Table 2 below); and
- 150 hearings fell into the study sample.

Table 1 shows reasons for hearings falling outside of the sample for the study.

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[1] All indictable sexual assault offences (the more serious sexual assault offences) are now tried in the District Court of NSW which sits permanently in Sydney (Downing Centre) and in four locations in the Sydney West Region (Campbelltown, Liverpool, Penrith and Parramatta) as well as in many locations on circuit in outer metropolitan Sydney and rural areas. In total the District Court has seven registries around NSW: Sydney, Sydney West, Newcastle, Wollongong, Lismore, Dubbo, Wagga Wagga. Committals are heard in NSW Local Courts. Less serious sexual assault hearings are commonly tried in the Local Courts.

[2] Between 1 May 1994 and 30 April 1995.

[3] The charge is taken as:
- the charge at the commencement of **trial**, at arraignment in the District Court; or
- the charge to which the accused pleads guilty and for which the accused is **sentenced**.

The study includes all those accused persons charged with attempts of these offences.

[4] Defined for the purposes of this research only as over 16 years of age at time of the offence.

Table 1 Reasons for hearings not included in sample (n=233)

Reason for exclusion	*Number of hearings*
No billed	61
Court reported	49
Victim under 16 years of age	38
Charge determined not appropriate by the court	26
Plea accepted in full discharge of indictment	20
Accused failed to appear	18
Victim was male	5
Other	16
Total	**233**

As shown in Table 1, cases which were no billed prior to reaching a hearing were obviously excluded from the study. The chapter on *No Bills* following this chapter discusses this issue further.

The table shows that in 18 matters the accused failed to appear for the hearing meaning that these matters fell outside of the study. In five matters the accused person was male. The table shows that sixteen matters categorised as 'other' were excluded. These matters included aborted cases or where the trial miscarried[5] or where, for example, the accused died or where the proceedings were transferred to the Mental Health Review Tribunal.

The table shows that 20 matters were excluded as the accused person pleaded guilty to a lesser charge in return for the remainder for charges being dismissed. The sentencing of these lesser charges was conducted in the Local Court and hence were excluded from the present study.

In another 26 matters, the court determined that the charge(s) was not appropriate. This is a general code entered by the District Court Directorate of Criminal Listings which is used when the court for example decides to proceed with the hearing but under a different charge(s), where the Directorate has incorrectly entered charge codes, or where the indictment includes an alternative charge and the court has proceeded on the alternative charge.

Hearings which were recorded by court reporters and then later transcribed were excluded from the study as transcripts were not generally available for all of these hearings and/or

[5] And this occurred during or before the complainant gave her evidence and was cross-examined on her evidence in full.

were otherwise too costly to transcribe or copy. Hearings for which court reporters were used were mainly hearings in the Downing Centre, Sydney or some hearings which ran more than five days in which the Judge required daily transcripts. All other centres except some Sydney courts used sound recordings as the means by which to record hearings.

This provided a sample for the study of 150 hearings. The 150 hearings represent only sound recorded hearings in the District Court of NSW. The 150 hearings studied in the research can be broken down into the following categories:

Table 2 Sample Configuration (n=150)

Hearing description	*Not guilty by direction/verdict*	*Guilty by plea or verdict*	*Total*
Trial (plea of not guilty)	77	34	111
Sentence (plea of guilty)		39	39
Total	**77**	**73**	**150**

Table 2 shows that the study examined 77 trials (where the accused pleaded not guilty) and 39 sentence hearings (where the accused pleaded guilty) and 34 hearings which were trial and sentence hearings (where the accused pleaded not guilty but was found guilty by either a judge or jury). Including hearings in which there was a trial followed by a sentence, the study examined 111 trials and 73 sentence matters.

DATA SOURCES

The data for the study was collected from three sources:

- District Court Justice Information System (JIS);[6]
- Office of the Director of Public Prosecutions (DPP) files;
- sound recordings of sexual assault proceedings located at each Court Transcription Centre.

Access to this data was obtained by making a formal application in writing to Chief Judge of the District Court, the Hon R. O. Blanch QC, the Director of Public Prosecutions and the then Director General of the Department of Courts Administration for access to their data. These applications were met with approval and each of these agencies has provided generous assistance to the DFW in conducting this study.

6 A computer database of the hearings proceeding to the District Court managed by the Criminal Registry Listings Directorate of the District Court.

DESIGN

The research was designed to examine the way in which women were treated in court as complainants in sexual assault hearings, including both trial and sentence hearings.

The instrument used to undertake this research was designed by the then Manager of Research at the DFW together with Research Officers at DFW, in conjunction with the Project Director. A standardised coding booklet was used to collect data from data sources. The coding booklet was heavily based on a coding booklet used in very similar research study being simultaneously conducted by the Department for Justice in Victoria. The original instrument had been modified following its design and use by the LRCV for research undertaken in its rape reference in 1991.[7] As part of this reference the LRCV undertook an analysis of rape prosecutions in Victoria.

DFW officers relied heavily on the research design and instruments used for the LRCV study and the follow up Victorian Department of Justice study and consulted researchers from the Department of Justice at length during the design phase of the research.

In applying the Victorian Coding Booklet to the NSW legislative framework, DFW consulted the BCSR and, in particular, Roseanne Bonney who had fifteen years earlier conducted a similar anaysis of sexual assault hearings in NSW.[8]

DATA COLLECTION

Standard data for each hearing in the sample was recorded on the coding booklet.[9] The following general categories were used to arrange the information collected:

General information about hearings

- characteristics of the accused
- characteristics of the complainant
- offence characteristics (per complainant)
- committal details
- Sentence Indication hearing details
- guilty pleas

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7 Law Reform Commission of Victoria, *Rape: Reform of Law and Procedure*; Report No 43, September 1991.

8 R Bonney, *Crimes (Sexual Assault) Amendment Act 1981: Monitoring and Evaluation* (a series of reports released from 1985-87), NSW Bureau of Crime Statistics and Research, Sydney.

9 For reasons of its length the coding booklet used for data collection has not been included in this report. However a copy of the booklet is availabe from the Law and Violence Unit, Department for Women.

- courtroom details
- trial details
- injuries/damage to complainant
- evidence by and against the accused
- complainant's evidence
- Judge's summing up
- Victim Impact Statements
- Pre-Sentence Reports
- sentence hearings
- counting questions

In total the study examined 323 variables. Given the enormous number of variables and the type of information each variable incorporated, the researchers looked at a number of different ways in which variables could be analysed.

Throughout the study the researchers were aware of the particular difficulties faced by Aboriginal women, women from non-English speaking backgrounds, women with disabilities and deaf and hearing impaired women in courts as victims of sexual assault. Questions relating to the specific needs of these women, such as whether an interpreter was used or arrangements were made to accommodate a woman's disability, were included in the coding booklet used to collect data. However, this information was not always discernible from sound recordings of the hearing or from DPP file notes. Therefore the information was only coded where it was clear from the data sources that, for example, an interpreter was used for the hearing or the complainant was a woman with a disability.

The report includes a separate chapter on women from Aboriginal communities which reflects the high number of hearings studied in the research in which Aboriginal women were the primary witnesses and complainants of sexual assault.

The tables below represent the variables in each section of the coding cooklet collected for each of the 150 hearings.

General information

Name of accused	Number of accused
Registry	Charges (including counts)
Court location	Pleas to each charge
Registry	Outcomes of each charge
Appeal status	Legislation under which offences charged

Number of victims | Sentence type
Fixed term | Minimum term
Additional term | Multiple count sentence

Characteristics of the accused person

Sex	Postcode
Employment status	Country of birth
Aboriginality	Legal representation
Use of ALS[10]	Marital status
Prior violence offences	Prior sexual offences
Date of birth	Bail status
Relationship with co-offenders	

Characteristics of the complainant

Date of birth	Postcode
Employment status	Country of birth
Number of years resident in Australia	Aboriginality
Marital status	Disabilities

Alleged offence characteristics (per complainant)

Date of alleged offence	Location of initial contact between parties
Nature of initial contact	Relationship of accused to complainant
Location of offence	First report of sexual assault
Number of assailants	Time taken to make complaint
Evidence of prior consenting sex	First report to police

Note that these details were collected from the complainant's statement to the police. The coding booklet included a variable 'Accused disputes details' and data collectors noted details of the offence variables above which were disputed by the accused and reasons for dispute.

Committal details

Committal for trial or sentence	Paper committal details
Whether complainant present at hearing	Whether complainant gave evidence
Defence application to cross-examine	Details of special reasons

10 Aboriginal Legal Service.

Sentence indication hearing details

Whether application made	Type of sentence offered
Minimum term	Additional term
Whether sentence accepted	

Guilty pleas

Stage of trial at which guilty plea indicated	Whether preceded by charge negotiations

Trial details

Commencement and completion date	Length of trial
Separate trials (for co-accused)	

Courtroom details

Non-publication order	Court closure
Support person	Use of interpreter
Details in which interpreter necessary	Special arrangements to accommodate disability
Type of alternative arrangements	Alternative arrangements for complainant to give evidence

Injuries/damage

Admission of evidence of physical injuries	Accused response to evidence
Admission of evidence of damage	Accused response to evidence
Nature of expert defence medical evidence	

Evidence by and against the accused

Type of evidence given by accused	Evidence introduced by prosecution
Accused main line of defence	

Complainant's evidence

Time: evidence in chief

Time: cross examination

Time: re-examination

Whether evidence of recent complaint introduced and whether judge permitted

Whether defence raised issue of delay in complaint in cross-examination

Complainant's reason for delay

Whether evidence of sexual reputation introduced

Context in which sexual reputation evidence raised

Description of information raised

Description of evidence admitted

Whether evidence of prior sexual behaviour adduced by prosecution or defence

Context in which prior sexual behaviour was raised

Description of information raised

Description of evidence admitted

Means by which evidence was admitted under section 409B

Reasons given for admitting evidence by judge

Defence questions about drinking on day of offence

Defence questions about general drinking and substance use habits

Defence questions about clothing

Defence questions about sexually provocative behaviour

Defence questions about victims compensation

Defence questions about her general responsibility for offence

Defence questions about reason for being in location where contact made

Defence questions about motives for false report

Defence questions about lack of resistance

Defence questions about resistance

Defence questions about lying or making up the story

Defence questions about injuries or damage

Comments by judge during complainant's evidence

Judge's summing up

Unsafe to convict on complainant's evidence warning given

Scrutinise with great care or Longman warning given

Section 405B direction given (delay does not mean false complaint)

Section 405B direction given (good reasons for delay in complaint)

Delay in complaint warning given

Judicial comment on sexual reputation evidence

Judicial comment on prior sexual behaviour, activity or experience

Judicial comment about drinking on day of offence

Judicial comment about general drinking and substance use habits

Judicial comment about clothing

Judicial comment about sexually provocative behaviour

Judicial comment about victims compensation

Judicial comment about her general responsibility for offence

Judicial comment about reason for being in location where contact made

Judicial comment about motives for false report

Judicial comment about lack of resistance

Judicial comment about resistance

Judicial comment about lying or making up the story

Judicial comment about injuries or damage

Judge's comments on accused's evidence

Victim Impact Statements(VIS)

VIS presented at sentence hearing

Form of VIS

Cross examination of victim at sentencing hearing

Pre-Sentence Reports (PSR)

PSR presented at sentence hearing

Author of PSR

Sentencing

Judical comment in remarks about age of complainant

Judical comment in remarks about occupation of complainant

Judical comment in remarks about relationship of complainant with accused

Judical comment in remarks about dress of complainant

Judical comment in remarks about demeanour at time of offence

Judical comment in remarks about complainant in location of initial contact

General judical comment in remarks about complainant

Judical comment in remarks about age of accused

Judical comment in remarks about occupation of accused

Judical comment in remarks about relationship with complainant

Judical comment in remarks about dress of accused

Judical comment in remarks about previous offences of accused

Judical comment in remarks about seriousness of offence

General Judical comment in remarks about accused

Age taken into account at sentencing

Substance use taken into account at sentencing

Impact on complainant taken into account at sentencing

Prior offences taken into account at sentencing

Disability of offender taken into account at sentencing

Medical condition taken into account at sentencing
Disability of complainant taken into account at sentencing
Early plea of guilty taken into account at sentencing
Remorse of offender taken into account at sentencing
Sentence Indication Scheme taken into account at sentencing
Pre-Sentence Report taken into account at sentencing
Other defence reports taken into account at sentencing
Character references for offender taken into account at sentencing
Representations from relatives of offender taken into account at sentencing
Representations from relatives of complainant taken into account at sentencing
Parity of sentence with co-accused taken into account at sentencing
Reducing court time taken into account at sentencing
Minimising victim humiliation and distress taken into account at sentencing
'Contribution' to offence by complainant taken into account at sentencing
General comments by Judge in remarks on sentence

Counting variables

Number of times trials stopped because of complainant's distress
Number of questions to complainant regarding direct contact with sexual organs of accused or complainant
Number of questions to complainant regarding sexual experience by Prosecution
Number of questions to complainant regarding sexual experience by Defence
Number of times sexual reputation evidence raised by Defence
Number of times judicial questioning/interruptions of cross-examination
Number of Prosecution objections to Defence cross-examination

Data collectors were employed officers at the DFW who undertook training for data collection. The same data collection team, made up of three officers, worked on the collection throughout the project. A book of coding instructions was prepared for data collectors and collectors were well trained prior to commencing collection. The purpose of the instruction book was to ensure consistency in coding decisions. Data collectors worked in pairs and discussed difficult decisions with each other in addition to consulting the coding instructions. Where there was no clear consensus, the Project Director was consulted.

Data collectors collected information for each hearing from the Justice Information System for basic information on the case including the charges, pleas entered, outcomes and

accused details. Complainant and offence characteristics were gathered using the DPP files and all the material on the trials were obtained from listening to the sound recordings made available by Court Transcription Centres attached to Courts around NSW. Overall each Centre recorded hearings which fell in its region. This meant that when, for example, the District Court sat on circuit in Ballina the hearing was covered by Coffs Harbour Transcription Centre and when the Court sat at Bourke the hearing was covered by Bathurst Transcription Centre.

Sound recordings of hearings were not to be removed from their location at the Court Transcription Centre so it was necessary for the researchers to travel to where the tapes were stored. The researchers listened to tapes at the following centres around NSW:

- Sydney
- Campbelltown
- Liverpool
- Parramatta
- Penrith
- Bathurst
- Wollongong
- Newcastle
- Coffs Harbour
- Wagga Wagga
- Gosford

Data collectors visited all the Centres above and the trials varied in length and intensity (with one trial taking up to 18 days to hear). For these reasons, data collectors had to make decisions about the parts of the trial to which they listened. For this reason data collectors prioritised listening to the evidence of the complainant. Coders **consistently** listened to the evidence of the complainant, the summing up of the judge and the sentence hearings (where applicable). Coders also listened to *voir dires*[11] where hearings relating to the legislative provisions were raised. In particular, coders were careful to listen to arguments pertaining to section 409B of the *Crimes Act* 1900 NSW wherever these occurred during the trial.[12]

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11 Legal phrase in Latin for 'trial within a trial', meaning parts of the trial where the jury is not present and the Judge discusses the admissability of evidence with Counsel.

12 The running sheets that accompanied the audio tapes indicated where there was a break in proceedings for a *voir dire* and the nature of the material under discussion. Coders consistently scanned these sheets to check for a *voir dire* that contained in particular a s.409B application that may have occurred outside those parts of the trial that were being listened to.

Post data collection

Following the completion of data collection in the coding booklets, researchers backcoded numerous variables in the coding booklets which allowed for comments and free text made by data collectors.

A code frame[13] was designed to categorise free text and comments collected by data collectors and using these frames the data was backcoded.

Data entry and analysis

Coding booklets were sent to South Side Data Group for data entry.

Once data was entered the information (in ASCII text) was read into SPSS, a statistical software package. Research officers cleaned the data, ran tests then produced frequency tables and cross tabulations.

This data then formed the basis of this report.

Confidentiality

The confidentiality of all complainants and accused in these hearings was a foremost consideration of the researchers. All coders signed confidentiality agreements with the DPP at the commencement of data collection. The agreement bound the coders and those involved in the project to not make verbal or written contact with any victim or witness in the hearing, to not disclose details of the hearing for purposes other than the research and not make note of any material subject to legal professional privilege (mainly file notes on the DPP file about the hearing).

While the research collected demographic data no identifying material was collected from the DPP files or from the sound recordings.[14] Utmost care has been taken in reporting the results so that cases can not be identified from the data or from the case studies.

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[13] A copy of the code frame used for backcoding data is available from the Law and Violence Unit, Department for Women.

[14] Coding booklets are kept in locked storage and will be destroyed three years after the completion of the project in keeping with standard research practice.

Other material

A literature search on sexual assault and women's experiences in court as victims of sexual assault was undertaken. Material from other jurisdictions and overseas is included in the results of this search. Research on reported decisions of courts in NSW jurisdictions and other Australian and overseas jurisdictions of sexual assault hearings was also undertaken.

This project did not involve, in general, speaking with or formally interviewing the women who were the principal witnesses in the cases falling within the study population. However, some of these women, on hearing of the work of the project, contacted the DFW to speak about their experiences. From time to time the researchers were invited to sit in on hearings in which these women were involved. While observations of these hearings do not constitute a formal part of the research, researchers were happy to do this at the invitation of the women.

Similarly, this project did not involve formally interviewing lawyers, court support workers, advocates and judicial officers involved in the hearings falling within the study population. The Project Team has spoken to advocates, representatives from community organisations, lawyers and court support staff about hearings falling within the study population. While these discussions have proved extremely helpful in clarifying difficulties or queries, it was not intended that they constitute a formal part of the research. The discussions were for the purposes of clarification only.

A note on the sample

There are many varied ways in which criminological data can be collected, read and analysed. The overall purpose of this research was to collect information about the court experience from the perspective of a woman complainant in a sexual assault trial or sentence hearing. There are two important methodological notes which need to be explained and kept in mind in looking at the results of this research:

Miscarried/aborted trials

The data set (150 hearings) includes four hearings which were aborted or miscarried prior to the hearing concluding. The researchers included only those aborted trials in which the complainant gave her evidence and was cross-examined in full and the trial was then subsequently aborted for reasons relating to the evidence of other witnesses or the jury's inability to come to a unanimous decision.

As the research looks at the experience of hearings from the viewpoint of women, it was decided that trials which miscarried late in their run, while not having a legal outcome, nonetheless still show a complainant's experience of the trial process. For these reasons these hearings have been included in the data set. All trials which aborted during the complainant's evidence or prior to her giving her evidence and being cross-examined in full were removed from the data set. This needs to be kept in mind when looking at the data.

The effect of retaining or not retaining the four miscarried trials in the data set on the results of the research is minimal, because of the sample size. If the four cases were not included, involving eight accused and twelve charges, the sample of 150 trials would be 2.67% smaller (146 trials), the number of accused would be 4.79% fewer (159 accused) and the number of charges would be 3.87% lower (298 charges). The areas of the study where including the cases results in missing data items are summing up, sentencing (if the accused were found guilty) and charge outcome.

Number of accused persons

Charges and outcomes of charges are most often attributed to the accused person who has been charged with the offences. Researchers, having decided to formulate the unit of research as the hearing from the viewpoint of the complainant, have at times in this report referred to charges in the number of hearings, not charges for the number of accused persons. In this study, 12 of the 150 hearings involved multiple accused persons. Hence there are 167 accused persons for the 150 hearings in the study population.

However, as the research looks at hearings from the viewpoint of complainants, the study refers only to either total number of charges (310) or total number of hearings (150), which is based on the number of hearings in the study, not the number of accused. This needs to be kept in mind in looking at the results of this research.

Profile of hearings

The study examined trials and sentence hearings in the District Court in NSW. For this reason summary hearings in the Local Court or indictable offences heard summarily in the Local Court were not part of this study. Other sexual assault offences committed together with more serious offences such as murder[1] are heard in the Supreme Court so again were not part of this study.

The study examined **reported** offences only. Reported offences are not representative of all incidents of sexual assault, as those offences being tried may not have the same characteristics as all sexual assaults.[2]

While the study's results of complainants experiences in the District Court of NSW can be generalised, descriptions of the accused, complainants, and circumstances of the offences in this research cannot. This research shows only descriptions of the matters that have reached court in the time period of the study. For this reason, where possible, we have included information about and comparisons with data which reflect realities for a broader population of victims of sexual assault and women who attend sexual assault services.

The research also needs to be placed in a broader context of women's experiences of sexual assault. The study examines only those hearings in which women have broken barriers to get to trial and jumped through various legal hoops and gateways in the prosecution process. These barriers for women (and even more for women with disabilities, sex workers and Aboriginal women, for example), have been well documented in previous research and community lobby campaigns by community activists, government agencies, service providers, victims/survivors, academics and feminist lawyers.[3] Some of these barriers include the perceived need for thorough medical and/or forensic evidence, police response and lack of commitment to prosecute, decisions of the DPP not to prosecute, committal procedures and the Magistrate's role not to commit for trial any case where the jury would not be reasonably likely to convict in a higher court.[4] These filtering processes lead to many complaints being screened out of the trial/sentence process. This is not confined to

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1 These matters are heard in the Supreme Court.

2 It is widely recognised that women significantly under-report sexual assaults upon them. The ABS *Victims' Crime Survey* indicates that only 25% of sexual assault offences are reported to the police. See further P Salmelainen and C Coumarelos; *Adult Sexual Assault in NSW*, Crime and Justice Bulletin, No. 20, July 1993, NSW Bureau of Crime Statistics and Research.

3 Women's Legal Resources Centre, *Quarter Way to Equal: A Report on Barriers to Access to Legal Services to Migrant Women*, 1994; Australian Law Reform Commission; *Equality Before the Law*, Reports Part 1 and 2, 1994.

sexual assault offences. For all types of criminal offences, the number of cases proceeding to court especially in the higher courts reflects only a very small sample of crimes actually committed.[5]

As shown in the previous chapter, the study population included 77 trials (where the accused pleaded not guilty) and 39 sentence hearings (where the accused pleaded guilty) and 34 cases which were trial and sentence hearings (where the accused pleaded not guilty but was found guilty by either a judge or jury). When trial/sentence hearings are included the study examined 111 trials and 73 sentence hearings.

Tables reflecting the data in more detail are included at the end of this chapter.

Characteristics of the accused

There were 167 accused persons involved in 150 hearings, as in some cases there were two or more accused charged with the same sexual assault. The highest number of multiple accused involved in the same offence was four and this matter was a trial. All but one of the accused persons in the cases studied were male.[6]

Age and location

The accused ranged in age from 16 to 54 years. The median age was 30 years. Research undertaken by the BCSR found that most proven adult sexual assault offenders in 1991 were aged between 21 and 30 with the 21 to 25 year age group having the highest rate of offenders.[7]

In this study, half of the accused lived in the Sydney Statistical Division.[8] The next highest number were from the Hunter region (8%) and then the Central West (7%) of NSW.

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4 Section 41(6) of the *Justices Act* 1902 NSW requires a Magistrate not to commit a matter for trial if s/he finds after hearing the evidence (or in most matters reading the evidence) that a reasonable jury properly instructed would not be likely to convict the accused or where the Magistrate is not of the opinion to commit the accused for trial. The accused is then committed to the District Court for trial.

5 See Brown, Neal, Farrier and Weisbrot, *Criminal Laws*, Federation Press, 1990, pp. 160-161.

6 Given that only one accused person in the study was a woman who committed the offence in partnership with two men and that other research shows that men are overwhelmingly the perpetrators of sexual assault, the research refers to accused persons as men. In research by the NSW Bureau of Crime Statistics and Research (1993) it was found that of 311 proven sexual assault offences in NSW in 1991, one offender was a woman, representing 0.3% of the sex offenders. Thus men comprised 99.7% of sexual assault offenders during that year (Salmelainen and Coumarelos, 1993, p. 7).

7 P Salmelainen and C Coumarelos; 1993, pp. 7-8.

Employment Status

Figure 1 Accused's employment status (n=150)

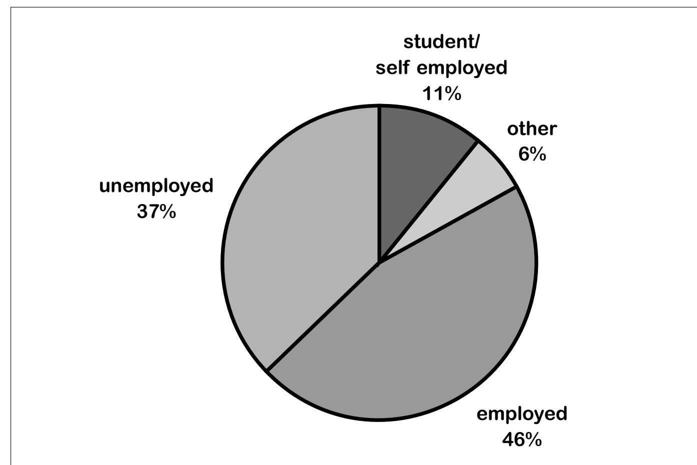

Figure 1 shows that most of the accused in the research population were employed (46%). Slightly more than one third were unemployed (37%). The ABS Labour Force data between May 1994 and April 1995 shows that 9% of men were unemployed in NSW during the study period.[9] This shows that accused persons charged with sexual assault in the study were about four times more likely to be unemployed, when compared with state unemployment levels.[10] The remainder were either self-employed or students.

Country of birth

From the data sources used it was difficult to ascertain the country of birth for the accused.[11] In fact in half of all matters, researchers were unable to determine country of birth with certainty. An accused's country of birth was identified in 51% of matters. Of these, 75% were born in Australia. A total of 12 accused (15%) were born in a non-English speaking country. The remaining 10% were born in other countries where English is the official language.

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8 Includes Sydney and outer Western Sydney regions but does not include Newcastle and Wollongong.

9 Australian Bureau of Statistics NSW Labour Force Status shows unemployment rate averages between May 1994-April 1995, May 1996 p.10

10 A 1985 study by the NSW Bureau of Crime Statistics and Research reported that 'compared to national unemployment levels…rape and sexual assault defendants were five times more likely to have been unemployed at the time of the alleged offence'. R Bonney, *Crimes (Sexual Assault) Amendment Act 1981, Monitoring and Evaluation, Interim Report*, No. 1, September 1985, p. 23, NSW Bureau of Crime Statistics and Research, Sydney, 1985.

11 Namely the District Court's Justice Information System (JIS), computerised records of the accused, the DPP file and the sound recordings of the court hearing/sentence;

Accused's Aboriginality

Accused persons from Aboriginal communities accounted for 10.8% of all accused (18 out of the 167 total accused). This means that within the study population, Aboriginal men were about nine times more likely to be accused persons in the NSW District Court than non-Aboriginal men.[12] Given that police officers do not systematically collect data on the accused's Aboriginality, and often accused persons are not asked to identify themselves as Aborigines, it may be a conservative figure. As with Aboriginal complainants, men from Aboriginal communities who were accused persons are over-represented in our research population when compared with the proportion of Aboriginal people in the NSW population.

A detailed discussion of the issues for Aboriginal women is located in the chapter *Women from Aboriginal communities.*

Of the 18 Aboriginal men in the study, a third were represented by the Aboriginal Legal Service. In general, the study found that the overwhelming majority of accused (96%) had some kind of legal representation.

Relationship status

The data about the accused's relationship status was extracted from the District Court computerised JIS. This gave us only limited information about the relationship status of the accused. The relationship categories were broad and did not reflect ex-de facto arrangements, current and ex-girlfriend situations. This information is collected for the JIS at the point of arrest, so its collection depends on the arresting officer. For this reason, in a third of cases it was not possible to ascertain the marital status of the accused at the time of the offence. In 44% of the 97 matters where data was found, the accused had never been married. Another 10% were married at the time of the offence and 13% were in de facto relationships.

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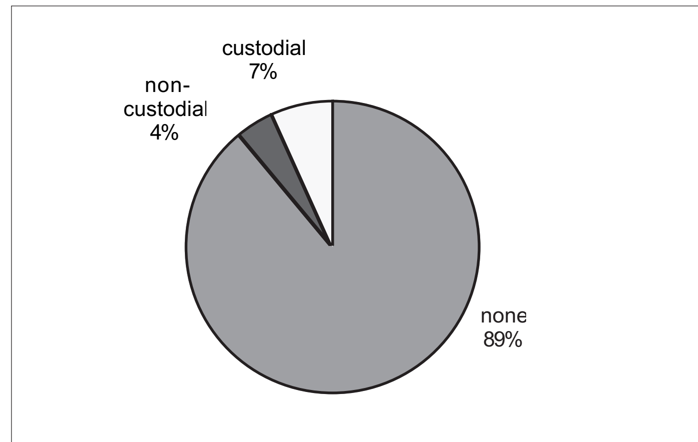
[12] This figure is calculated using Australian Bureau of Statistics Census data showing that in 1991, 1.28% of the NSW population identified as being of Aboriginal or Torres Strait Islander descent.

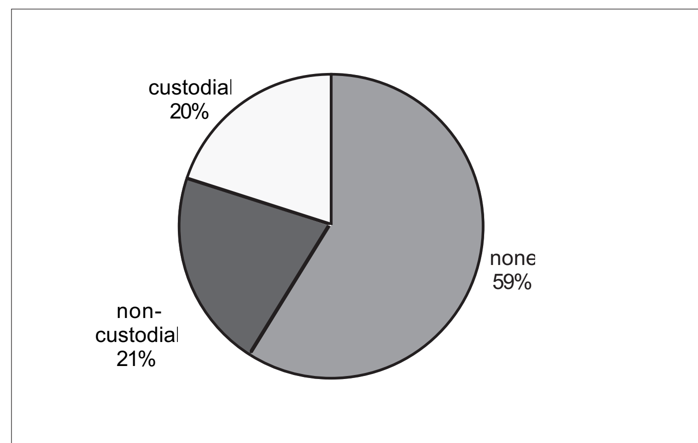
Prior offences

Figure 2 Accused's prior sex offences and sentencing outcomes (n=150)



As Figure 2 indicates, approximately 18 accused persons in the study (11%) had prior sexual offences for which most (11 out of 18) had received custodial sentences (61%).[13] These findings are similar to BCSR's 1993 study which found that for persons convicted of sex offences in 1991, 12.9% had prior convictions for sex offences.[14] Information from the BCSR study found that the re-offending rate for sex offenders is in general not as high as that for offenders who commit non-sexual offences against the person.[15]

Figure 3 Accused's prior violence offences and sentencing outcomes (n=150)



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13 Custodial refers to a sentence of imprisonment or being 'in custody'.

14 P Salmelainen and C Coumarelos, 1993: pp7-8; see also a study in Western Australia which tracked sex offenders following their release from custody over a 12 year period, and showed that about 9% of offenders returned to custody for committing another sex offence: R Broadhurst and R Maller, *Sex Offending and Recidivism*, Research Report No. 3, Crime Research Centre, University of Western Australia, Western Australia cited in P Salmelainen and C Coumarelos, 1993, p. 8.

15 P Salmelainen and C Coumarelos, 1993, p 8.

Figure 3 shows that 41% of accused men in the study had prior violence convictions with a fairly equal balance of custodial and non-custodial sentence outcomes.

At the time of trial, 19% of accused in the research population were in custody. Most of these accused had been refused bail for the sexual assault offence. However, some accused had been granted bail, and in the time between arrest for the sexual assault and the trial, had been charged with or imprisoned for another offence or apprehended for an outstanding warrant.

Of the 18 matters where there were more than one accused, 14 co-accused were friends or acquaintances. In three cases co-accused persons charged with offences arising out of the same set of circumstances were relatives.

CHARACTERISTICS OF THE COMPLAINANT

The information for complainant characteristics was obtained from the DPP files. Again, as demographic information is not collected systematically for complainants it depends upon the officer taking the victim's complaint and the notes the prosecution officers make on the file about the complainant. For this reason researchers only collected data that was clearly noted on the file. As such some of the figures may be conservative estimates.

AGE

Complainants in the 150 hearings studied in the research ranged in age from 16 to 61 years at the time of the offence. The average age was 24.5 years at time of the offence.

Figure 4 Complainant's age at time of offence (n=150)

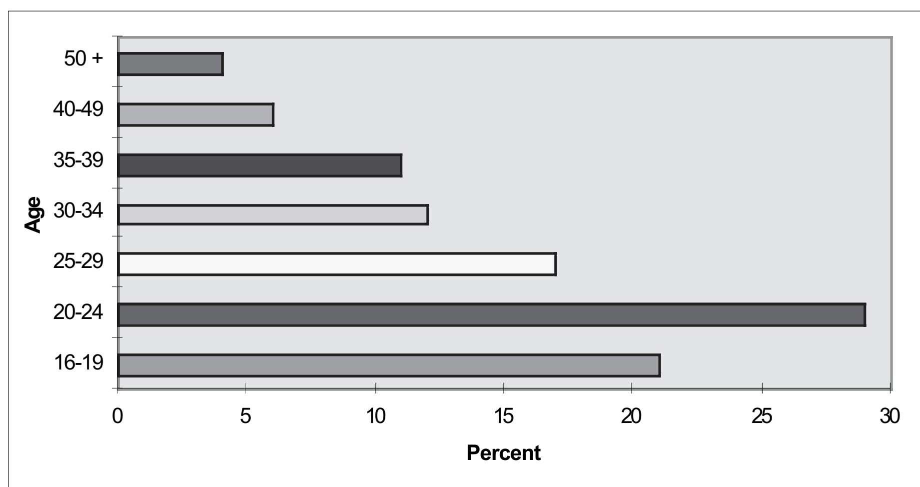


Figure 4 shows that the information in this study is consistent with data collected from sexual assault centres in NSW showing that women are most likely to be assaulted between the ages of 16 and 24.[16]

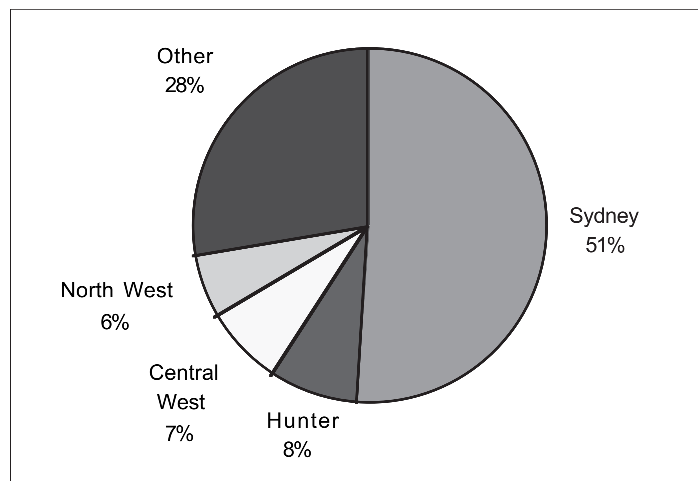
The research did not study those cases where the complainant was less than 16 years at the time of the offence (see the chapter on *Methodology* and the discussion of child sexual assault in the *Introduction* to this report).

Country of birth

Three quarters of all complainants in this study were born in Australia (74.7%). In total, 7 complainants were born in a non-English speaking country (5%), with over half having been in Australia for less than six years. In 18% of cases, researchers were not able to discern the country of birth of the complainant. The research study did not collect data on language spoken at home. ABS 1991 Census data shows that in NSW, 17% of women aged 15 years and over were born in non-English speaking countries.[17] Furthermore, statistics from the NSW Health Department show that in 1993–94, 14.2% of victims of sexual assault attending Sexual Assault Services spoke a language other than English at home.[18] It appears that women from ethnic communities are under-represented in this research study as complainants in sexual assault matters in the District Court.

Place of residence

Figure 5 Complainant's place of residence at time of the assault (n=150)



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16 NSW Health Department, *Victims of Sexual Assault: Initial Contact at NSW Sexual Assault Services – 1992–93, 1993–94*, March 1995, p. 30–31.

17 Australian Bureau of Statistics and NSW Ministry for the Status and Advancement of Women; *Women in NSW*, Government Publishing Service, Sydney, 1995, p. 14.

18 NSW Health Department, op.cit., p. 34.

Figure 5 shows that half of all complainants lived in the Sydney Statistical Division (51%). The remainder were from rural NSW including the Hunter region (8%), Central West (7%) and the North Western regions (6%).

Complainant's Aboriginality

ABS 1991 Census data shows that in NSW just over 1% of women identify as being from an Aboriginal community.[19] However, Aboriginal women represent 11.3% of complainants studied in the research. Just as Aboriginal men are over-represented in the sample, women from Aboriginal communities were nine times more likely to be complainants than any other group of women in the matters studied, including women from ethnic communities and women with disabilities.[20]

It also seems clear that Aboriginal women complainants are under-represented among users of existing sexual assault services since only 5.1% of victims attending NSW Sexual Assault Centres during 1993–94 identified themselves as being from Aboriginal communities.[21] A later chapter in this report titled *Women from Aboriginal Communities* provides a detailed discussion and analysis of the experiences of Aboriginal women in court as complainants in sexual assault matters and other parts of this report uses case studies and examples of their experiences.

Disabilities

The research collected data on disabilities of the complainant. Of the sample of 150, 13 women had a disability, representing 9% of the sample. The information was collected from DPP files and occasionally police officer notes. When in doubt, researchers coded complainants as not having a disability. For this reason the estimate of the proportion of women with disabilities may be conservative. The 1993 *Survey of Disability, Ageing and Carers* found that about 20% of women in NSW reported having a disability.[22]

Half of the women in the current study reporting a disability had a physical disability (six women) and a quarter had an intellectual disability (four women). Other women with

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19 Australian Bureau of Statistics, op. cit., p. 14.

20 This figure is calculated based on Australian Bureau of Statistics 1991 Census information showing Aborigines comprise 1.28% of the NSW population but 11.3% of the study sample of complainants. The number of Aboriginal women in the research population could be even higher given that in 21 cases (14% of the total studied) it could not be ascertained from DPP files or the sound recordings whether the complainant was of Aboriginal or Torres Strait Islander descent.

21 NSW Health Department, op. cit., p. 33.

22 Australian Bureau of Statistics and NSW Ministry for the Status and Advancement of Women, op. cit, p. 22.

disabilities included one with a psychiatric disability, one who was deaf/hearing-impaired and one who had multiple disabilities.

When compared to the findings from sexual assault services, it appears that women with disabilities were under-represented in the study.[23] Again the filtering processes existing throughout the criminal justice system would be compounded for women with special needs, such as women with disabilities.

Marital status

Figure 6 Complainant's marital status (n=150)

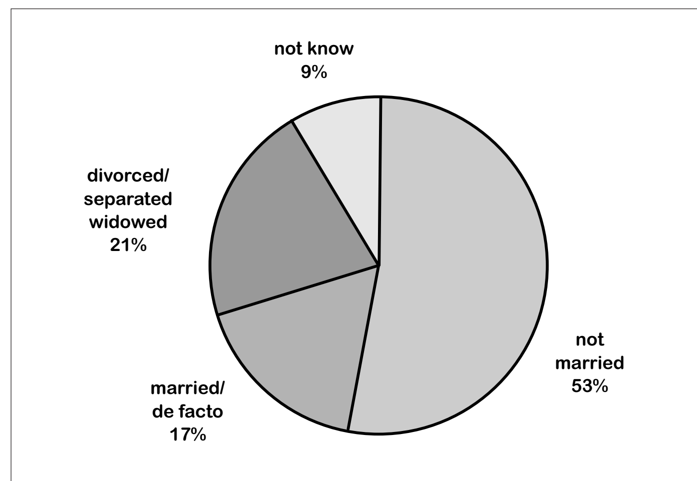

Figure 6 indicates that just more than half of all complainants in this study had never been married (53%) and 21% of complainants were separated, divorced or widowed. Women who were married or in a de facto relationship represented 17% of the sample. While this figure is well below the population average for women who are married or in de facto relationships, it is representative of the marital status profile for the average age (24.5 years) of complainants in the sample.[24]

[23] In 1993–94, women with intellectual disabilities represented 6.6% of victims attending sexual assault services in NSW; women with a psychiatric condition represented 6.0% of victims attending sexual assault services and 1.3% of victims had a physical disability; NSW Health Department, op.cit., p. 46.

[24] At the 1991 Census, married women comprised 44% of all women in NSW; Australian Bureau of Statistics, 1995, p. 16.

EMPLOYMENT STATUS

Figure 7 Complainant's employment status (n=150)

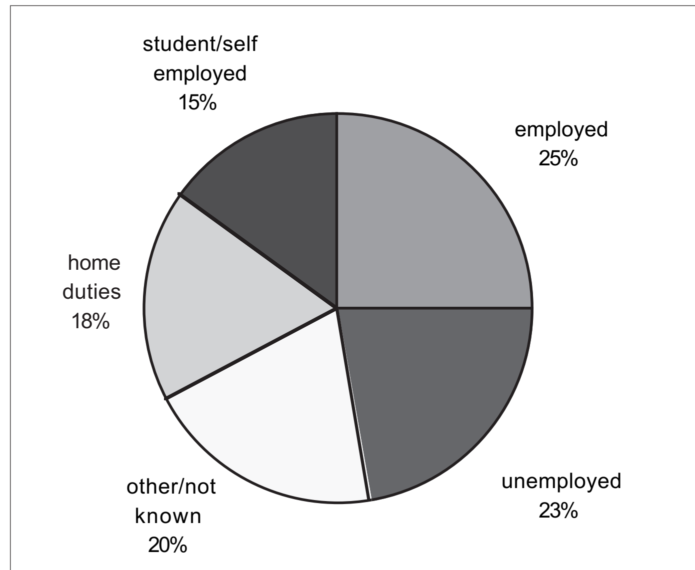

Figure 7 shows that one quarter of complainants were employed (25%) and approximately another quarter were unemployed (23%). As with the accused men in the study, there was a higher level of unemployment amongst women in the study than the NSW average for females during the study period, which was 8%.[25] About one in five of the complainants were employed in home duties (18%) and a further 15% were self-employed or students, either at school or university.

OFFENCE CHARACTERISTICS

Information regarding the offence was obtained from the complainant's police statement. Researchers noted instances where the accused in his record of interview or in giving sworn or unsworn evidence disputed the details of the offence as described by the complainant. This rarely occurred, however, and most often accused persons disputed instead the issue of consent.

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25 Australian Bureau of Statistics NSW Labour Force Status shows unemployment rate averages between May 1994-April 1995, May 1996 p.10

Initial contact

'Initial contact' was defined as the point of the first contact between the accused and the complainant that preceded the continuous chain of events leading to the sexual assault. Generally the initial contact is within 24 hours of the sexual assault, however, it is more complicated when the accused and complainant have been in a previous or current relationship. This information helps to ascertain the immediate circumstances surrounding or connected with the offence.[26]

Figure 8 Location of initial contact (n=150)

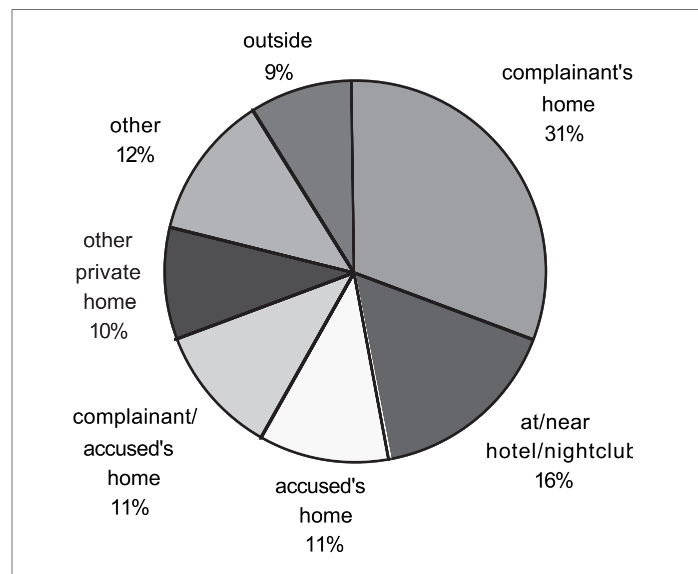


Figure 8 indicates that in nearly two thirds of hearings in the study the initial contact between the complainant and the accused was a private home of some kind (63%). The complainant's own home was the most frequent point of initial contact (31%). In 11% of cases the initial point of contact was the accused's home and in a further 11% of cases at the home shared by the complainant and the accused. In another 10% of cases the initial contact between the complainant and the accused was made in another private home.

[26] The collection of data on initial contact assisted in the analysis of the operation in sexual assault trials of a guiding principle of evidence namely the common law priniciple of *res gestae*. This evidentiary principle refers to a rule that allows evidence, normally excluded, to be admitted as relevant to the facts if it relates to an incident which 'can safely be regarded as a true reflection of what was unrolling or actually happening' at the time of the sexual assault. See M Aronson and J Hunter in *Litigation: Evidence and Procedure*, 5th edition, Butterworths, 1995, p. 767. The *res gestae* rule is embodied in s. 409B (3)(a) which allows evidence of sexual behaviour, activity or experience to be admitted if it is evidence of such at or about the relevant time of the offence and evidence which is part of a connected set of circumstances. The *res gestae* rule has since this study been abolished by enactment of the *Evidence Act* NSW 1995.

Hotels or nightclubs and their surrounds were the point of initial contact for 16% of complainants and accused.

FORCED AND UNFORCED CONTACT

Figure 9 Nature of initial contact (n=150)

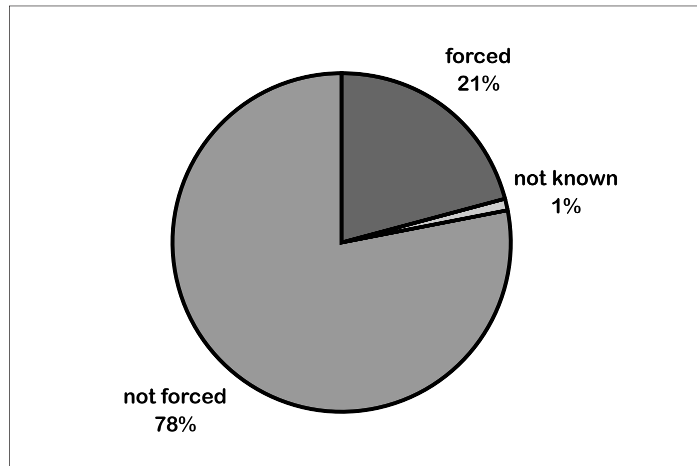


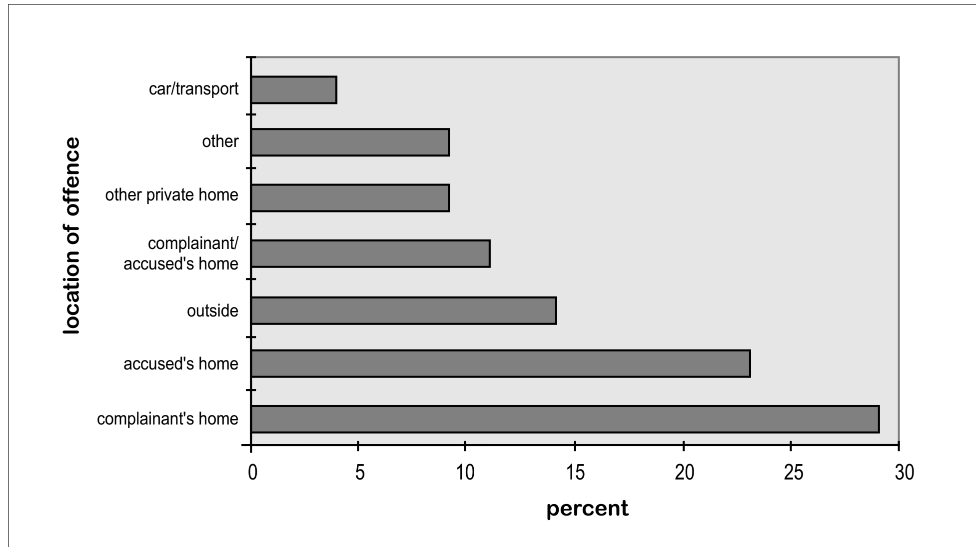
Figure 9 shows that in over three quarters of cases the initial contact between the complainant and the accused was not forced (78%). Typical cases of unforced initial contact were where the complainant invited the accused into her home, where the accused and complainant met at hotel/nightclub/party, or where the complainant was invited into the accused's home as a friend.

In 32 cases where the initial contact was forced, the location was most likely to be in the complainant's own home (56%). Typical cases of forced contact included where the accused broke into the complainant's home or where the accused was the ex-partner of the complainant and approached her despite the existence of a restraining order. In four cases a road or street was a location of forced initial contact.

Only 10 (7%) of the accused disputed the complainant's account of where the initial contact between them occurred. The majority of these accused denied they had any contact with the complainant at all or at the time in question.

LOCATION OF OFFENCE

Figure 10 Location of Offence (n=150)



The majority of offences occurred indoors, rather than on the street or in a public place. Figure 10 shows that a private home of some kind was the most common offence location, accounting for nearly three quarters of the 150 hearings studied in the research (72%). Again, the complainant's home rated most highly as the location of the offence (29%), followed by the accused's home (23%). Just over one in ten of the sexual assaults occurred in a home shared by the complainant and the accused (11%). Another 9% of sexual assaults occurred in some other private home.[27]

Less than one third of sexual assaults in this sample occurred outside private homes (27%). Figure 10 shows that 4% of sexual assaults occurred in a car or other transport and 14% occurred outside. Despite public perceptions about sexual assault, in the cases studied in this research fewer sexual assaults occurred in places such as public transport stations, parklands, streets or in back lanes. One in ten sexual assaults (10%) occurred in areas described as parkland or reserve. However, this should be compared with a study by BCSR in 1993 which found that 30% of all recorded sexual assault incidents occurred in outdoor areas such as streets, parks, parking areas and grass areas.[28]

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[27] These results are consistent with a 1985 NSW Bureau of Crime Statistics and Research study which found that of the sexual assaults that occur in private homes, half occur in the victim's home and in many cases the victim allows the offender to enter; R Bonney (1985) and further with information from victims attending sexual assault services which shows that 35.3% of sexual assaults occurred in the victim's home during 1993/4; NSW Health Department, op. cit., pp37-38.

[28] See P Salmelainen and C Coumarelos, op.cit., p. 5. Note that this data includes **all** sexual assault incidents recorded by police in 1989-1991 including indecent assault. This can also be compared with a study by the Law Reform Commission of Victoria in 1991 (using a similar methodology and data sample to this study) which showed that in 18% of sexual assault matters studied, the incident took place in a public place such as a street, car park, public transport station; Law Reform Commission of Victoria, *Rape – Reform of Law and Procedure*; Interim Report No. 42, 1991, pp. 67-69.

A small number of the accused disputed the complainant's account of where the offence took place (13%). Of those that did, most denied having any contact with the complainant. Some claimed to have had contact with the complainant but denied any sexual contact or that sexual contact occurred in a different location to that alleged by the complainant.

Assailants and co-accused

There are 12 matters in the research which involve multiple accused.

'Assailant' refers to those people involved in the sexual assault based on the complainant's story. Not all assailants are charged with offences relating to the sexual assault. Therefore, assailants will include co-offenders but could also include others involved in the offence who were not charged with sexual assault. In the vast majority of cases studied (83%) only one assailant or accused was involved in the sexual assault. In one case there were nine assailants according to the victim, however, only four men were charged and stood trial.

The number of assailants was a source of dispute for some accused (7%). When the accused disputed the complainant's account of the number of assailants, most said either they did not have any contact with the complainant at all or the other assailant(s) was responsible for the sexual assault.

Relationship between accused and complainant

Again this data is based on the version of the sexual assault as told by the complainant in her statement.

Figure 11 Relationship between complainant and accused (n=150)

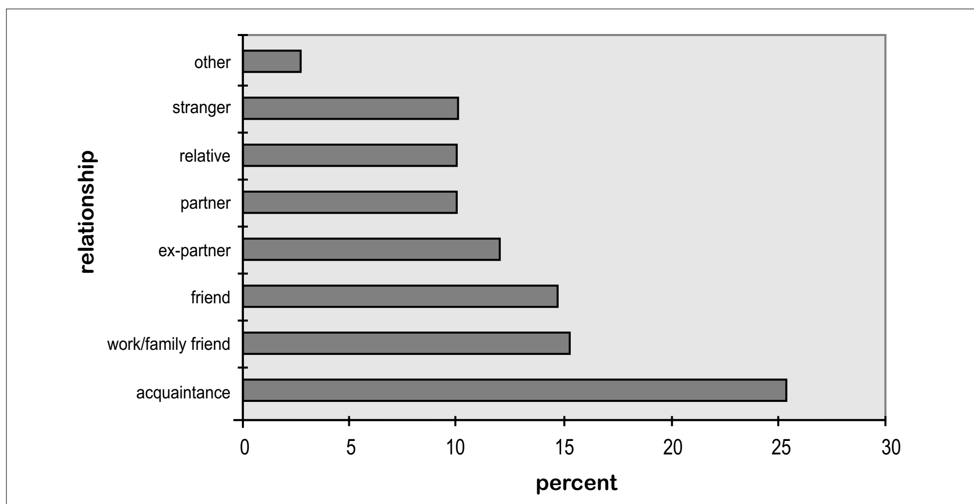

Figure 11 demonstrates that in only 10% of matters in this study the accused was a stranger to the complainant. In the vast majority of cases (90%) the complainant knew the accused in some way. In one quarter of cases (25%) the accused was an acquaintance of some kind. This included somebody who the complainant met on the day/night of the offence, a slight acquaintance or a second order acquaintance (such as, a friend of a friend). Work friends, family friends and other associates made up 15% of accused. This included accused who were employers of the complainants, flatmates, doctors, clients of complainants who were sex workers, fellow students and neighbours.

Partners and ex-partners made up 22% of the relationships between complainant and accused. This includes accused who were spouses, de factos, boyfriends and ex-partners of the complainant. Slightly more of these were previous partners (12%) than current partners (10%). In 22 cases (15%), the complainant described the accused as a friend. In one in ten cases (10%) the accused was a relative (not including spouses/de facto/ boyfriends or ex-partners).

These findings are consistent with other research such as that of BCSR in 1993 which found that 'sexual assault offenders usually know their victims in one way or another, and quite often they are trusted by the victim. Clearly sexual assault is not usually committed by total strangers'. [29] The BCSR study goes on to suggest that this fact may in part explain the high rate of repeat victimisation. Furthermore, a study of victims who attended NSW Sexual Assault Centres in 1993–94 found that women were most likely to describe their assailant as a social friend or acquaintance and that 14.9% of the assailants were total strangers to the victim.[30]

The relationship between the complainant and the accused is especially significant in her decision to take legal action by laying a complaint with the police. As this report will show, the relationship of the accused to the complainant has a significant impact on her experience in court at the trial. Research of victims seen at sexual assault centres has found that where the assailant was a total stranger, victims were more likely to take legal action and where the assailant was a social friend or acquaintance the victim was more likely to decide *against* taking legal action.[31]

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[29] P Salmelainen and C Coumarelos, op.cit. p. 7. See also Bonney (1985) who found that half of the offenders in NSW were known to the victims and included family members, friends and acquaintances and work associates and that a further one fifth of the offenders were persons the victim had met for the first time in a social setting the day or night of the offence; R Bonney, op. cit. This compares with the Law Reform Commission of Victoria's (1991) findings that one quarter of the complainants reported that the accused was a stranger, pp. 65–66.

[30] NSW Health Department, op. cit., p. 36.

[31] NSW Health Department, op. cit., p. 30.

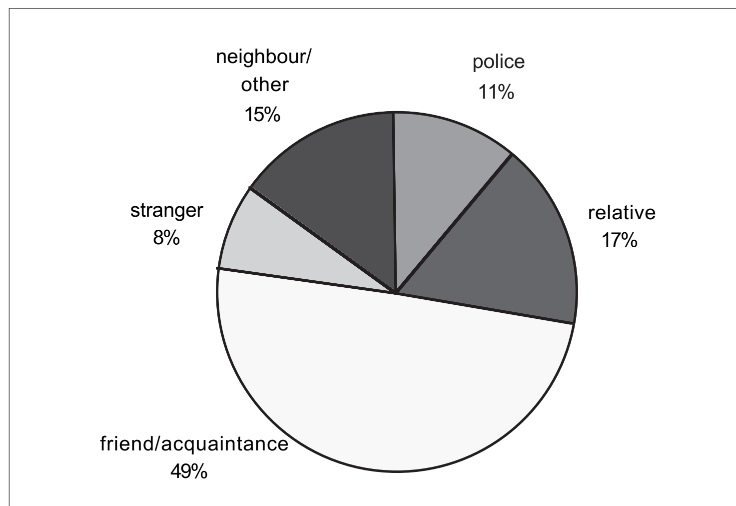
The accused disputed the relationship as described by the complainant in eight of the 150 cases, five said they had a closer relationship with the complainant and three denied that there was any prior relationship as described by the complainant.

Prior consenting sex

Overall there was evidence of prior consenting sex between the complainant and the accused in about one quarter of cases (27%). Generally this was when the relationship between the complainant and the accused was described as a partner or ex-partner of some kind. However, in nearly one third of the 22 cases (32%) where the accused was described as a friend there was evidence from the complainant to indicate there had been prior consenting sex between them. The current findings are interesting compared with a 1985 study by Bonney at BCSR looking at sexual assault hearings, which found that only 3.5% of accused and complainants had prior sexual relations.[32] The present research shows that since 1981 there has been an increase in the number of cases heard in the District Court in which the complainant and accused have engaged in prior consensual sex.[33]

Reporting practices

Figure 12 First complaint of assault (n=150)



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32 See R Bonney, op. cit., p. 28. It seems that the current study population includes a much higher proportion of complainants and accused who have or had a relationship, when compared with Bonney's study in 1981. There are varying explanations for this, one of which is that women complainants are now more likely to make complaints against persons with whom they have been in a relationship and that police may be more willing to act on these complaints.

33 This is interesting and differs from the Law Reform Commission of Victoria study which found that in only 10% of cases it was acknowledged by the complainant that there had been prior consensual sex. However this study had a smaller number of cases and a significantly higher rate of sexual assaults by strangers in the sample than the present study: Law Reform Commission of Victoria (1991): pp. 67-68.

Figure 12 shows that in approximately half of all cases the complainant first told a friend or acquaintance about the sexual assault (49%). Another 17% of women told a relative (often her mother or sister) and just over one in ten complainants first told the police about the sexual assault (11%). In 12 cases (8%) the complainant first told a stranger about the sexual assault.

The overwhelming majority of complainants told somebody about the sexual assault within 12 hours of the incident occurring (83%). In fact over half had reported the sexual assault to someone within one hour of the incident occurring.

In relation to reporting the sexual assault to the police, over half of the complainants had reported the sexual assault to the police within 5 hours, with nearly one third contacting police within one hour.

There is ample research to suggest that, for a host of complex and varied reasons, women victims of sexual assault delay in bringing their complaint to the attention of another person and especially the police.[34] It is clear from the present research that women complainants in the study have complained to another person and made their complaint to police relatively quickly. The issue of making, and delay in complaint is discussed in detail in the chapter on *Complaint*.

ANALYSIS OF SUBGROUPS: WOMEN WITH DISABILITIES AND WOMEN FROM ETHNIC COMMUNITIES

In recognition of the diversity of women in the community and the needs of a variety of groups of women, a more detailed analysis in this study focuses on certain subgroups of complainants, namely women with disabilities and women from ethnic communities. The present study has also undertaken detailed analysis of complainants from Aboriginal communities. This is described in detail in the chapter on *Women from Aboriginal communities*.

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34 As an example, see Ministry for the Status and Advancement of Women; *Sexual Assault Phone-In*, NSW Government, 1993; J Bargen and E Fishwick, (1995).

Women with disabilities

Information from the 1993 *Survey of Disability, Ageing and Carers* show that 468,300 women aged 15 years and over or about 20% of women in NSW reported having a disability.[35] The research collected information about women with disabilities and their experiences in court as victims of sexual assault.

Complainant details

In the current study, women with disabilities and women who are deaf or hearing impaired constitute 9% (13) of the study population. Of this group, one complainant had psychiatric disabilities, four complainants had intellectual disabilities, six had physical disabilities, one was hearing-impaired and one complainant had both an intellectual disability and a hearing-impairment.

The employment status of these complainants included five employees, two employed in home duties, two unemployed, two disability pensioners and two invalid pensioners.

Offence details

In all but one of the matters involving hearing impaired women and women with disabilities the accused was a friend, acquaintance, partner or ex-partner of the complainant.

Over half of the complainants told someone of the offence within one hour. Three complainants told someone of the offence between one and five hours, two between six and 12 hours and one complainant took more than a week to tell someone about the sexual assault.

Over half the complainants first told a friend, relative or acquaintance about the sexual assault.

Three complainants reported the offence to police in less than one hour of it occurring, five complainants reported to police within five hours, one complainant told police within 12 hours and one complainant reported within seven days. Two complainants took more than a week to advise the police.

In the majority of cases (ten), the location of the initial contact with the accused was in a private home. In half of the matters the offence occurred in the complainant's home, four in the accused's home and one in the home in which both the complainant and accused resided. Three offences occurred in parkland or bushland. None of the assaults in this sample occurred in an institutional setting.

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[35] A disability was defined as the presence of one or more limitations, restrictions or impairments which had lasted or was likely to last for six months or more; Australian Bureau of Statistics (1995): p. 55.

Court details

In the matters involving women with disabilities, ten matters went to trial and two matters went to sentence.

WOMEN FROM ETHNIC COMMUNITIES

The research included only eight matters in which the complainant was a woman from an ethnic community. As stated above, women from ethnic communities were under-represented in the research.

Age, employment and marital status

The women from ethnic communities in the sample were aged between 18 to 34 with an average age of 24 years. Women complainants from ethnic communities included employees, women working at home and women who were unemployed.

Relationship to accused

In all matters involving women from ethnic communities the complainant knew the accused person as a partner or ex-partner, family associate or relative.

Location of initial contact and offence

In the majority of the cases (six), both the initial contact with the accused and the offence occurred at a private home.

Reporting practices

Over half of the complainants told someone of the offence within one hour of it occurring. In one case in which the accused was a relative, the complainant did not complain of the offence until one week after the incident. Just under half the complainants told the police of the offence within an hour. In two cases— one in which the accused was an ex-partner and one in which the accused was a relative— the complainant advised the police after a period of a week.

Court details

In these eight matters, five went to trial and the remainder were guilty pleas which proceeded straight to sentence.

SUMMARY

It is important to keep in mind that incidents described in this research are sexual assault matters heard in the District Court. Therefore while they are able to be generalised to all sexual assaults heard in the District Court they may not typify all sexual assault incidences occurring in the community.

- The study examined 111 trials and 73 sentence hearings.
- The median age of accused persons in the study was 30 years and over half of the accused lived in the Sydney region.
- 44% of accused were employed and a high proportion were Australian born.
- A high proportion of accused persons came from Aboriginal communities and the study concluded that Aboriginal men were over-represented as accused persons.
- While only 10% of accused persons had prior sexual offences, 30% had prior violence offences.
- Most accused persons had been granted bail.
- The median age of complainants in the study was 24.5 years and three quarters were Australian born.
- The study found that complainants from ethnic communities were under-represented as complainants of sexual assault in the District Court of NSW.
- The study found women from Aboriginal communities were over-represented as complainants in sexual assault hearings, comprising 11% of complainants in the study population.
- Of women complainants in the study, women with disabilities comprised 9% of complainants.
- In 63% of cases in the study intial contact was made at a private home of some kind and this contact was not forced in 78% of cases.
- The offences in the study occurred most often (72%) in a private home, and this was more likely to be the home of the complainant.
- In the vast majority of cases (90%) in the study the complainant knew the accused. Only 10% of cases involved an accused and complainant who were strangers.
- In 27% of cases there was some evidence of prior consenting sex between the complainant and the accused.
- The study found that in 49% of cases the complainant first told a friend or acquaintance about the assault and with the majority of complainants (83%) telling somebody about the sexual assault within 5 hours of it occurring.

- Half of all complainants reported the sexual assault to police within five hours of it occurring and over one third of complainants contacted police within one hour.
- Women with disabilities constituted 9% of all complainants in the study.
- Women from ethnic communities were under-represented in the study population, representing only 5% of complainants in hearings studied by the research.

Charges, Pleas and Outcomes

This chapter examines charges laid in the sexual assault hearings studied in the research, the accused person's pleas to these charges and the outcome of these charges—that is, whether the accused persons were found guilty or not.

Figure 1 gives an outline of the sample in the present research. This information is presented in detail in the *Methodology* chapter of this report. To repeat, its configuration was as follows:

Figure 1 Sample configuration (n=150)

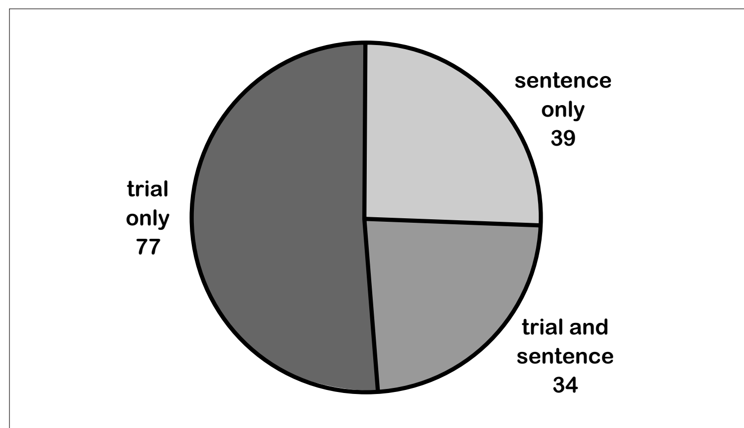


Figure 1 shows that of the 150 hearings studied, 111 were trials (34 and 77) and 39 were sentence hearings only. There were only 108 trials in which the complainant gave evidence. In 3 trials the complainant did not give evidence. In one hearing overwhelming forensic evidence and eye witness evidence was relied on. In another two hearings the jury gave a not guilty verdict before the complainant gave evidence following a *Prasad*[1] direction.

Accused persons in 39 out of 150 cases pleaded guilty.[2] This represents a guilty plea rate of 26%. This rate is consistent with the rate of guilty pleas reported by BCSR in a 1993

1 A *Prasad* direction refers to a direction by the Judge mostly on application by the Defence to the jury, that the jury find the accused not guilty. The jury is bound to accept this direction. It is the role of the Judge, during the trial, to determine whether there is enough evidence, excluding evidence favourable to the accused, to satisfy the jury beyond reasonable doubt of the accused's guilt. *R v Prasad* (1979) 23 SASR 161

2 While there were 150 cases, there were a total of 167 accused persons, as in some cases there were multiple accused. However as the purpose of the current study was to examine the experience of hearings from the viewpoint of women, and the research found 150 hearings in which women were the complainants, the data is analysed looking at the number of cases.

study which found that the percentage of accused persons who pleaded guilty to sexual assault offences in the Higher Courts[3] between 1988 and 1992 was 30-33%.[4]

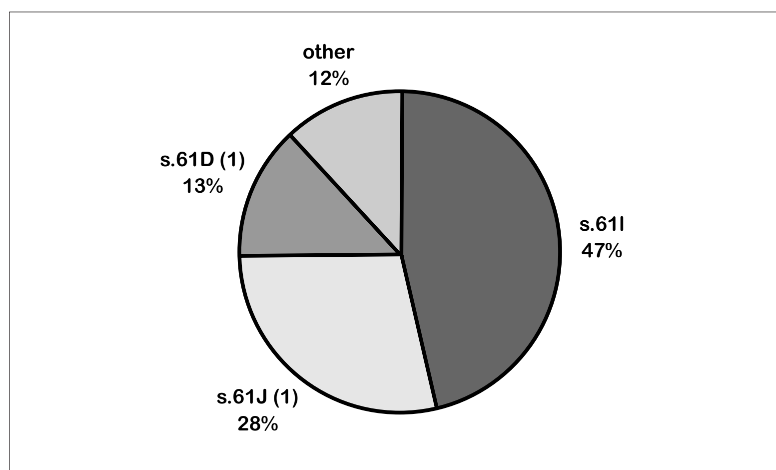
The above figure shows that another 34 cases out of 111 cases which went to trial resulted in a conviction. This represents a conviction rate following a plea of not guilty of 31%. This figure is lower than the conviction rate found by a 1992 BCSR study which shows that the percentage of persons convicted between 1982 and 1989 ranged from 37.4% to 46.7%.[5] However the samples differed in the two studies. The BCSR study looked at a broader category of sexual assault offences which included indecent assault offences and offences such as homosexual offences and carnal knowledge. The present research examined aggravated sexual assault, sexual assault and maliciously inflicted harm with the intent to have sexual intercourse.

This chapter looks specifically at all charges and all associated pleas and outcomes, as well as referring to principal charges in the hearings studied. The chapter presents some of the information using the *number of hearings* studied (150) and other information using the *number of total offences charged* (310) in the hearings studied by the research. An accused person is often charged with more than one offence.

CHARGES

SEXUAL ASSAULT CHARGES

Figure 2 Range of sexual assault charges (n=310)



3 District Court and Supreme Court

4 P Salmelainen and C Coumarelos; 'Adult Sexual Assault in NSW', *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, July 1993, p. 12.

5 ibid. pp. 10-12.

Figure 2 presents the range of sexual assault charges laid in the hearings studied[6]. This information is also shown in detail in Table 1 at the conclusion of this chapter. Sexual assault charges total more than 150 (the number of hearings) because often the accused was charged with several sexual assault charges. Figure 2 shows that of all charges laid, charges under section 61I of the *Crimes Act* 1900 NSW[7] were the most common (47%). The next largest group of charges were laid under section 61J of the *Crimes Act* 1900 NSW.[8] There were a total of 87 charges laid which represents just more than one quarter (28%) of all sexual assault charges laid. Table 1 at the conclusion of this chapter shows that despite the repeal of sections 61B, 61C and 61D of the *Crimes Act* 1900 NSW in 1989, 57 of the offences (18%) charged were under these provisions. These charges are laid only if the offence occurred before the repeal of the legislation in 1989.

Figure 3   Range of principal sexual assault charges only (n=150)

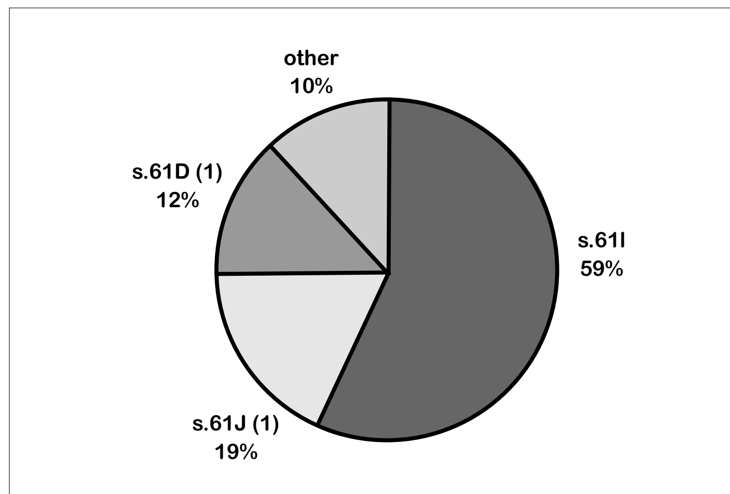


Figure 3 gives the same information as that in Figure 2 (charges laid in hearings studied) however here the research focuses on the **principal charge** in each matter. The principal charge was identified as the charge with the highest penalty. For this reason the Figure provides information on the total number of sexual assault hearings not the total number of charges.[9] Table 3 at the conclusion of this chapter presents this information in more detail. When the research addresses principal charges, Figure 3 shows that in more than

6 For a description of these provisions, see p. 40 in the chapter on *Methodology*; for a description of the maximum penalty for these provisions, see p. 314 in the chapter on *Sentencing*.

7 Sexual intercourse without consent.

8 Aggravated sexual intercourse without consent.

half (59%) of all the hearings studied, the principal charge was sexual intercourse without consent (section 61I). The next most common principal charge in the hearings studied was aggravated sexual assault (section 61J) which represented the principal charge in 19% of cases. In about one in ten hearings (12%) the principal charge was an offence under section 61D of the now repealed legislation, sexual intercourse without consent.

The highest number of charges of sexual intercourse without consent (section 61I) in a single case was 6 [Case 14]. The highest number of charges of aggravated sexual intercourse without consent (section 61J) in a single case was 10 [Case 127].

Often an accused person may be charged with related but ancillary offences such as robbery, break and enter or assault as well as sexual assault offences. These charges arise out of the same incident and the accused is tried on all of the charges. Guilt is separately assessed for each charge.

ANCILLARY CHARGES

Figure 4   Range of ancillary charges (n=115)

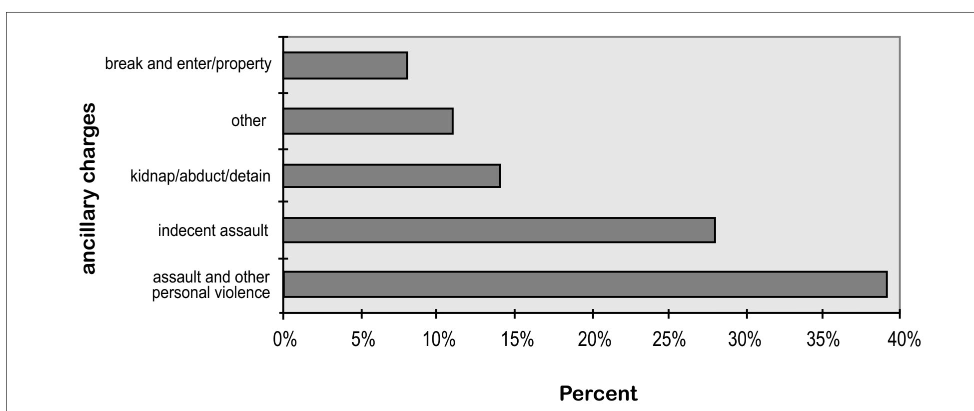


Figure 4 presents all charges which were ancillary to the sexual assault charges laid in cases studied in the research. This information is presented in more detail in Table 4 at the conclusion of this chapter. Of all ancillary charges, accused persons were most commonly charged with assault or other personal violence offences (39% of all non-sexual assault charges). The next largest group of offences related to indecent assault offences which

[9] The present research sample comprised 150 hearings. However in these hearings there were a total of 167 accused persons. There were a number of cases in which multiple accused were tried together. It can be argued that as charges attach to an accused person, *principal* charges should be examined in relation to the total number of accused persons (in the present research this is 167). The overall purpose of the present research was to examine the conduct of trials from the viewpoint of women complainants. Hence the research uses only the number of hearings as per the complainant (150) or the total number of charges (310) and does not use the number of accused persons as a denominator from which to analyse these results.

represented 28% of all other ancillary offences charged. The present research shows that when accused persons are charged with offences arising from a sexual assault and they are also charged with ancillary offences, it is most likely to be either an offence of assault or another personal violence offence or an offence of indecent assault.

PLEAS TO CHARGES

Figures 5a and 5b below describes the total number of sexual assault offences charged in the hearings studied. The figures show the pleas by the accused person(s) to the range of charges as outlined in Table 1. This information is also described in details in Table 4 at the conclusion of this chapter.

A plea is the accused's response to the charges. At arraignment an accused person can plead not guilty or guilty or can enter no plea. Arraignment usually occurs on the accused's first appearance in the District Court. Some accused persons changed their plea as the trial began or shortly into the trial after discussions with the DPP and on hearing the evidence presented during the trial. For the purposes of the information in Figures 5a and 5b and Table 4, the plea of the accused on the day of arraignment is considered.

Figure 5a Pleas to principal sexual assault charges section 61I (n=144)

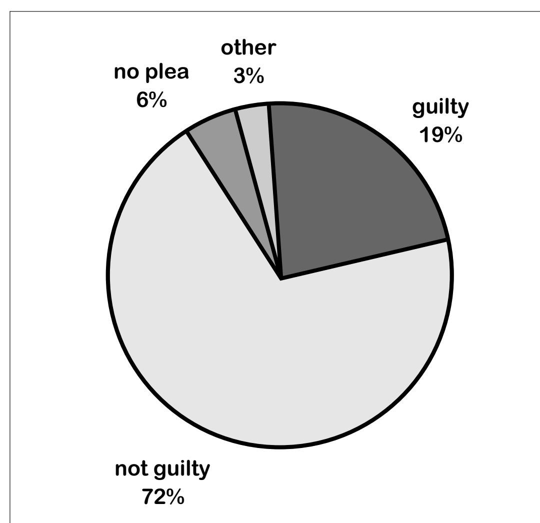
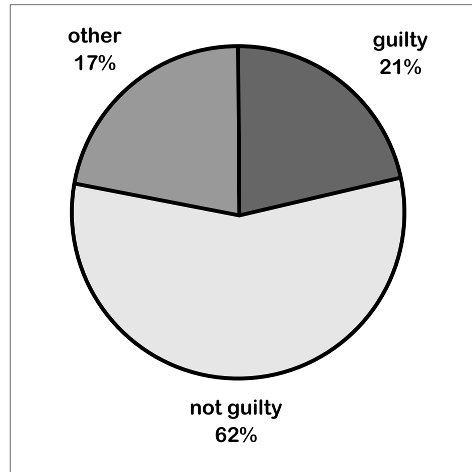


Figure 5b Pleas to principal sexual assault charges section 61J (1) (n=87)



Not guilty pleas

Table 4, at the conclusion of this chapter, shows that there were 144 charges laid under section 61I (sexual intercourse without consent) to which 104 pleas of not guilty were entered. In Figure 5a, it can be seen that this represents a not guilty plea rate of 72% for those charges. In almost three quarters of section 61I charges, a plea of not guilty was entered. Of the 87 charges laid under section 61J (aggravated sexual assault), Figure 5b shows that 54 pleas of not guilty were entered (62%). There was a slightly higher rate of not guilty pleas to charges under section 61I than to aggravated sexual assault charges under section 61J.

In examining not guilty pleas for all offences charged, the present research shows that 205 pleas of not guilty were entered to the total 310 offences. This represents two thirds (66%) of all sexual assault charges in the study.

Guilty pleas

Figure 5a above shows that guilty pleas were entered for 28 of the 144 charges (19%) laid under section 61I.[10] Figure 5b also shows that of the 87 charges laid under section 61J (1), guilty pleas were entered to 18 of these charges (21%). This information is presented in more detail in Table 4 at the conclusion of this chapter.

10 Guilty pleas include four *plea adhered to* and 24 *pleas of guilty.* This includes all guilty pleas made at any stage during the pre-trial process, up until the day of arraignment.

In examining guilty pleas for all offences charged, the present research shows that a plea of guilty was entered in one fifth (22%) of all sexual assault offences in the study.

STAGE AT WHICH PLEA IS ENTERED

Figure 6 Stage at which defendant pleaded guilty (n=39)

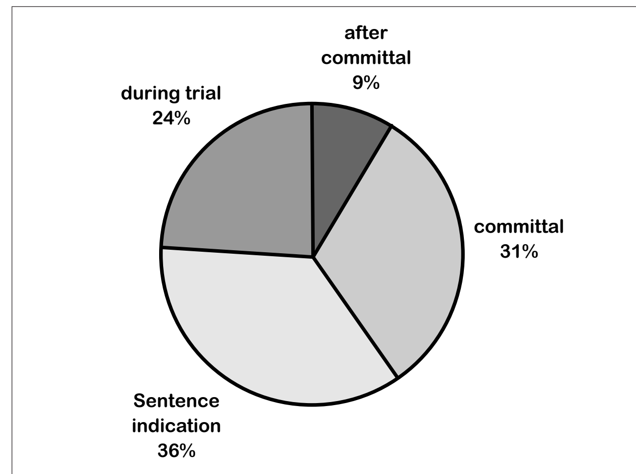


Figure 6 shows that in the cases in which the accused pleaded guilty, almost one third entered a plea of guilty at committal (31%) and 9% entered a plea of guilty immediately after committal. Just over a third of accused entered a plea of guilty at a Sentence Indication hearing (36%), and 24% of accused pleaded guilty at the commencement of trial or during the trial.

SENTENCE INDICATION

The chapter in this report on *Sentencing* and the *Introduction* outline the Sentence Indication Scheme in detail. In the current study, as Figure 6 above shows, just over a third of accused persons (14 out of 39) pleaded guilty at sentence indication (36%). The research shows that some accused persons took significant advantage of the Sentence Indication Scheme in sexual assault cases.[11] No further analysis of sentence indication has been undertaken because of its abolition in NSW in January 1996.

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[11] See further NSW Bureau of Crime Statistics and Research; *Sentence Indication Scheme Evaluation*, Legislative Evaluation Series, 1995.

Outcomes or finalisation of charges

Charges are finalised through a plea, by a verdict of the jury (or under some circumstances by a Judge), or where the charge has been determined not appropriate at either arraignment or during the trial, by the Judge. The latter outcome is also used to delete a charge from the JIS—used by the Criminal Listings Directorate of the District Court to store information about hearings—when it has been entered incorrectly. 'Charge determined not appropriate' can also be used as a code for hearings in which the accused person was charged on the indictment with a charge and an alternative charge. Once the jury or Judge have proceeded on the alternative charge the initial charge is coded as 'charge determined not appropriate'.

Not guilty verdicts can come as a result of the jury or Judge in a judge alone trial deciding on a verdict of not guilty or the Judge directing the jury to find the accused not guilty. Directed verdicts of acquittal are discussed in more detail in the chapter titled *Directed Verdicts*.

Table 5 at the conclusion of the chapter presents the finalisation of sexual assault charges. It relates to all sexual assault charges brought against accused persons in the hearings studied. Table 5 shows how charges listed in Table 1 were finalised and the outcome of pleas as listed in Table 4.[12]

A change in plea to guilty after the commencement of the trial sometimes happens when the accused hears the evidence against him, takes legal advice or his counsel enters into discussions with the Crown Prosecutor and negotiates a plea to a lesser charge. This is called charge bargaining. The 'Other' column in Table 5 refers to outcomes or types of finalisation that were unusual such as where the trial on the particular charge was adjourned for a date outside the research period or the charge was deemed to be not appropriate by the Crown or judge after the trial began.

Finalisation of Sexual Assault Charges

Table 5 shows that for 21% of all charges a guilty plea was entered and a further 18% of charges resulted in a guilty verdict. In total then, of all sexual assault offences charged, almost 40% (121 out of 310 charges) resulted in a conviction.

Table 5 also shows that almost half of all sexual assault offences charged (49%) were finalised or resulted in not guilty verdicts. Directed verdicts of acquittal represented 8%

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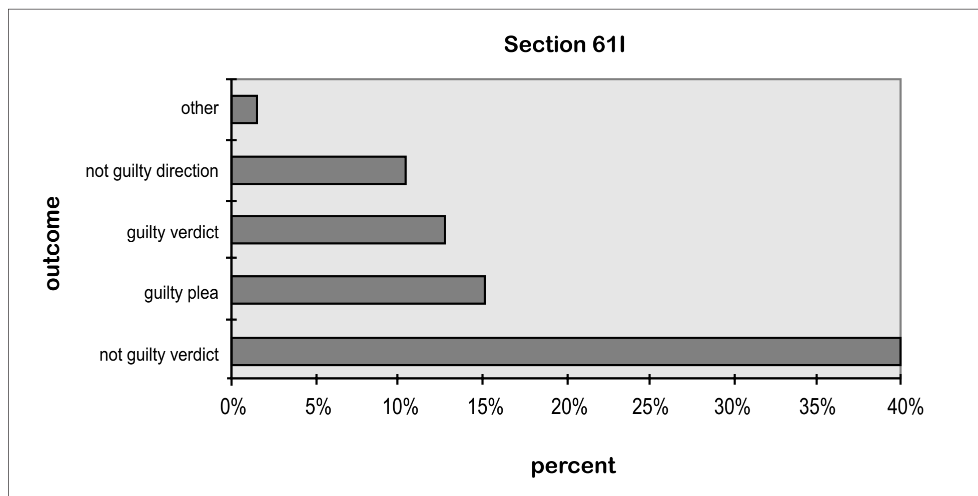
12 There is a small discrepancy in the number of charges to which a guilty plea was entered between Table 5 and Table 6. This is because of the fact that a plea of guilty was entered to in small number of charges after arraignment or during the trial.

of the total number of offences (26 out of 310) and 17% of offences which resulted in a not guilty verdict (26 out of 153).

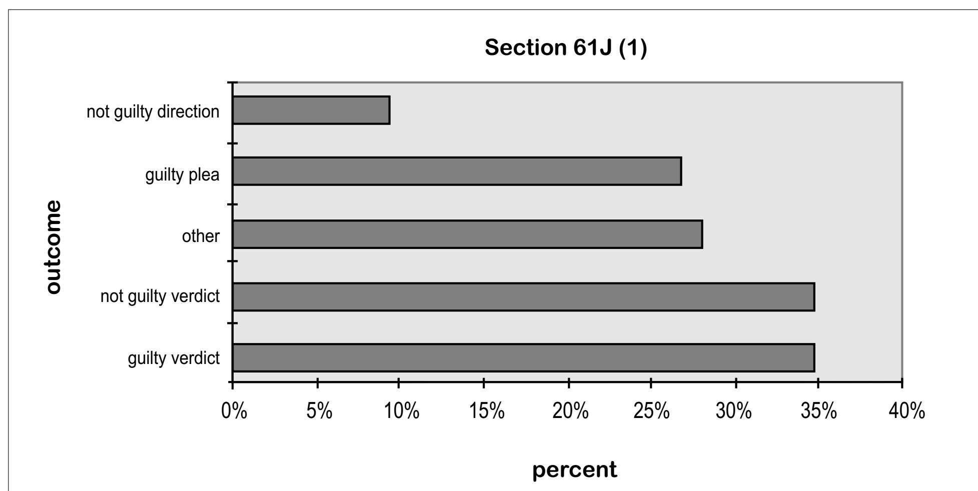
Figures 7a and 7b looks at not guilty verdicts across the specific and most common offences of section 61I and section 61J (1).

Figure 7a   Finalisation of sexual assault charges - Section 61I (n=144)



Of offences charged under section 61I (the most common of offences charged), 90 out of 144 charges resulted in acquittal (63%), where 50% of charges were dismissed by verdict and 13% by direction. This is represented in Figure 7a.

Figure 7b   Finalisation of sexual assault charges – section 61J (1) (n=87)



For charges laid under section 61J, which was the second most common sexual assault charge, verdicts of not guilty resulted in 29 out of 87 charges (33%), where 26% of charges were acquitted by verdict and 7% by direction. This is represented in Figure 7b.

Thus the present research shows that there is a much higher rate of acquittals for section 61I offences than for charges under section 61J (1).

Figure 8 presents conviction and acquittal rates for the 111 trials in which the accused person(s) pleaded not guilty or entered no plea. Therefore this information uses the number of trials as its base, not the total number of offences.

FINALISATION OF SEXUAL ASSAULT TRIALS

Figure 8 Finalisation of matters which went to trial (n=111)

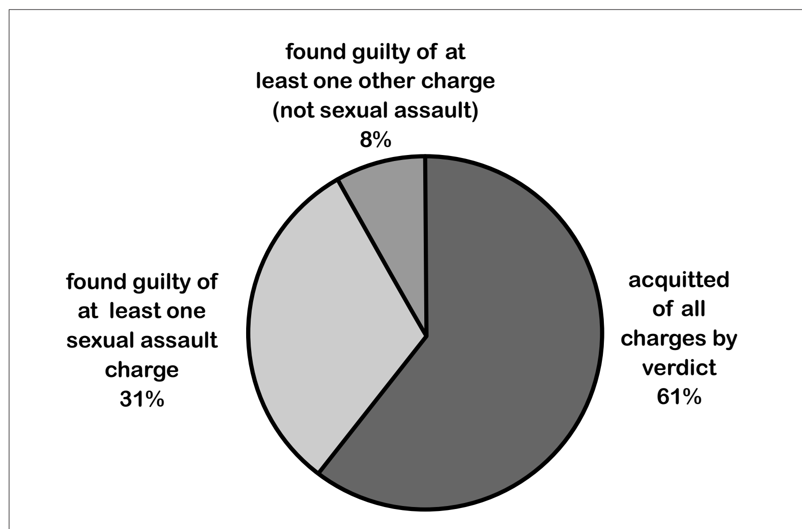


Figure 8 shows that, of the 111 matters in which the accused person(s) pleaded not guilty, 68 trials (61%) resulted in an acquittal by either a verdict of not guilty by the Judge/jury or a directed verdict by the Judge.[13] Trials in which there was a finding of guilt by the jury or Judge represented 31% of all hearings which went to trial. In a further 8% (9 trials out of 111), the accused person(s) was found guilty of at least one other ancillary charge.

[13] As detailed in the *Methodology* chapter, of the 111 trials, four trials were miscarried/aborted. These are counted here as acquittals. If these four trials were to be removed from the 111 total trials and the 68 acquittals, for the purposes of analysis of this variable only, the acquittal rate would be reduced to 60%.

Co-accused persons

There were 12 hearings in the study which involved multiple accused who were charged with sexual assault offences relating to the same incident and were tried together. Nine of these hearings involved two co-accused,[14] one matter involved three co-accused and another two matters involved four co-accused. The two hearings involving four co-accused were in fact the same four in two separate trials for the same incident. The first jury was discharged and a re-trial was ordered which fell into the period of the study.[15] None of the co-accused in any of the hearings pleaded guilty. Hence all went to trial.

In five of the ten hearings involving co-accused the defendants were all acquitted of all charges.[16] In only one case involving two co-accused were both found guilty at their trial and sentenced for at least one sexual assault offence each.

Hearings involving women from aboriginal communities

In cases involving Aboriginal women complainants in the study, one accused pleaded guilty and 16 pleaded not guilty. In these 16 cases in which the accused person pleaded not guilty, three quarters (12) were found not guilty by a jury or Judge. This represents a conviction rate of 25%.

Section 61K of the Crimes Act[17]

In the 1981 changes to the *Crimes Act* 1900 NSW which introduced the graded offences of sexual assault, there was a move to include a sexual assault charge which focused on the

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[14] Two of these nine hearings involving two co-accused related to the same two co-accused in a trial and retrial for the same incident. The first of these hearings miscarried and was aborted because of an admission of evidence which contravened evidentiary rules by a Defence witness. The complainant had given her evidence in full and had completed cross-examination: Case 40; See note below.

[15] The first of these hearings was one of the four aborted/miscarried trials which were included in the present study despite not being legally finalised and a retrial being ordered: Case 82. This trial as with the other three aborted or miscarried trials were included because the complainant gave her evidence in full and was cross-examined in full; the trial miscarried much later in the hearing because of the admission of character evidence about one of the accused. As the research aimed to examine the experience of women complainants in trials, these four hearings were included in the data set as the complainant had completed her role as primary witness in the trial. A detailed explanation of this issue is contained in the *Methodology* chapter of this report. If these four aborted/miscarried trials were removed from the data set the present research would have included a total of ten hearings which involved multiple accused.

[16] In relation to acquittals the denominator for trial outcomes becomes ten not 12 because in two hearings the trial was aborted and a retrial was ordered. These are coded as 'other' for this variable. See above note.

[17] Maliciously inflicting or threatening to inflict actual bodily harm with intent to have sexual intercourse.

violent nature of sexual assault where there was no requirement to prove lack of consent as an element of the offence. This offence was described in the now-repealed section 61C. The offence was retained in the 1989 changes to legislation in the form of section 61K of the *Crimes Act* 1900 NSW. The offence relates to the inflicting or threatened inflicting of actual bodily harm with the intention of having sexual intercourse. For more detail see the *Sentencing* chapter of this report.

It was hoped that police officers would be encouraged to charge under this offence as there was no requirement for the Crown in the court to prove the complainant's lack of consent to the act of sexual intercourse.[18] Table 1, at the conclusion of this chapter, shows that of all charges laid (310) only 16 charges related to offences under section 61C or section 61K (5%). Of these 16 charges, 44% of accused pleaded guilty. Table 2, at the conclusion of this chapter, shows that a charge under section 61K or section 61C was laid as the *principal* charge in only 8 out of 150 hearings in the study (5%). For either total number of charges laid or principal charges in each hearing, section 61C and section 61K comprise only 5%. Therefore it seems that the intended purpose of this section was not being realised.

Summary

- The present research examined 150 sound recorded trials and sentence hearings, including 111 trials and 77 sentence hearings.
- The results of the research were examined by looking at **principal offences** and their outcomes in the hearings (150) and also by looking at charges and outcomes for the **total number of offences** in the hearings (310).
- Of the 150 hearings, 39 resulted in guilty pleas representing 26% of the total sample.
- Of the 111 trials, 34 resulted in a conviction, represents a conviction rate of 31% and an acquittal rate of 69%.
- In 59% of hearings, section 61I of the *Crimes Act* 1900 NSW (sexual intercourse without consent) was the principal offence charged, while 19% of principal offences were charged under section 61J(1) of the Act (aggravated sexual intercourse without consent).
- Many accused persons were charged with offences other than those offences which were the subject of this study. Of the 115 ancillary charges in the sample, 39% of charges were offences of assault and other personal violence offences, while 28% of charges were indecent assault offences.

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18 G Woods, *Sexual Assault Law Reforms in NSW*; Department of the Attorney-General and Justice, Sydney, 1981, p. 7.

- In examining the data and looking at total number of offences with which accused persons in the research were charged, the study found that, overall, for two thirds of sexual assault charges a accused persons entered a plea of not guilty plea (66%).
- In examining the data and looking at the total number of offences with which accused persons in the research were charged, the study found that, overall, the accused entered a plea of guilty for 22% of charges.
- One third of pleas of guilty were entered at committal (31%), while another one third of guilty pleas were entered at sentence indication (36%).
- Almost half (49%) of the total number of sexual assault offences examined by the research, resulted in a verdict of not guilty. Directed verdicts of acquittal represented 8% of the total number of offences (26 out of 310).
- The study showed that few accused persons were charged with offences under section 61K of the *Crimes Act* 1900 NSW, an offence which emphasises the violent nature of the sexual assault and does not involve consent as an element of the offence. Section 61K represented on 5% of total offences with which accused persons were charged in the present study.

Table 1 Range of sexual assault charges (all charges)

Type of sexual assault charge	*Section*[19]	*Number*[20]
Maliciously inflict grievous bodily harm with intent to have sexual intercourse	s.61B	1
Sexual intercourse without consent	s.61D(1)	41
Attempt sexual intercourse without consent	s.61D s. 61F	2
Maliciously inflict actual bodily harm with intent to have sexual intercourse	s.61C(1)(a)	3
Maliciously inflict actual bodily harm with intent to have sexual intercourse in company	s.61C(3)(a)	3
Sexual intercourse without consent in company	s.61D(1)(b)	6
Threaten to inflict actual bodily harm with weapon with intent to have sexual intercourse	s.61C(1)(b)	1
Aggravated sexual assault	s.61J(1)	87
Sexual intercourse without consent	s.61I	144
Attempt sexual intercourse with aggravation	s.61J s.61P	8
Maliciously inflict actual bodily harm with intent to have sexual intercourse	s.61K(a)	6
Threaten actual bodily harm with intent to have sexual intercourse	s.61K(b)	3
Attempt sexual intercourse without consent	s.61I s.61P	3
Aggravated sexual assault without consent	s.61J	2
Total sexual assault charges		**310**

19 Sections refer to the *Crimes Act* 1900 NSW.

20 The tables represents the number of sexual assault charges under section 61B, C, D (1981 amendments) and section 61I, J, K (1989 amendments) of the *Crimes Act* 1900 NSW for 167 accused in the 150 matters before the NSW District Court in the one year study period between 30 April 1994 and 1 May 1995 where the complainant was a female over the age of 16 years.

Table 2 Range of sexual assault charges (principal charge)

Type of sexual assault charge	***Section***[21]	***Number***[22]
Maliciously inflict grievous bodily harm with intent to have sexual intercourse	s.61B	
Sexual intercourse without consent	s.61D(1)	18
Attempt sexual intercourse without consent	s.61D s. 61F	1
Maliciously inflict actual bodily harm with intent to have sexual intercourse	s.61C(1)(a)	1
Maliciously inflict actual bodily harm with intent to have sexual intercourse in company	s.61C(3)(a)	
Sexual intercourse without consent in company	s.61D(1)(b)	4
Threaten to inflict actual bodily harm with weapon with intent to have sexual intercourse	s.61C(1)(b)	
Aggravated sexual assault	s.61J(1)	29
Sexual intercourse without consent	s.61I	88
Attempt sexual intercourse with aggravation	s.61J s.61P	2
Maliciously inflict actual bodily harm with intent to have sexual intercourse	s.61K(a)	4
Threaten actual bodily harm with intent to have sexual intercourse	s.61K(b)	3
Attempt sexual intercourse without consent	s.61I s.61P	
Aggravated sexual assault without consent	s.61J	
Total sexual assault matters		**150**

Table 3 Range of ancillary charges

Type of charge	*Number*
Assault and other personal violence offences	45
Indecent assault offences	32
Break and enter and property offences	9
Kidnap, abduct and detain offences	16
Other offences	13
Total ancillary charges	**115** [23]

[21] Sections refer to the *Crimes Act* 1900 NSW.

[22] The table represents the number of cases where the charge was the primary or principal charge in the matter. 'Principal charge' refers to the charge with the highest penalty.

[23] The table relates to all charges laid in all matters studied, not principal charges in the matters.

Table 4 Pleas

Type of sexual assault charge	*guilty*	*not guilty*	*no plea*	*plea adhered to*[24]	*not applicable*[25]	*Total*
Maliciously inflict grievous bodily harm with intent to have sexual intercourse *s.61B*	1	-	-	-	-	1
Sexual intercourse without consent *s.61D(1)*	7	28	-	2	4	41
Attempt sexual intercourse without consent *s.61D + s.61F*	-	1	-	-	1	2
Maliciously inflict actual bodily harm with intent to have sexual intercourse *s.61C(1)(a)*	-	1	-	1	1	3
Maliciously inflict actual bodily harm with intent to have sexual intercourse in company *s.61C(3)(a)*	-	1	-	1	1	3
Sexual intercourse without consent in company *s.61D(1)(b)*	-	5	-	-	1	6
Threaten to inflict actual bodily harm with weapon with intent to have sexual intercourse *s.61C(1)(b)*	-	1				1
Aggravated sexual assault *s.61J(1)*	15	54	-	3	15	87
Sexual intercourse without consent *s.61I*	24	104	9	4	3	144
Attempt sexual intercourse with aggravation *s.61J + s.61P*	1	5	-	2	-	8
Maliciously inflict actual bodily harm with intent to have sexual intercourse *s.61K(a)*	1	3	-	1	1	6
Threaten actual bodily harm with intent to have sexual intercourse *s.61K(b)*	3	-	-	-	-	3
Attempt sexual intercourse without consent *s.61I + s. 61P*	-	2	-	-	1	3
Aggravated sexual assault without consent *s.61J*	-	-	-	-	2	2
Totals (n=310)	**52**	**205**	**9**	**14**	**30**	**310**

[24] Where a plea of guilty is entered into at early part of the process such as the committal hearing in the Local Court.

[25] Where the plea is not relevant as these charges have been dismissed or not followed through on or before the day of arraignment.

Table 5 Finalisation of sexual assault charges

Type of sexual assault charge	*Guilty: plea*	*Guilty: verdict*	*Not guilty: verdict*	*Not guilty: direction*	*Other*	*Total*
Maliciously inflict grievous bodily harm with intent to have sexual intercourse *s.61B*	1	-	-	-	-	1
Sexual intercourse without consent *s.61D(1)*	9	4	22	-	6	41
Attempt sexual intercourse without consent *s.61D + s.61F*	-	1	-	-	1	2
Maliciously inflict actual bodily harm with intent to have sexual intercourse *s.61C(1)(a)*	1	1	-	-	1	3
Maliciously inflict actual bodily harm with intent to have sexual intercourse in company *s.61C(3)(a)*	-	-	1	-	2	3
Sexual intercourse without consent in company *s.61D(1)(b)*	-	2	3	-	1	6
Threaten to inflict actual bodily harm with weapon with intent to have sexual intercourse *s.61C(1)(b)*	-	-	-	1		1
Aggravated sexual assault *s.61J(1)*	17	23	23	6	18	87
Sexual intercourse without consent *s.61I*	28	23	72	18	3	144
Attempt sexual intercourse with aggravation *s.61J + s.61P*	3	2	2	1	-	8
Maliciously inflict actual bodily harm with intent to have sexual intercourse *s.61K(a)*	2	1	2	-	1	6
Threaten actual bodily harm with intent to have sexual intercourse *s.61K(b)*	3	-	-	-	-	3
Attempt sexual intercourse without consent *s.61I + s. 61P*	-	-	-	2	1	3
Aggravated sexual assault without consent *s.61J*	-	-	-	-	2	2
Totals	**64**	**57**	**127**	**26**	**36**	**310**
%	**21**	**18**	**41**	**8%**	**12**	**100**