

Exploring approaches to sexual assault law reform

A Fair Chance: Proposals for Sexual Assault Law Reform in NSW, A discussion paper by the New South Wales Adult Sexual Assault Interagency Committee, November 2004, 40 pages.

The New South Wales Adult Sexual Assault Interagency Committee, convened by New South Wales police, are keen to address the problem of low conviction rates in sexual offence cases, and to identify areas in need of reform where the prosecution of sexual assault is concerned.

The Committee consists of a range of key stakeholders including representatives from government departments, the Office of Public Prosecutions, Women's Legal Services, and the New South Wales Rape Crisis Centre. The paper, *A Fair Chance: Proposals for Sexual Assault Law Reform in NSW*, is the product of an 18-month review of both national and international research undertaken by the Legal Issues Sub-committee, appointed by the New South Wales Adult Sexual Assault Interagency Committee, to explore approaches to sexual assault law reform taken by the various jurisdictions in Australia.

The paper looks at the prosecution process in the context of sexual offences and explores current legislation, the impact of the system on victims, and options for reform. Specifically, the paper addresses: (1) jury directions in relation to corroboration warnings and delays in complaint; (2) changes to court procedures that will minimise the associated trauma complainant's experience in going through the prosecution process, as well as reduce delays; (3) the further strengthening of the nature of suppression orders to better protect the confidentiality of complainants; and (4) changes to the substantive law that will more effectively deal with offences involving drug and alcohol facilitated sexual assault, and that will improve the law's treatment of consent.

Of particular interest are the reforms proposed by the sub-committee that could allow the evidence provided by multiple victims in historical cases, or "tendency evidence" (that is, other witnesses who could give evidence of behaviour that was consistent with the charges that had proceeded against the accused), to be more readily admitted in sexual offence cases. *A Fair Chance* highlights the difficulties posed by existing legislation in restricting evidence of uncharged acts or past similar behaviour being admitted. In most cases, the prejudicial effect of evidence that suggests the accused might have a propensity to behave in certain ways, or where there are patterns of abusive behaviour that can be demonstrated in the past (i.e. such as in domestic violence contexts) is understood to outweigh any evidentiary value that it could provide to a prosecution case.

The law also continues to rely on traditional safeguards for cases involving multiple victims. Where victims have had contact with each other, either at the time, or following the events in question, the law has allowed the mere possibility of "concoction" to render the evidence of these other acts or offences inadmissible. For prosecutions involving multiple victims, the law has generally required that charges involving one victim be heard separately from any others.

The options for reform outlined in *A Fair Chance* would provide for a more appropriate balance in allowing prosecutors to legitimately draw on evidence that substantially supports the allegations of single or multiple victims while ensuring that the rights of an accused are properly observed.

Copies of the report can be accessed via the Violence Against Women Specialist Unit's website at www.lawlink.nsw.gov.au/vaw

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