

What Victims Assault or Sexual Assault Can Expect at Court



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Amy Watts, Assistant Solicitor, NSW Department of Public Prosecutions on 10 June 2014. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- Why prosecute an assault or sexual assault?
- What are a victim's rights?
- The court process from start to finish
- Protections for victims of sexual assault or 'vulnerable witnesses'

Reasons to prosecute assault or sexual assault

- It's a crime
- Appropriate societal response
- Punishment
- Protection to others
- Fairness to those victimised
- Rehabilitation of the victim
- Enforced rehabilitation of offender

Statistics

- A 2009-2010 BOSCAR report found 85% of offenders convicted of an offence of aggravated sexual assault were sentenced to prison, with an average sentence of 8 years and an average minimum term of 4 years
- BOSCAR indicates that only 20-27% of victims report sexual assault and more than 80% of reported cases don't proceed to prosecution. Among those that reach court, there's less than a 50% conviction rate of the accused being found guilty. This does not take into account the amount of offenders that plead guilty.

Standard of Proof

- The standard of proof for criminal matters including assault or sexual assault is **beyond reasonable doubt**.
- To be eligible for financial assistance from Victims Services, the standard of proof is lower – the balance of probabilities (more likely than not). Therefore, even if the accused is not found guilty, the victim may still be eligible for financial assistance from Victims Services. All victims of crimes that occurred in NSW are eligible for free counselling from Victims Services. For more information call the Victims Access Line: **1800 633 063**

Victims Rights

- Charter of Victims Rights outlines 18 rights of victims, this includes:
 - If you ask, to be told how the investigation is going
 - To be kept informed if the prosecution wants to change or drop charges
 - To given information about being a witness
 - For victims of sex crimes or assault causing injury, to be protected from contact with the offender and their witnesses while the case is in court
 - Be told if the offender has been granted bail
 - To be given the option of doing a victim impact statement
 - To have a say if the offender applies for parole
- If your client does not feel these rights have been respected, she can make a complaint to Victims Services
- Your client should also contact Victims Services for free counselling and find out if she is eligible for financial assistance

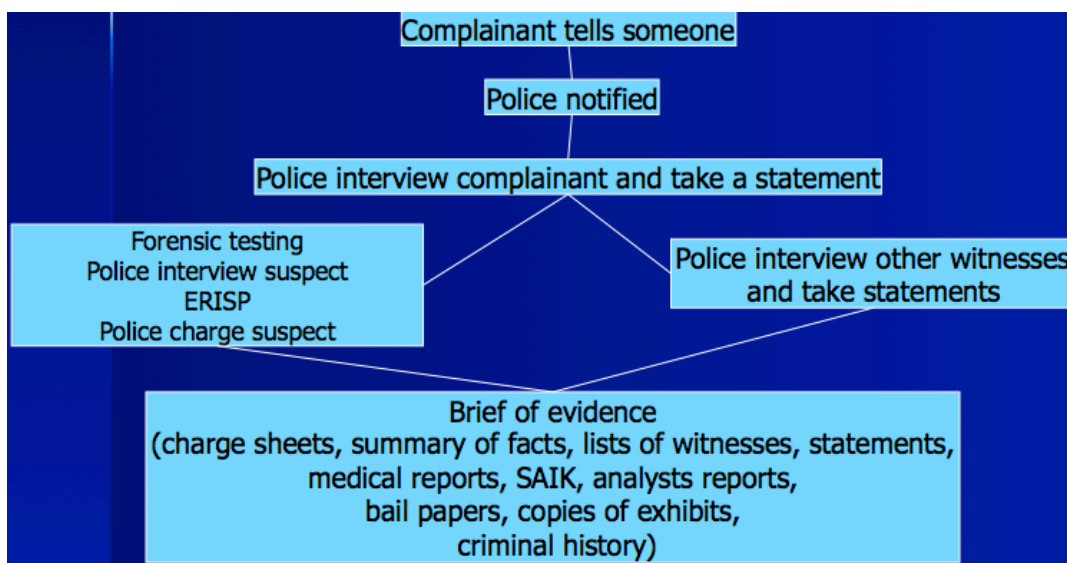
Who will prosecute the matter?

Criminal matters are either prosecuted by the police (summary offences {less serious}) or the Department of Public Prosecutions (DPP). The matter will be dealt with the DPP if it is one of the following matters:



1. If it is an **indictable** {more serious} matter: ie, the penalty is more than 2 years imprisonment or if there are multiple charges and the sum of their penalty is more than 5 years imprisonment
2. If it is a child sexual assault matter (even if the victim is now an adult)
3. If a police officer is the accused

The Court Process



Pre-committal (before the committee hearing)

- Police brief sent to DPP **and the Defence** - Police issue disclosure certificate & DPP take over proceedings
- DPP will go through screening sheet to see if the correct charges are laid, if there is sufficient evidence, what additional evidence is needed to proceed etc.
- Accused and his/her legal representative read brief and tell DPP who they wish to call evidence from at committal
- Section 93 *Criminal Procedure Act 1986* – is the complainant required for cross examination at committal? (vulnerable persons barred from appearance at committal)

Committal hearing process

A committal hearing is like a mini-trial to see if there is enough evidence for the case to go to trial

If the defendant pleads guilty

- The matter goes to sentencing

If the defendant pleads not guilty

- There will either be a paper committal (decided based on documentary evidence only) or if the evidence itself is not strong enough, the defence will call witness/es
- If the Magistrate considers the evidence is NOT sufficient, the matter is dismissed
- If the Magistrate considers the evidence IS sufficient, the matter committed for trial &
 - Bail is considered
 - Arraignment in District Court where the accused formally pleads guilty or not guilty, if accused pleads guilty, a date is set for sentencing, if the accused pleads not guilty, a date is set for trial.

Trial hearing process

Guilty Plea

- Date set for sentence
- Pre sentence report
- Bail considered
- Sentenced



Not Guilty Plea

- Jury
- empanelled or judge alone
- Closed court
- Mandatory non publication order
- CCTV
- Guilty? Sentenced
- Not guilty? Released

Trial Procedure

- Jury empanelled
- List of witnesses read to the court
- Judges comments to jury
- Crown's opening address
- Crown witnesses called (evidence in chief, cross examination, re examination)
- Defence opening address
- Defence witnesses called
- Closing addresses
- Judges summing up and directions to jury
- Jury retire
- Verdict

Court of Criminal Appeal

Found guilty by a jury

- Conviction appeal
- Or
- Conviction and sentence appeal
- Or
- Sentence appeal

Pleaded guilty

- Conviction and sentence appeal
- Or
- Sentence appeal

Conviction

- Allowed (New trial or conviction quashed and no re-trial)
- Or
- Dismissed

Sentence

- Allowed (sentence varied)
- Or
- Dismissed

At appeal – complainant and / or witnesses not usually called but there are some exceptions

Provisions for sexual assault complainants

- CCTV/screens
- Support people
- Restrictions on improper questions
- No cross examination by unrepresented accused
- Sensitive Evidence Provisions
- Sexual assault communications privilege
- Closed courts (discretionary)
- Pre-trial hearings (case management)
- Non publication orders (name, evidence etc)
- Use of electronic recordings or transcripts in retrials
- Communication aids

Evidence relating to sexual experience

- Section 293 Criminal Procedure Act: evidence that says or implies a victim has had or lacks sexual experiences or activities is inadmissible
- However – there are a number of exceptions. Eg, if the evidence of a victim's sexual reputation relates directly to alleged sexual assault in question or is a part of a related event, or if it relates to a relationship she was in with the accused at the time of the alleged sexual assault, or relates to whether, for example, a

pregnancy or disease has resulted from the alleged sexual assault, then that evidence is admissible and the victim could be cross-examined on that evidence.

- Eg, *R v Mosegaard* [2005] NSW CCA 361
 - Defence tried to introduce evidence victim had sex with others 48 hrs before assault, enjoyed bondage & was exotic dancer
 - Evidence excluded from the trial and upheld on appeal
 - Found evidence not persuasive & would have humiliated complainant



Vulnerable persons

- A child and a cognitively impaired person are now known as a “vulnerable person”
- Definition of cognitively impaired person:

A person is defined to be *cognitively impaired* if the person has:

- (a) an intellectual disability,
- (b) a developmental disorder (including an autistic spectrum disorder),
- (c) a neurological disorder,
- (d) dementia,
- (e) a severe mental illness,
- (f) a brain injury,

Additional provisions for vulnerable persons

- Electronic statements played as evidence in court;
- Paper committals only (vulnerable person barred from giving evidence at committal);
- Wishes of the vulnerable person to be taken into account

Referrals

- Witness Assistance Service: 1800 814 534
 - *Information and support for witnesses*
- Victims Services: 1800 633 063
 - *Counselling, financial assistance & complaints about the charter of rights*
- 1800 RESPECT: 1800 737 732
- Law Access: 1300 888 529
- Women’s Legal Contact Line: 8745 6988