



**Drugs and Crime Prevention Committee**

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**COMBATING SEXUAL ASSAULT  
AGAINST ADULT MEN AND  
WOMEN**

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**Inquiry into Sexual Offences Against  
Children and Adults**

**Final Report**  
November 1996



PARLIAMENT OF VICTORIA

**Drugs and Crime Prevention Committee**

**COMBATING SEXUAL ASSAULT  
AGAINST ADULT MEN AND WOMEN**

**FINAL REPORT**

upon the

**Inquiry into Sexual Offences Against  
Children and Adults**

*Ordered to be printed  
November, 1996.*

*No. 26 - Session 1996*



# **DRUGS AND CRIME PREVENTION COMMITTEE**

## **MEMBERS**

The Honourable Andrew R. Brideson, M.L.C., **Chairman.**

Mr. Gary J. Rowe, M.P., **Deputy Chairman.**

Mr. Andre Haermeyer, M.P.,

Mr. Don Kilgour, M.P.,

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Mr. Barry E. Traynor, M.P.,

Mrs. Jan T. C. Wilson, M.P.,

# **DRUGS AND CRIME PREVENTION COMMITTEE**

## **STAFF**

Ms. Helen Green  
Director of Research and Administration

Ms. Maria Tedesco  
Office Manager / Research Assistant

Mr. Alan B. Ogilvie  
RMIT  
Research Consultant

Ms. Sarah Crome  
Research Consultant

# **FUNCTIONS OF THE DRUGS AND CRIME PREVENTION COMMITTEE**

*Parliamentary Committees Act 1968*

## **Section 4 EF.**

To inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with the illicit use of drugs (including the manufacture, supply or distribution of drugs for such use) or the level or causes of crime or violent behaviour, if the Committee is required or permitted so to do by or under this Act.

**The Drugs and Crime Prevention Committee's address is:**

Level 8  
35 Spring Street,  
Melbourne Victoria 3000

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**CRIME PREVENTION COMMITTEE**  
**52nd Parliament**

The predecessor of the Parliamentary Drugs and Crime Prevention Committee was the Parliamentary Crime Prevention Committee established for the term of the 52nd Parliament, under the Chairmanship of The Honourable Kenneth Smith, M.L.C. The Committee resolved to inquire into the 1992/93 Victoria Police Annual Report and in particular the reported increase in reported rape and sexual assault. The Committee tabled its first report, "Combating Child Sexual Assault - An Integrated Model" in May 1995. The recommendations, 130 in number, may be found in Appendix 1 of this report.

**Membership of the Crime Prevention Committee was:**

The Honourable Kenneth M. Smith, M.L.C., (*Chairman*)

Mr. Donald Kilgour, M.P., (*Deputy Chairman*)

Mr. Robert K. B. Doyle, M.P.

Mr. Andre Haermeyer, M.P.

Mr. Hurtle R. Lupton, O.A.M., J.P., M.P.

The Honourable Donato A. Nardella, M.L.C.

Mr. Gary J. Rowe, M.P.

Mr. Robert C. G. Sercombe, M.P.

Mrs. Janet T. Wilson, M.P.

**Staff - to July 1995**

Mr. Alan B. Ogilvie - Director of Research and Administration

Ms Tiffany Tyler - Office Manager - Research Officer

Ms. Lisa Casamento - Research Consultant

Ms. Lorraine Beyer - Research Consultant

## **TERMS OF REFERENCE**

**The Parliamentary Crime Prevention Committee shall inquire into, consider and report to the Parliament on the 1992/93 Victoria Police Annual Report and in particular the cited increase in Rape and Sexual Assault, and shall: -**

- 1. Analyse the levels of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**
  
- 2. Examine the causal factors of the increase in the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**
  
- 3. Report on initiatives to reduce the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**



**STATEMENT REGARDING EVIDENCE**  
**TAKEN IN PRIVATE**

The Committee has taken extensive evidence "In Camera" in order to allow for full and frank discussions, and still protect individual witnesses, particularly victims of sexual assault. The disclosure and publishing of this evidence, which has been given in private, is prohibited by Section 4R (3) of the *Parliamentary Committees Act*, 1968 which states:

"A Joint Investigatory Committee shall not disclose or publish any evidence given to it in private."

The Committee wishes it known that it has received evidence in support of every issue raised and every recommendation contained within this report, but is constrained not to publish evidence given in private.

## **PREAMBLE**

The Parliamentary Drugs and Crime Prevention Committee was established at the commencement of the 53rd Parliament. At the first meeting of the 53<sup>rd</sup> Parliament, the Committee, under the Chairmanship of the Honourable Andrew Brideson M.L.C., resolved unanimously, on the motion of Mr. Gary J. Rowe M.P., seconded Mr. Donald Kilgour M.P., that the current inquiry [sexual offences against adults] be continued until completion.

The First Report of the Parliamentary Crime Prevention Committee's inquiry into the 1992/93 Victoria Police Annual Report and in particular "Sexual Offences Against Children and Adults" focused on the sexual assault of children.

This, the Second and Final Report of the Inquiry, addresses sexual offences against adult men and women and provides a model for combating such offences.

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## **CHAIRMAN'S FOREWORD**

This is the second and final Report resulting from the Drug and Crime Prevention Committee's Inquiry into Sexual Offences against Children and Adults. This Report deals with sexual assault against adult males and females.

This inquiry was commenced in 1994 by the former Crime Prevention Committee under the Chairmanship of the Honourable Ken Smith, MLC. Considerable evidence was taken from a cohort of professionals in Melbourne, interstate and from experts in Britain, Canada, the Netherlands and the United States. Given the nature of the inquiry much of this evidence was taken in camera.

There is no doubt that sexual attacks on individuals scar them for life. It is apparent to the Committee that victims/survivors are further traumatised by the legal systems that are supposed to protect them and incarcerate guilty offenders.

The recommendations emanating from this report have been made to improve and/or refine these processes. Whilst acknowledging that an alleged offender is innocent until proven guilty beyond reasonable doubt, it was made abundantly clear to the Committee that the needs of victims/survivors must be given a higher priority than is currently the case.

It needs to be noted that the Committee has used the term "victim" throughout this report. Where the term victim has been used, the Committee acknowledges that this reference may also be applicable, to survivors as the individual progresses from victim to survivor.

The Report is written in such a way that the reader is taken through the entire process encountered by a victim. The Committee has looked at the initial

assault against the victim, the services available to them, the investigative procedures taken by the police and the prosecution of offenders and disposition by the legal system.

Whilst many government and community based organisations provide support services to victims, the Committee believes these services could be better integrated to improve service delivery. The Committee wishes to acknowledge that those providing current victim support services do so in a most professional, compassionate manner and are to be commended.

There is no doubt that the majority of victims, of sexual assault, are female and the majority of offenders are male. This fact is supported by evidence gathered by the Committee within Australia and internationally. Acknowledging that men offend against women, the Committee believed it important to investigate additional areas of sexual assault which may be taking place in society.

Sexual assault against males has been addressed in a separate chapter. The Committee considers that it has a responsibility to inform the community of the nature and extent of sexual violence against adult males, and has made recommendations aimed at supporting male victims in their contact with the health and criminal justice systems.

If the incidence of sexual assault and its associated trauma is to be reduced, every effort must be made to educate young people and the general community as to its seriousness. The Committee believes pro-active strategies must be developed aimed at addressing gender inequalities and relationship issues. Respect of a person's fundamental right to say 'no' in any situation must be paramount.

My sincere thanks are directed to the former Crime Prevention Committee and staff members.

To the current Committee, I thank them for their co-operation, bi-partisan support and commitment to this challenging inquiry.

The Committee's Director of Research and Administration, Ms Helen Green and Office Manager, Ms Maria Tedesco are also thanked for their untiring commitment and dedication.

Ms Sarah Crome and Mr Alan Ogilvie provided the Committee with up to date research as consultants. The Committee is indebted to them as demands on their time and expertise were substantial.

The reforms proposed in this report will provide a better service for all sexual assault victims. Improved communications between key service providers will facilitate those improvements. The full impact of changes recommended in this report will be witnessed over time as they will generate improved policing, prosecution and ultimately conviction and treatment of sex offenders.

# **RECOMMENDATIONS**

## **Chapter Two - Contemporary Issues**

(1) The Committee recommends to the Standing Committee of Attorneys-General that State and Commonwealth Governments establish uniform definitions of rape and sexual assault. (*Section 2.5.1*)

## **Chapter Three - Statistical Review**

(2) The Committee recommends that the collection, analysis and presentation of all statistical data, relevant to adult sexual assault, be centralised and consistent. (*Section 3.7*)

## **Chapter Four - Incident Profiles**

(3) The Committee recommends an inquiry be undertaken into sexual and physical abuse allegedly committed by and against intellectually disabled persons. (*Section 4.7*)

## **Chapter Five - Victim Services**

(4) The Committee recommends a review of funding arrangements for CASA services. (*Section 5.2.4*)

(5) The Committee recommends that data collection by CASA's be standardised, and that a central referral data base be developed to facilitate referral of victims to specialist service providers. (*Section 5.2.8*)

(6) The Committee recommends that the Department of Human Services establish minimum qualifications and experience for counsellors involved with sexual assault victims, and that career strategies be developed aimed at encouraging staff retention in CASA's. (*Section 5.4*).

**(7) The Committee recommends that formal de-briefing protocols be developed by the Department of Human Services to assist CASA staff in accordance with identified needs. (Section 5.4.1)**

**(8) The Committee recommends that where a victim's case reaches court, priority be given to ensuring adequate support and advocacy is available and that CASA staff receive adequate training in issues relating to court appearance, advocacy and support. (Section 5.5)**

**(9) The Committee recommends that all CASA's and relevant community organisations develop strategies that better cater to the needs of non-English speaking background clients. (Section 5.7)**

**(10) The Committee recommends that community based support groups be funded to provide services to primary and secondary victims of sexual assault. (Section 5.11)**

#### **Chapter Six - Male Victims**

**(11) The Committee recommends that the Department of Human Services publish, and distribute widely, appropriate materials aimed at providing public information about available services, including those to male victims. (Section 6.4.3)**

**(12) The Committee recommends a review be conducted of existing services providing support to male victims, with a view to providing additional services, particularly in rural areas. (Section 6.4.4)**

**(13) The Committee recommends that the Department of Human Services develop protocols linking existing agencies providing services to adult males and that a centralised free-call referral service be established. (Section 6.4.5)**

**(14) The Committee recommends that Police Standing Orders be reviewed to ensure that male victims of sexual assault are provided with professional service which encompasses crisis care, forensic examination, counselling and support. (Section 6.5.1)**

**(15) The Committee recommends that the definition of rape and sexual penetration within the *Crimes Act 1958* be reviewed to include situations where the victim is forced to penetrate the offender. (Section 6.6.1)**

**(16) The Committee recommends that a review of the rules of evidence be undertaken to ensure that, just as a victim's past sexual activity cannot be raised in evidence, nor should their sexual preference. (Section 6.6.2)**

**(17) The Committee recommends that physiological responses of male sexual assault victims should not be interpreted as consent to the sexual assault. (section 6.6.2)**

**(18) The Committee recommends that staff facilitating groups for victims of male sexual assault be appropriately qualified and adequately trained. (Section 6.8)**

**(19) The Committee recommends that male sexual assault issues be mandatory in the training of correctional staff and that staff be encouraged to report incidents of sexual violence amongst prisoners. (Section 6.9)**

**(20) The Committee recommends that an extensive independent investigation be conducted of the nature and prevalence of sexual assault within the correctional environment, including private prisons. (Section 6.9)**

## **Chapter Seven - Investigation**

**(21) The Committee recommends the statewide implementation of co-located sexual assault response teams comprising CIB and CPS members, and that all victims of sexual assault have direct access to those teams. (Sect 7.2.3)**

**(22) The Committee recommends a victim information kit, available in various languages, be developed by the Department of Human Services, in consultation with CASA's, Victoria Police, the Office of Public Prosecutions, Courts and other agencies. (Section 7.4)**

**(23) The Committee recommends that counselling and support services be available to victims and police officers within each police district. (Section 7.8)**

**(24) The Committee recommends that all management and operational courses for police officers incorporate issues relevant to sexual assault offences, particularly victim-based issues and that external experts such as CASA personnel assist in providing such training. (Section 7.9)**

**(25) The Committee recommends that Section 464ZF(2) of the Crimes Act 1958 be amended to ensure that every person convicted of serious sexual assault has a blood sample taken. (Section 7.12)**

**(26) The Committee recommends that the Crimes Act 1958 be amended to allow a period of 12 months for the analysis of forensic samples prior to their destruction. (Section 7.12)**

**(27) The Committee recommends an independent review be conducted of Forensic Medical Services with a view to establishing strategies to overcome identified problems, including a feasibility study of forensic nursing services. (Section 7.13).**

**(28) The Committee recommends that research be conducted by the Victorian Institute of Forensic Medicine into the relationships between sexual assault and the transmission of HIV, Hepatitis and other sexually transmitted diseases, focusing on initiatives to protect and treat victims. (Section 7.13.1)**

**(29) The Committee recommends that AIDS and STD counselling be provided for victims of sexual assault and that information be produced in a variety of languages. (Section 7.13.1)**

## **Chapter Eight - Prosecution**

**(30) The Committee recommends that the victim of a sexual assault not be required to give evidence at a committal hearing, unless exceptional circumstances exist. (Section 8.2)**



**(31) The Committee recommends that S37C of the *Crimes Act 1958*, be amended to provide that a witness [who is the victim] to a proceeding that relates to a charge for a sexual offence, be allowed to give evidence via alternative arrangements, unless the witness chooses otherwise. It should be the victim's decision, not the courts. (*Section 8.5.1*)**

**(32) The Committee recommends that a review of section 37A be undertaken by the Attorney General to establish if there is a need to further protect victims and limit the degree of latitude which the judiciary may permit regarding an examination of a victim's past sexual activity. (*Section 8.5.2*)**

**(33) The Committee recommends that any part of medical, psychological, counselling or other reports which discuss or in any way infer past sexual activity by the victim be inadmissible in evidence. (*Section 8.5.2*)**

**(34) The Committee recommends that clinical notes between victim and counsellor, be inadmissible in evidence. (*Section 8.5.3*)**

**(35) The Committee recommends that the use of audio or video evidence be extended to include adult victims of sexual assault. (*Section 8.5.4*)**

**(36) The Committee recommends the expansion of the Sexual Offences Section within the Office of Public Prosecutions. (*Section 8.8*)**

**(37) The Committee recommends that funding be provided to expand the Witness Assistance Service to ensure all sexual assault witnesses are supported including those in rural areas and that a witness advice video be produced. (*Section 8.9*)**

**(38) The Committee recommends that the Office of Public Prosecutions establish a witness protocol specified for sexual assault victims. (*Section 8.9*)**

**(39) The Committee recommends an expansion of Court Network services in metropolitan and rural areas. (*Section 8.10*)**

**(40) The Committee recommends the Australian Institute of Judicial Administration ensure compulsory and ongoing training of Judges in gender issues. (*Section 8.11*)**

**(41) The Committee recommends that the needs of all persons be better accommodated within the legal process, particularly non-English speaking witnesses and those whose first language is other than English. (*Section 8.13*)**

**(42) The Committee recommends an inquiry into the rules of evidence and their application in relation to adult sexual assault offences. (*Section 8.16*)**

**(43) The Committee recommends that an Office of Legal Ombudsman be established to investigate complaints against members of the legal profession, including prosecuting and defence solicitors and barristers. (*Section 8.17*)**

#### **Chapter Nine - Offender Disposition**

**(44) The Committee recommends an independent review of sentencing disparity between Magistrates' and Higher Courts to ensure equity of disposition. (*Section 9.3.1*)**

**(45) The Committee recommends that sex offenders who breach a Court issued Community Based Order or Intensive Correction Order should not be placed on a further order. (*Section 9.4.2*)**

**(46) The Committee recommends that the treatment of adolescent sex offenders be expanded statewide as a matter of government priority. (*Section 9.7*)**

**(47) The Committee recommends that professional, independent assessment of all sex offenders be available to the court to facilitate a treatment pathway for offenders sentenced to custodial and non-custodial dispositions. (*Section 9.7.3*)**

**(48) The Committee recommends that the continuum of care model be further developed by CORE, with particular emphasis on support services available to sex offenders post release. (*Section 9.7.3*)**

### **Chapter Ten - Pro-Active Strategies**

**(49) The Committee recommends that an advertising campaign be developed by the Department of Human Services as part of an overall community education strategy. (*Section 10.5*)**

**(50) The Committee recommends that continuing development of the Curriculum and Standards Framework in the areas of human relationships be a priority of the Board of Studies. (*Section 10.6*)**

# **CHAPTER ONE**

## **PREFACE**

### **1.1 Introduction**

The Crime Prevention Committee of the 52nd Parliament, resolved to adopt an inquiry into the Victoria Police Annual Report 1992/93 which was tabled in the Parliament on 23rd November, 1993. This was done under section 4F (1) (b) of the *Parliamentary Committees Act* 1968.

The terms of reference are as follows:

**The Parliamentary Crime Prevention Committee shall inquire into, consider and report to the Parliament on the 1992/93 Victoria Police Annual Report and in particular the cited increase in Rape and Sexual Assault, and shall: -**

- 1. Analyse the levels of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**
- 2. Examine the causal factors of the increase in the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**
- 3. Report on initiatives to reduce the level of rape and sexual assault as cited in the 1992/93 Victoria Police Annual Report.**

The Drugs and Crime Prevention Committee, of the 53rd Victorian Parliament, resolved on the 27th May, 1996 to continue the inquiry, under the same terms of reference as the preceding Committee.

### **1.2 Annual Report**

The Committee's investigation of the 1992/93 Annual Report of the Victoria Police Force, identified key areas of the police structure, mission, resources and financial affairs for the designated period. The annual report

provided a brief insight into police achievements during the fiscal year as well as a discourse regarding major issues facing the Force. An indication of current levels of major crime and a brief trend analysis was also provided.

The comment within the report, “. . . the extent of sexual assault in the community is particularly disturbing . . .” was the catalyst for focusing the Committee’s attention to the increase of 7.97% in reported rape and attempted rape (Victoria Police, 1993). This increase, along with similar increases in other sexual offences, generated concern with all Committee Members and motivated an inquiry aimed at providing practical recommendations for the development of an integrated response to combat sexual assault.

Initial investigations of reported sex offences revealed that the level of reported rape had increased by 11.25% in 1992/93 and it was only a decrease in reported attempted rapes -13.40% which realised the figure of 7.97%. Reports of indecent assault were also up by 12.60% (Victoria Police, Statistical Services Division, 1993).

The Committee took the view that both public and private sectors must share the responsibility of, and therefore be an active participant in addressing sexual offences.

### **1.3 First Report**

The Crime Prevention Committee tabled in the Victorian Parliament its first report resulting from the inquiry in June, 1995. The report, "**Combating Child Sexual Assault - An Integrated Model**", deals primarily with the issues surrounding child sexual assault and provides 130 recommendations concerning improvements in the current system. A lack of co-operation, co-ordination and integration between service providers was a critical factor identified by the Committee.

### **1.4 Second Report**

This, the second part of the inquiry, focuses more specifically on sexual assault against adults and addresses several issues concerning the sexual assault of adult males and females.

Many of the recommendations of the first report will be relevant to this report. An example of this can be seen in Recommendation 64. which states, "The Committee recommends that the *Crimes Act* 1958, be amended to allow a period of 12 months for the analysis of samples prior to their destruction" (Parliamentary Crime Prevention Committee, Combating Child Sexual Assault - An Integrated Model: xxii). The extension of time for analysis of forensic samples is relevant to all sexual assault matters and other crimes regardless of the age of the victim.

Where the recommendations of the first report adequately address issues relevant to adults the Committee has refrained from duplicating the recommendations, however reference may be made to the first report. There will be situations where further expansion of recommendations made in the first report is required to incorporate more fully the issues relevant to adult sexual assault. In these instances the Committee has provided specific recommendations.

For the purpose of this inquiry, an adult refers to any person aged 16 years or over. The area of adult male sexual assault is a serious issue within contemporary society though it is widely unrecognised. For this reason adult male sexual assault has received considerable attention from the Committee. The recommendations made are intended to be applicable to men and women although some are gender specific.

The Committee has attempted to investigate and report on key areas relevant to adult sexual assault within this report. It should be noted that given the enormous breadth of sexual assault, the Committee has not concentrated on specific interests groups but rather a generalist approach has been adopted.

#### **1.4.1 Evidence Received**

The Committee wishes to highlight the wide range of witnesses who have provided evidence at formal and informal hearings and/or have provided written submissions. A complete list of witnesses and submissions may be found in the attached appendices.

All evidence received in private has been held to be confidential by the Committee. S4R of the *Parliamentary Committees Act* 1968 directs that evidence given in private not be disclosed or published. The Committee further determined that written submissions shall not be released to the

public. This is for the protection of all witnesses and to ensure that secrecy provisions within legislation are not inadvertently contravened.

The Committee has actively sought and received evidence from the widest possible cross section of practitioners and members of the community to enable it to make informed recommendations. Travel by the Committee has included visits to New South Wales, Queensland, South Australia, Western Australia and the Northern Territory where meetings with Ministers, practitioners, offenders and victims provided an overview of services in those States.

The Committee also travelled to the United States of America, Canada, the Netherlands and the United Kingdom and witnessed alternate models of service which have influenced the recommendations of this report.

Within Victoria, evidence was received at both formal and informal hearings from a diverse range of witnesses. Representatives from the judiciary, the legal fraternity, police, victims, offenders, health professionals and community groups appeared before the Committee. This provided valuable insight into the complexity of issues surrounding adult sexual assault. Much of the evidence heard by the Committee was taken in camera, given the sensitive nature of the inquiry.

Written submissions from government departments, victim support groups and other relevant organisations and individuals provided substantiation for much of the informal evidence received by the Committee. The Committee wishes to acknowledge the assistance and co-operation of these agencies and individuals.

#### **1.4.2 Site Visits**

Site visits to a number of relevant facilities were conducted throughout the course of the inquiry. These included offender treatment facilities both institutional and community based and enabled the Committee to meet and have open discussions with rapists and other sex offenders. Psychologists, psychiatrists and other professionals provided an insight into the mind of the offender. Different treatment models including treatment programs for sex offenders were also studied. The Committee visited several rape crisis centres in Victoria and interstate where valuable discussions were held with victims and their advocates.

### **1.4.3 Limitations of the Inquiry**

The Committee has identified a number of key areas of government and non-government services which should be developed and improved as a consequence of implementing the recommendations of this report. The Committee would encourage lateral thinking regarding the possible application of some recommendations, particularly across health, education and justice portfolios.

### **1.5 Summary**

These reforms must take place within the context of further change in community attitudes regarding gender and relationship issues, consent and respect for a persons right to say "no" to sexual advances in any circumstance. Education at all levels in schools must be accompanied by campaigns involving the mass media and various youth and community organisations.

These reforms should be aimed at widespread community acknowledgment of sexual assault and commitment towards preventative strategies. Sexual assault victims must have community support in reporting any sexual offence to authorities.



## **CHAPTER TWO**

### **CONTEMPORARY ISSUES**

#### **2.1 Introduction**

Rape and other sexual offences against adults are not new phenomena nor are they restricted to any single state or country. Offence codes, definitions and penalties may vary but ultimately the offence involves the commission of a sexual act against another person without his or her consent.

While commentators vary in their emphasis on the degree of power or sex involved in a sexual assault, the Committee believes sexual assault to be a crime of violence in which the perpetrator meets his or her need for control and power by the commission of sexual acts which subdue, humiliate and harm the victim, usually incorporating sexual gratification for the offender. The gender of the perpetrator and victim is not an issue although the overwhelming evidence indicates that most sexual victimisation is carried out by males against females (Victoria Police Crime Statistics, 1993/94).

The Declaration of the Elimination of Violence Against Women (1993), the National Committee on Violence (1990), the National Committee on Violence Against Women and the Australian Law Reform Commission Inquiry into Equality Before the Law (1994) all recognise that dealing with domestic violence and sexual assault demands a coherent, co-ordinated multi-agency approach.

Sexual Assault is a unique crime. Not only is the victim assaulted, but the private and protected physical and psychological boundaries of the person are invaded. In most instances there are no witnesses to the crime, thus adding to the difficulty of securing a conviction. Men and women of all ages and cultural backgrounds are vulnerable to sexual violence.

#### **2.2 Historical Development**

As with many criminal and social issues the legislative framework within which the Victoria Criminal Justice System operates is evolutionary by

nature. Dr. David Brereton was employed as a part time consultant to the Law Reform Commission of Victoria from November 1990 to June 1992.

The following is Dr. Brereton's historical overview of the evolution of the Victorian *Crime (Rape) Act* 1991 including its relationship to other legislative reforms between 1976 and 1991.

### **Sexual Assault Reforms** **Introduced in Victoria, 1976 - 91**

#### **Rape Offences (Proceedings) Act 1976**

- Restrictions on admissibility of sexual history evidence introduced.
- Hand-up procedure made mandatory for committal hearings in rape cases.
- Prosecutors required to be legally qualified.
- Committal hearings for rape offences closed to the public.
- Time limits for rape prosecutions set at three months from charge to committal and three months from committal to trial.

#### **Crimes (Sexual Offences) Act 1980**

- Physical circumstances of rape defined to include penetration of anus by penis or object, penetration of vagina by object, and insertion of penis into mouth.
- Separate aggravating circumstances offences created. Corroboration warning no longer required.

#### **Crimes (Amendment) Act 1985**

- Rape in marriage immunity abolished.

## **Crimes (Sexual Offences) Act 1991**

- Physical circumstances of rape further expanded to include penetration of vagina or anus by any part of the body other than the penis.
- Continuation of penetration after withdrawal of consent, and penetration in course of a fraudulent medical examination, included in definition of rape.
- Judges required to record reasons for admitting sexual history evidence.
- Judges required to instruct juries, in cases where the issue of late complaint is raised, that there may have been a good reason for the delay.
- Judges also no longer permitted to warn that complainants in sexual offence trials are an unreliable class of witnesses.
- Judges empowered to close courtroom in order to protect complainants from distress or embarrassment.

## **Crimes (Rape) Act 1991**

- Meaning of consent and non-consent partly codified; judges required to give certain direction to juries in cases where consent is an issue.
- Sexual history provisions of Evidence Act extended to cover complainant's previous sexual relations with the accused, as well as with other people.
- Provision made for a complainant to give her or his evidence by 'alternative means', such as closed circuit television, if a court considers that the person would otherwise suffer severe emotional trauma, or be severely disadvantaged as a witness.
- Separate offences with 'rape with aggravating circumstances' and 'indecent assault with aggravating circumstances' abolished.
- Maximum penalty for rape raised from 20 to 25 years.

## Evolution Of The Victorian Crimes (Rape) Act 1991

### **October 1985**

- Law Reform Commission of Victoria (LRCV) given reference on reform of sexual offences law by the Attorney General.

### **June 1987**

- LRCV releases report, *Rape and Allied Offences: Substantive Aspects*. Report recommends broader definition of sexual penetration and abolition of aggravating circumstances offences; argues that existing 'mens rea' test should be retained; rejects calls for a statutory definition of consent. Two part-time Commissioners dissent from these recommendations.

### **June 1988**

- LRCV releases report, *Rape and Allied Offences: Procedure and Evidence*.

### **June 1990**

- Draft Crimes (Sexual Offences) Bill circulated by Attorney-General. The Bill was primarily concerned with the reform of sexual offences against children and mentally impaired. Definition of sexual penetration expanded, as recommended by LRCV, but aggravating circumstances offences retained. In line with LRCV report, no change proposed to the mental and consent elements of rape and indecent assault.

### **August 1990**

- Victorian Court of Criminal Appeal, in *R v Mobilio*, rules that a vaginal examination undertaken by a radiographer on fraudulent medical grounds was not rape, because there was no fraud as to the nature of the act. Decision receives considerable adverse publicity.

- Real Rape Law Coalition (RRLC) formed - includes representatives of Centres Against Sexual Assault (CASA's), Community Legal Centres, Women's Legal Resource Group and Prostitutes' Collective. Coalition distributes pamphlet identifying 'belief in consent' as a central issue. Pamphlet summarises five recent rape trials in which the accused was supposedly acquitted on the grounds of mistaken belief in consent. Pamphlet also suggests that the Michigan approach, which uses the concept of 'coercive circumstances', is preferable to the common law focus on consent.

### **September 1990**

- Public meeting convened by RRLC to register opposition to Crimes (Sexual Offences) Bill. Speakers include Chief Magistrate and prominent women barristers. Editorial published in *The Age* newspaper criticising proposed Bill and arguing that the accused's 'belief in consent' should have to be reasonable. RRLC lobbies Opposition to block the Bill in the Legislative Council until there has been further consultation. President of Victorian Council of Civil Liberties quoted in the press as defending existing rape laws.

### **October 1990**

- Attorney-General agrees to refer the issue of rape law reform back to the LRCV, stating that the Government will introduce legislation as a matter of priority if the review shows that further changes to the law are required. In turn, the RRLC undertakes to drop its campaign against the Bill. LRCV terms of reference require it to report by April 1991 on the definition of rape and indecent assault, particularly the issue of consent, and to advise on further measures to reduce trauma for sexual assault victims. LRCV also directed to carry out research into recent rape prosecutions, 'collect data from all relevant people', and review definitions of rape and indecent assault used in other jurisdictions, especially Michigan.

### **November 1990**

- Chairperson of LRCV constitutes Division and appoints honorary consultants. Division contains four Commissioners who had been

involved in the earlier reference. Honorary consultants include representatives from: RRLC, CASA's, legal profession, police, judiciary, Legal Aid, and Women's Policy Co-ordination Unit.

- LRCV hires researchers and commences analysis of Director of Public Prosecutions (DPP) files. Researchers follow-up three of the five 'belief in consent' cases summarised in the RRLC pamphlet and establish that the central issue in each of these cases was the complainant's actual consent rather than the accused's mistaken belief in consent. RRLC informed of these findings.

### **December 1990**

- High Court refuses to hear DPP's appeal against the *Mobilio* decision.
- Case of *R v Ram Singh* decided by Victorian Court of Criminal Appeal. Court declares a conviction for rape to be 'unsafe and unsatisfactory' - notes that a 'remarkable feature' of the case is that, despite the woman's assertion that she was forced to have sex, there were no signs of force on her body, or any evidence that struggle took place. Decision strongly criticised by women's groups.

### **January 1991**

- First meeting between LRCV and honorary consultants. Meeting provided with a briefing paper prepared by LRCV researchers, which examines approaches taken to consent in other jurisdictions. Paper notes research showing that, in practice, consent has remained a central issue in Michigan sexual assault trials.

### **January - March 1991**

- DPP research continues. LRCV staff consult with a wide range of groups and individuals.

## March 1991

- RLC presents legislative and procedural recommendations to LRCV. Main recommendations are that:
  - an objective test to be applied to the accused's actions and intentions;
  - it should be a charge of rape where the accused has 'failed to actively ascertain whether the victim/survivor was freely and voluntarily agreeing to participate in the act of sexual penetration';
  - free and voluntary agreement must be ascertained solely by the overt words or actions of a competent person;
  - aggravating circumstances offences should be retained;
  - the Crimes Act should include an interpretation clause setting out a series of general propositions, for example: 'men are responsible for their actions', 'women are autonomous social agents'; 'all people . . . have the right to refuse to engage in sexual activity'; and 'free and voluntary agreement to engage in sexual activity cannot be implied or assumed from the clothing, demeanour, relative social class, race, or age, the past sexual history or lifestyle of the victim/survivor';
  - sexual assault victims should have the right to an advocate to represent her/him in dealings with the police and DPP, and during court proceedings.
  - preliminary results of DPP research circulated. Amongst other things, research shows that the issue of 'mistaken belief in consent' is raised in only a very small proportion of rape trials. Also shows that very few prosecutions are discontinued once charges are laid.
  - several rapes receive extensive media coverage. Minister for Police and Emergency Services, issues Ministerial Statement on 'Safety, Security and Women'.

## **April 1991**

- LRCV convenes three meetings of commissioners and consultants to discuss RRLC proposals. No firm conclusions reached. LRCV Chairperson indicates that it will not be possible to report to Attorney-General by the end of the month.
- Government decides to proceed with Crimes (Sexual Offences) Bill without waiting for LRCV report. Revised version of bill includes a provision overturning the Court of Criminal Appeal's ruling in *R v Mobilio*.
- RRLC criticises Government for not waiting until LRCV's report. Attorney-General defends decision and emphasises that the Government will introduce further legislation if shown to be necessary. Opposition agrees to passage of Bill through Parliament.

## **May 1991**

- Meeting of LRCV Division - mainly concerned with procedural and administrative reforms, but tentative decision made that a statutory definition of consent should be developed. Commissioners informed that the Government is very keen on introducing legislation in Spring session of Parliament.

## **May - June 1991**

- More 'rape stories' reported in the media. Premier Kirner expresses outrage about the level of sexual violence in the community and indicates that new rape legislation is a high priority.
- Large number of letters received by LRCV urging it to adopt RRLC recommendations in their entirety.

## **July 1991**

- LRCV submits *Interim Report* (Report No. 42) to Attorney-General. This report is primarily concerned with procedural and administrative



reforms. Report says that the LRCV has tentatively concluded that consent should be retained as an element of the offences of rape and indecent assault, but should be legislatively defined. Report indicates that a draft formulation will be circulated for comment in the near future. No view expressed on whether the mental element should be re-formulated. Report rejects proposal for complainants to be represented by advocates.

- LRCV receives submission from Feminist Lawyers. Submission broadly in line with earlier submission received from RRLC, but with greater attention to legal argument - seeks to show that there is support in the case law for the proposition that a 'belief in consent' should have to be reasonable.

### **July - August 1991**

- LRCV staff work on developing draft legislation. Draft contains detailed consent provisions and mandatory jury directions on consent; retains the 'mens rea' requirement, but includes a provision requiring juries to be directed that they should take account of whether the belief was reasonable in the circumstances.

### **August 1991**

- Informal meeting between LRCV staff and representatives of RRLC to discuss draft legislation. Interest shown in LRCV's proposal, but responses generally guarded. LRCV staff emphasise to RRLC representatives that the Commission is unlikely to give any further ground on the 'belief in consent' issue.
- Meeting held between LRCV and all honorary consultants to discuss proposed draft. Some modifications proposed, but general framework receives broad approval, including that from RRLC representatives. Consultants from the judiciary and legal profession express concerns about the wording of the proposed legislation, but generally concede that they can 'live with it'.
- LRCV Division adopts proposed draft legislation with only minor amendments. Division decides to recommend abolition of separate aggravating circumstances offences, although this matter has not been

discussed with RRLC, or in any consultants' meetings. Also decides to recommend that adult complainants be able to give their evidence via alternative arrangements (eg. closed circuit television) in some circumstances. This issue 'flagged' in the LRCV's *Interim Report*, but not discussed at any consultants' meetings.

- Wide publicity given to case of *R v Hakopian*, where trial judge states that the fact that the rape victim was a prostitute - and hence presumably suffered less psychological harm - justified a relatively light sentence.
- *Interim Report* tabled in Parliament, but attracts relatively little media attention.

### **September 1991**

- Report containing LRCV's recommendations for legislative change and draft bill forwarded to Attorney-General (*Rape: Reform of Law and Procedure*, Report No 43).

### **October 1991**

- LRCV personnel brief shadow Attorney-General, prior to tabling of report in Parliament. Mrs Wade told by one Commissioner that the draft bill largely re-states common law and existing legislative provisions, and is not as radical as it seems.
- LRCV's report released to media and tabled in Parliament. In answer to a parliamentary question, the Premier welcomes the report and announces that the Government will introduce legislation shortly, after allowing for a further two weeks of consultation. Premier 'notes with pleasure' that the report recommends the removal of the separate offence of aggravated rape and that sentences for rape are to be increased (despite a clear statement from the LRCV that the purpose of the proposed change was to simplify trials, not change sentencing practices.)
- *Herald-Sun* newspaper runs story the day after the report is tabled, headlined 'New Penalties for Sex Crimes'. Article declares that jail sentences for sex offenders would be doubled under radical changes to

the law proposed yesterday'. *The Age* gives extensive coverage to the release of the report and runs an editorial supporting its main recommendations. The report is described as 'a progressive and genuine attempt to balance the rights of a rape victim with the rights of the accused to a fair trial'. Editorial accepts LRCV's arguments for retaining existing mental element.

- Centres Against Sexual Assault issue a press release in support of the proposed legislation. LRCV report also publicly supported by the Victorian Council of Civil Liberties.

### **November 1991**

- Crimes (Rape) Bill introduced into Legislative Council. The content of the bill is very close to the draft prepared by LRCV.
- Parliamentary Opposition proposes an amendment to the Crimes (Rape) Bill, requiring cumulative sentencing for persons convicted of rape. This proposal attracts strong criticism from various groups, especially sections of the legal profession. Attorney-General declares the proposed amendment to be unacceptable to the Government.
- Fax and phone campaign organised by RRLC urging the Opposition to drop the proposed amendment and allow the legislation to proceed.
- In debate in the Legislative Council, the Opposition indicates that it will not persist with its amendment. As an alternative, it successfully moves to have the maximum penalty for rape increased to 25 years. Otherwise, Opposition speakers generally express support for the Bill.
- Bill, as amended, goes to the Legislative Assembly. Government reluctantly accepts Opposition's amendment increasing the maximum penalty, although the new penalty does not fit into the framework established under the new Sentencing Act. In speaking to the Bill, the shadow Attorney-General advises that the Opposition probably would not have proposed an amendment to this Bill altering sentences but for the Premier's rather cynical political exercise in pretending that sentences would be increased by this Bill when, in fact, they are not. Shadow Attorney-General also repeats her view that the Bill changes very little - in support, refers to the briefing given to her by LRCV personnel prior to the tabling of the report. States her personal view

that consent should not have to be an element of the offence in certain circumstances, and that an objective standard should apply. Other Opposition speakers take a more favourable view of the legislation.

## **November 26**

- Bill passes through Legislative Assembly with Opposition support.

## **January 1, 1992**

- Crimes (Rape) Act proclaimed (Brereton, 1994:75,76, 87-93).

### **2.3 Recent Developments**

Amendments in 1993 to S464 of *The Crimes Act 1958*, provided broad powers to police in the areas of fingerprinting and forensic procedures. Many of the intrusive or non-consensual powers must first be considered, on sworn evidence, by a Magistrate as a safeguard of civil liberties.

The Attorney General advised the Committee of recent changes to the *Sentencing Act* which ensure that the protection of the Community is the principle purpose in sentencing serious sexual offenders and violent offenders (Attorney General, Public Hearing, 27/10/1994)

“Whereas the principle of proportionality must be applied when sentencing all other offenders, with serious sexual (and violent) offenders, protection of the community is prescribed as the principle purpose for which a sentence is imposed, and thus the sentencing Judge may impose a sentence which is longer than the proportionate sentence. Thus by virtue of section 18A the Court may impose an indefinite sentence” (Chief Judge Waldron, 1994)

“I am aware of a significant increase in the level of sentencing over recent times through my participation in the Court of Criminal Appeal, where substantial sentences have been imposed for sexual offences over more recent times” (The Honourable Mr. Justice Vincent, Public Hearing, 26/10/1994).

Stalking legislation and a new offence for convicted sexual offenders who loiter in or near where children congregate are other recent initiatives. Success of these initiatives is yet to be determined.

The Committee visited an organisation in London called Women Against Rape where the legislative framework of each country, aimed at addressing the crime of rape, was discussed at length. It was obvious from this visit and other international contacts, that current, relevant Victorian legislation is at the forefront in terms of offence definitions and supporting legislation, including investigative powers and judicial processes.

The Committee considers that whilst changes have been to the benefit of the victim and society generally, further advances as recommended in this report are still required to enhance the services to victims and increase the protection of the community.

## **2.4 Definitions**

As can be seen above, the definition of rape and allied offences has changed over the last 20 or so years and has increasingly encapsulated more and more sexual acts into its definition.

**“Rape”** is currently defined in the *Crimes Act 1958* as:

38 (2) A person commits rape if -

- (a) he or she intentionally sexually penetrates another person without that person's consent while being aware that the person is not consenting or might not be consenting; or
- (b) after sexual penetration he or she does not withdraw from a person who is not consenting on becoming aware that the person is not consenting or might not be consenting.

To determine the meaning of sexual penetration for the purposes of rape we must again turn to the *Crimes Act 1958* which states:

**"sexual penetration"** means -

- (a) the introduction (to any extent) by a person of his penis into the vagina, anus or mouth of another person, whether or not there is emission of semen; or
- (b) the introduction (to any extent) by a person of an object or a part of his or her body (other than the penis) into the vagina

As the definition within the Act uses the term "means" it excludes other forms of penetration which are not articulated in the words of the definition. Therefore reverse rape, where the victim is forced to penetrate the offender, is not covered by the definition which results in a lesser charge and subsequent penalty being available to the court. This anomaly is further discussed in a later chapter which deals with issues specifically relating to adult male sexual assault.

Those incidents which do not include penetration or attempted penetration are covered by the more general offence of Indecent Assault.

**"Indecent Assault"** is defined as:

39 (2) A person commits indecent assault if he or she assaults another person in indecent circumstances while being aware the person is not consenting or might not be consenting.

Other offences including assault with intent to rape, incest and sexual offences against people with impaired mental function are also defined within the Victorian *Crimes Act* 1958.

Offences contained in subdivisions (8B) to (8E) of the *Crimes Act* which include most sexual offences against children use the term "an act of sexual penetration" which is further defined in S35 (2) which states,

35. (2) For the purposes of Subdivisions (8B) to (8E) both the person who sexually penetrates another person and the other person are taking part in an act of sexual penetration.

It is this subtle use of words which allows for charges to be laid against adults who perform sexual acts such as fellatio on a child. The same act of fellatio on an adult without consent is not rape, but rather indecent assault.

## **2.5 National Agenda**

Sexual assault law reform was first identified as a high priority in the National Strategy produced by the National Committee on Violence against Women in 1992. This Committee established in 1990 comprised of both state and federal representatives, community members and police, provided a forum for national consideration of legal, policy and program issues related to violence against women.

In May 1995, The Office of the Status of Women (ACT) published Sexual Assault Law Reform, which identified the difficulty in developing an accurate picture of the prevalence of rape/sexual assault due to limiting official statistics and legislative variations across states and jurisdictions. Numerous international and national surveys indicate that those who do report rape/sexual assault to the police are in the minority.

The Report of the New South Wales Standing Committee on Social Issues tabled in 1996 highlighted the urgent need for a national focus on sexual assault and violence against women. The Drugs and Crime Prevention Committee endorses the view and considers that long term change will require a commitment at all levels of government.

The Rape Law Evaluation Project soon to be published by the Department of Justice, will provide a more detailed insight into evidentiary procedures and sentencing outcomes in Victorian rape cases.

### **2.5.1 Interstate Legislative Disparity**

**(1) The Committee recommends to the Standing Committee of Attorneys-General that State and Commonwealth Governments establish uniform definitions of rape and sexual assault.**

Victoria, South Australia and Queensland have an offence of rape which may vary slightly in definition but still encompasses similar principles. Other states, including New South Wales, employ the term "sexual assault" for all sexual offences, some defining rape and sexual assault as intercourse without consent. Some states and territories have extended the definition of rape to include actions other than penetration of the vagina by the penis, some include penetration by objects other than the penis, some require only minimal penetration, others include fellatio and/or cunnilingus and continuance of penetration.

This causes considerable difficulty in identifying an accurate national picture of both the extent of sexual assault and the proportionate penalties handed down by courts.

The Committee believes there are considerable gains to be made by developing more standardised offence codes and definitions at a national level.

A National Strategy based on uniformity would provide:

- a combination of the best provisions of all states and territories;
- interstate consistency;
- uniformity of protection;
- state / territory / federal funding of sexual assault services;
- clearer understanding of legislation around Australia; and
- make it easier to provide advice to women regardless of where they live.

## **2.6 Summary**

All levels of government within Australia have identified sexual assault as a major issue impinging upon the lives of many Australians. The long term emotional and physical implications of sexual assault have been well documented. Many victims will need long term support, which carries emotional and financial implications that will impact upon the lives of many Australians. The development of unified, integrated and long term strategies will significantly reduce the incidence of sexual assault and its impact on victims and the general community.



# **CHAPTER THREE**

## **STATISTICAL REVIEW**

### **3.1 Introduction**

The reliance on official crime statistics alone, in the development of intervention or reduction strategies, would be inappropriate. Statistics relevant to sexual assault are collected by many organisations including police, health, Centres Against Sexual Assault (CASA), victim support groups, prosecutions, courts and corrections. The quality, validity and reliability of data gathered varies, as does the analysis, presentation and distribution of findings. Different counting rules, counting methods, time lines, definitions, storage methods and analytical programs are just some of the difficulties associated with cross-agency data comparison. Any attempt to compare Victorian data with those of other Australian States, or internationally, compounds these problems making results meaningless.

For these reasons the Committee has determined to provide the following chapter relating to relevant statistics without any analytical comment other than where it is considered necessary.

### **3.2 Victoria Police Statistics**

"In 1993/94 the Force adopted the rule of counting the number of rape and sex offences reported for each and every distinct course of criminal conduct (eg. a person raped on ten occasions over a six month period is counted as ten offences). Prior to 1993/94 only the number of victims was counted regardless of distinct occurrences (eg. only one offence would be counted)" (Victoria Police Crime Statistics 1993/94:11).

The Police Force has therefore cautioned against comparing 1993/94 statistics with data from previous years. The Committee during its extensive review of reported sex crimes to Community Policing Squads during 1992/93 found many occasions where multiple offences against a single victim were counted as separate offences. This was supported when the Committee compared data with recorded sex offences for the same period.

Table 1 indicates reported rape offences per 100,000 population:

**Table 1:**

**Number of reported rape offences  
in Victoria, per 100,000 population**

	1992/93	1993/94	1994/95	1995/96
No. Offences	702	1308	1188	1239
Rate per 100,000	16	29	26.5	27

Sources: Victoria Police Official Crime Statistics 1992/93:20, 1993/94:15, 1994/95:8 (Provisional); 1995/96:12 (Provisional).

According to the 1994/95 Police statistics, there were 1188 rape offences reported to police and 7,843 sex offences (non-rape, including indecent assault and child sexual assault). For rape this represented a 9.8% reduction in reports from the previous financial year, and for other sex offences it represented a 6.4% reduction (Victoria Police, 1995).

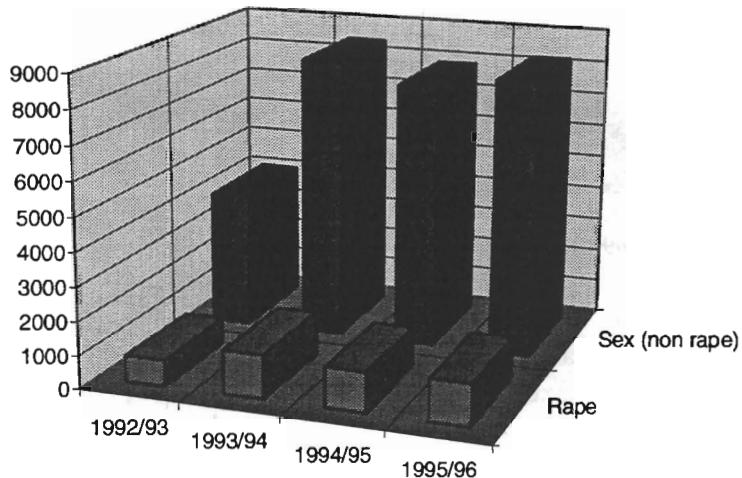
The rate per 100, 000 population was 26.5 for rape and 174.8 for other sex offences. Of the 1188 rape offences reported, 937 or 78.9% were cleared and of non-rape 5987 or 76.3% were cleared (Victoria Police, 1995).

Police statistics for 1995/96 reveal an increase in reported rape offences of 4.2% over 1994/95. The rate per 100,000 population also increased slightly. Sexual offences (non-rape) increased by 3.2% between 1994/95 and 1995/96 (Victoria Police, 1996)

The following chart indicates the number of rapes and sex offences (non-rape) reported to Victoria Police for the financial years 1992/93 to 1995/96:

**Chart 1:**

**Reported sex offences**  
**Victoria Police 1992/93 to 1995/96**



Source: Victoria Police Official Crime Statistics, 1992/93 - 1995/96.

**3.2.1 Victoria Police Rape Squad**

**Table 2:**

**Victoria Police Rape Squad**  
**crime data 1991 to 1995.**

	<b>Cases Investigated</b>	<b>Offenders Charged</b>	<b>Cases to Court</b>	<b>Convictions Obtained</b>
<b>1991/92</b>	31	19	21	19
<b>1992/93</b>	52	33	22	16
<b>1993/94</b>	52	17	13	7
<b>1994/95</b>	41	18	11	6*

Note: Figures for 1993/94 and 1994/95 are not statewide figures. The Rape Squad only investigate a small percentage of rapes within Victoria.

\*A number of matters are still to be determined in the Courts.

Source: Victoria Police Rape Squad, 1996.

### 3.3 Centres Against Sexual Assault Statistics

Centres Against Sexual Assault were requested to provide the Committee with statistical data for the financial period 1994/95. All centres complied with the request however the format of the information was inconsistent and the collection methodologies also varied. The Committee has collated the information and provides it in tabulated form.

**Table: 3**

#### Number of new client contacts by gender CASA 1994/95

CENTRE	Male	Female	Total
South West	30	117	147
Goulburn Valley	33	267	300
Royal Women's	798	7,852	8650
SECASA	275	1691	1966
Mallee	77	245	322
Loddon	63	258	321
Ballarat	27	209	236
Northern	44	323	367
Geelong	28	177	205
Wimmera	23	65	88
Upper Murray	37	189	226
West CASA	N/A*	N/A*	356
Gippsland	79	413	492
A.H. Statewide	1,837	11284	13121
<b>TOTAL</b>	<b>3,351</b>	<b>23,090</b>	<b>26,797</b>

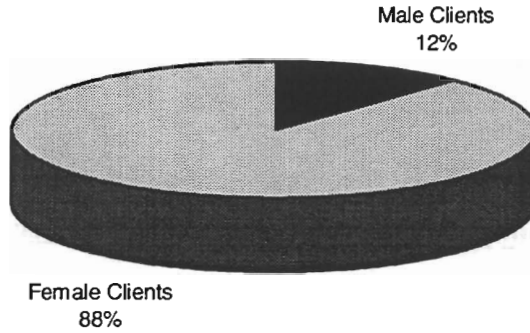
Note: The definition of client categories may vary between CASA's and some clients may be counted more than once in these figures. Client numbers include those aged under 15 years. Figures were not available from all CASA's.

\* WestCASA did not provide a breakdown of client numbers by gender.

Source: Submission by individual CASA's.

**Chart 2:**

**CASA clients by gender 1945/95**



Source: CASA Statistics 1994/95.

The following table indicates the relationship between victim and offender as supplied by selected CASA's.

**Table: 4**

**Relationship of victim to offender**  
**CASA 1994/95**

	<b>A:</b>	<b>B:</b>	<b>C:</b>	<b>D:</b>	<b>E:</b>	<b>F:</b>	<b>G:</b>
<b>South West</b>	49	17	2	5	66	8	147
<b>Goulburn Valley</b>	36	170	10	15	69	5	305
<b>SECASA</b>	97	24	54	24	69	13	281
<b>Mallee</b>	19	4	3	4	9	2	41
<b>Loddon</b>	41	0	12	19	47	4	123
<b>North East</b>	94	138	50	26	46	13	367
<b>Geelong</b>	23	9	6	5	19	11	73
<b>TOTAL</b>	<b>359</b>	<b>362</b>	<b>137</b>	<b>98</b>	<b>325</b>	<b>56</b>	<b>1,337</b>

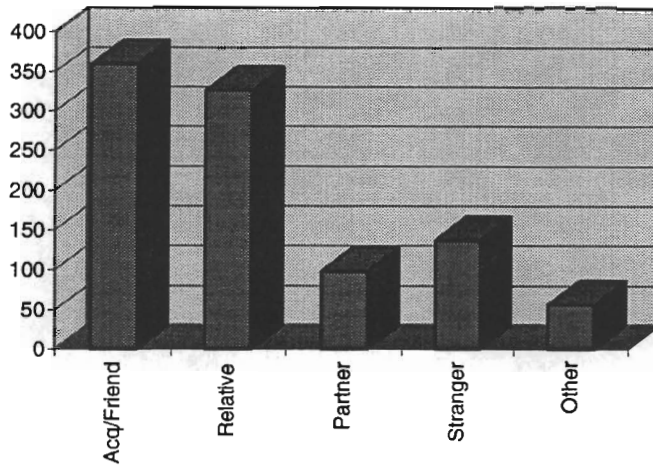
<b>Legend: A:</b>	Acquaintance/Friend	Total	743
<b>B:</b>	Not Recorded	Total	1,692
<b>C:</b>	Stranger	Total	178
<b>D:</b>	Partner	Total	146
<b>E:</b>	Parent/Relative	Total	994
<b>F:</b>	Other	Total	303
<b>G:</b>	Number	Total	4,056

Note: Not all CASA's supplied useable data in this area.

Source: Submission by individual CASA's.

**Chart 3:**

**Relationship between victim and offender**  
**CASA 1994/95**



Source: Submissions by individual CASA's.

The Committee notes that where the offender's identity was recorded in CASA statistics, the offender was known to the victim in the majority of cases.

**Table 5:**

**Location of offence**  
**CASA clients 1994/95**

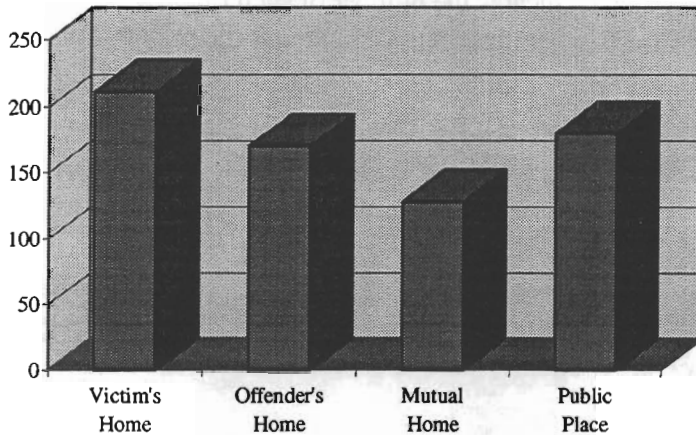
	<b>Victim's Home</b>	<b>Offender's Home</b>	<b>Mutual Home</b>	<b>Public Place</b>	<b>Other Unknown</b>
<b>South West</b>	27	18	32	23	47
<b>Goulburn Valley</b>	31	22	19	17	211
<b>SECASA</b>	52	63	31	46	89
<b>Mallee</b>	14	2	6	9	9
<b>Loddon</b>	39	20	23	13	30
<b>North East</b>	38	36	13	65	215
<b>Geelong</b>	10	9	4	7	40
<b>TOTAL</b>	211	170	128	180	641

Note: Not all CASA's supplied useable data in this area.

Source: Submission by individual CASA's.

**Chart 4:**

**Location of Assault**  
**CASA 1994/95**



Note: Not all CASA's supplied useable data in this area.

Source: Submission by individual CASA's.



The Committee notes that where the location of the offence was known, approximately 82% were committed in the private residence of the victim, offender or a mutual home shared by the victim and offender.

**The Committee wishes to draw attention to the fact that very few assaults occur in public places.**

Discrepancies between collection methods used by various CASA's makes meaningful comparison of data most difficult. The Committee considers it imperative the Department of Human Services **require** all CASA's to provide consistent, comparable and meaningful data as a mandatory component of funding.

### **3.4 Magistrates Court Statistics**

The major sexual offences heard and determined in the Magistrates Court are Indecent Assault under sections S39.1; S42; S44.1 and 68.3.A of the *Crimes Act* 1958 and Wilful and Obscene Exposure under section 7.1.c of the *Vagrancy Act* 1966. Statistics are drawn from the Sentencing Statistics Book produced by the Caseflow Analysis Section. Magistrates Court statistics are counted for **calendar** years which makes comparison with official crime statistics impossible as they are counted for **financial** years. The following table indicates the number of such offences determined in the Magistrates Courts where Indecent Assault was the principal offence.

**Table:6**

**Number of indecent assault offences determined  
in Magistrates' Courts, Victoria - 1993/94/95**

	1993	1994	1995
Indecent Assault S39.1	67	286	367
Indecent Assault S42.	883	174	90
Indecent Assault S44.1	895	432	306
Indecent Assault S68.3.A	2	91	37
Wilful and Obs. Exp. S7.1.c	576	432	413

Source: Caseflow Analysis Section, Courts and Tribunals Services Division, Department of Justice, Sentencing Statistics, 1993,1994,1995.

The Magistrates' Courts statistics identify the measures of penalties for individual offences. These measures are divided into Imprisonment, Fines and Unpaid Community Work. The most common penalty in each of the three classifications is indicated in the following table.

**Table 7:**

**Average penalty in Magistrates' Courts**  
**Indecent assault section 39.1**

	Measurement	1993	1994	1995
Imprisonment	Months	4	3	6
Fine	Dollars	2,000	1,000	500
Unpaid Comm. Work	Hours	128	150	150

Source: Caseload Analysis Section, Courts and Tribunals Services Division, Department of Justice, Sentencing Statistics, 1993,1994,1995.

**Table 8:**

**Disposition of offences in the Magistrates' Courts**  
**under Section 39.1. Indecent assault**

Disposition	1993	1994	1995
Dismissed	3	45	33
Struck Out	48	75	130
Imprisonment		19	30
Mix Imp/Susp.	2	2	10
Suspended Sentence	3	24	34
Unpaid Comm. Work	2	46	26
C.C.O. Corrections Officer		2	7
MIS. Order with Conditions		3	
Intensive Correction Order	2	7	10
Fine	7	34	52
Adjourned/Bond		28	26

Source: Caseload Analysis Section, Courts and Tribunals Services Division, Department of Justice, Sentencing Statistics, 1993,1994,1995.

### **3.5 Higher Court Statistics**

In 1993 there were a total of 246 rape and rape associated offences including attempted and aggravated rapes dealt with in Higher Criminal Courts. A guilty plea was recorded against 94 of those offences. Of the remaining 152 offences against which a guilty plea was not recorded, 70% failed to achieve a conviction. In these cases the accused was either acquitted; a Nolle Prosequi was submitted; or no evidence was led by the prosecution. Offenders for only 46 contested offences were convicted in higher courts for rape or associated offences (Sentencing Statistics, Higher Criminal Courts, Victoria 1993:78).

In 1994 the number of rape and allied offences rose to 269, an increase of 9.35%. A guilty plea was recorded against 70 counts, a reduction of 12% in comparison with 1993. Of the remaining 199 offences which were contested, 75% were either acquitted or a Nolle Prosequi was submitted (Sentencing Statistics, Higher Criminal Courts, Victoria 1994:72).

As crime statistics recorded by police are in financial years and court statistics are in calendar years it is difficult to compare the two sets of figures, however 1308 offences of rape were recorded by Victoria Police for the financial years 1993/94, with 246 offences determined by Higher Courts of which 140 achieved a conviction in 1993. In 1994, 120 offences achieved a conviction in Higher Courts which is less than 10% of the total number of rapes reported in the 1993/94 financial year. Acknowledging that a variation may exist between financial and calendar years it still appears that only around 10% of rapes recorded by police result in conviction in the Higher Courts (Sentencing Statistics, Higher Criminal Courts, Victoria 1994:72). This percentage is even further reduced when the data collected by the Committee from Community Policing Squads is considered, this data suggests that a significant number of alleged rapes and other sexual offences which are reported to police are in fact not recorded in official crime statistics.

#### **3.5.1 Higher Court Statistics - Country Circuit**

The following tables indicate the result of rape and aggravated rape charges determined in Higher Courts outside the Metropolitan Area for the years 1993 and 1994.

**Table 9:**

**Result of charges for rape and aggravated rape**  
**Country Circuit, 1993.**

<b>Court</b>	<b>Acquitted</b>	<b>Convicted</b>	<b>% Acquitted</b>
Warrnambool	NIL	NIL	
Wangaratta	6	4	60.0
Morwell	3	7	30.0
Mildura	4	0	100
Kerang	1	1	50.0
Horsham	3	0	100
Geelong	0	2	0.00
Bendigo	13	0	100
Ballarat	5	1	83.3
Bairnsdale	4	0	100
<b>TOTAL</b>	<b>39</b>	<b>15</b>	<b>61.5</b>

Note: These figures are offence based not offender based.

Source: Caseload Analysis Section, Courts and Tribunals Service, Department of Justice, 1995.

The Committee notes the high acquittal rates in various country regions and considers further investigation is required to identify reasons for this disparity.

**Table 10:**

**Result of charges for rape and aggravated rape**  
**Country Circuit, 1994.**

Court	Acquitted	Convicted	% Acquitted
Warrnambool	2	6	25.0
Wangaratta	2	0	100
Morwell	21	3	87.5
Sale	NIL	NIL	
Mildura	2	2	50.0
Kerang	2	2	50.0
Horsham	4	0	100
Geelong	0	1	0.00
Bendigo	8	1	88.9
Ballarat	2	2	50.0
Shepparton	1	1	50.0
<b>TOTAL</b>	<b>44</b>	<b>18</b>	<b>59.1</b>

Note: These figures are offence based not offender based.

Source: Caseflow Analysis Section, Courts and Tribunals Service, Department of Justice, 1995.

### **3.6 Sentencing Statistics**

Penalties imposed for each offence of rape or rape associated offence during 1993 varied considerably, although 90.1% received a custodial sentence. Of the 140 convictions, a sentence of ten years or greater imprisonment was imposed in 15 cases. A sentence of between five and ten years was imposed for 36 offences. 55% of offences had imposed a sentence of imprisonment of less than five years (Sentencing Statistics, Higher Criminal Courts, Victoria 1993:99-100).

In 1994, 93.3% of rape and associated offence convictions resulted in imprisonment, a slight increase as against the 1993 figure. Of the 120 recorded convictions a sentence of ten years or greater imprisonment was imposed in six cases (5%). A sentence of between five and ten years

imprisonment occurred in 62.5% cases. 25% offences resulted in imprisonment of less than five years duration.

Compared to other serious offences against the person, offenders convicted of rape receive relatively severe sentences. For example, in the 1988 - 1991 period, 96% of convicted adult rapists were sentenced to imprisonment, whilst 70% of convicted armed robbers and 61% of offenders convicted of intentionally causing serious injury were given sentences of imprisonment.

Rape offenders also received longer sentences, with an average minimum term of six years eight months, whilst armed robbers received an average of five years three months, and offenders convicted of intentionally causing serious injury received an average sentence of two years one month (Victorian Bureau of Crime Statistics and Research, 1992).

A substantial increase in the percentage of rape offenders receiving a sentence between five years and less than ten years is evident between 1993 and 1994. In 1993 of the 101 rape offences (rape as distinct from attempted, aggravated or assault with intent to rape) 32 or 31.7% received between five and less than ten years imprisonment. In 1994 that figure had increased to 51 or 50.5% of the 101 rape offences recorded in that year.

**Table 11:**

**Rape imprisonment rates**  
**Higher Courts, 1993 - 1994**

	1993	1994	% Change
Median	4 years	5 years	25
Mode	4 years	6 years	50
Average	4.43 years	5.2 years	17

Note: Average Years has been rounded for calculation

Source: Sentencing Statistics Higher Criminal Courts Victoria, 1993 - 1994.

The increase in lengths of imprisonment for rape offenders may be reflective of the changing social and community attitudes to serious sexual offences.

### **3.7 Data shortcomings**

**(2) The Committee recommends that the collection, analysis and presentation of all statistical data, relevant to adult sexual assault, be centralised and consistent.**

Some statistical data related to sexual offences exists but it is difficult to build up a complete picture. Shortcomings in the data available also make it impossible to gauge whether or not present responses of the criminal justice and welfare systems are working in an efficient, responsive and co-ordinated manner, in accordance with the expectations and needs of government and community.

It is not the intention of the Committee to restrict the collection of data by individual agencies however, the data collected must be made available to a centralised area, to facilitate an integrated analysis that may be undertaken in the context of other relevant data. The result of such a process would afford relevant Ministers a complete picture for consideration in the formulation of policy and legislation. The difficulty experienced by the Committee in collating and interpreting data was largely due to inconsistencies in data collection methodology and presentation.

### **3.8 Summary**

The economic or emotional dependence many victims of sexual assault have on their abusers, the intimate nature of the sexual assault itself; the feelings of powerlessness experienced by victims and perceptions of sectors of the community, may have contributed to high levels of under-reporting of sexual assaults. Offending often occurs in the context of a relationship between victim and offender, which contributes to the difficulties the victim has of being believed and supported, and of taking the next step and reporting the sexual assault to police.

## **CHAPTER FOUR**

### **INCIDENT PROFILES**

#### **4.1 Introduction**

A nexus exists between a sexual assault victim and an offender. The nexus may begin and end with a single incident or commence a substantial time before, and continue long after the event. Regardless of its duration, the nexus is a critical issue when examining both victims and offenders. To better conceptualise the dynamics of sexual assault, it is important to consider many of the factors which are associated with the offence. These factors may influence the decision of victims to report the crime and the way in which the “criminal justice system” deals with that report.

#### **4.2 Reporting Levels**

The issue of reporting levels for rape has been the subject of much debate in recent literature. Various figures have been touted as being representative of reporting rates, some pointing to an increase in reporting.

Figures as high as 30% and some as low as 6% have been suggested for rape and serious adult sexual assault. Research in the United States supports a figure of around 6% by suggesting that the incidence rate of rape is 10 to 15 times higher than the Justice Department statistics (Freiberg P., 1990:25).

Australian victim surveys conducted by the Australian Bureau of Statistics (ABS), the Australian Institute of Criminology (AIC) and the Real Rape Law Coalition recorded reporting levels of 33%, 32% and 30% respectively.

##### **4.2.1 Reasons For Not Reporting**

There are a number of reasons why approximately two thirds of victims do not report a rape or other sexual assault to Police. A National Survey of



Survivors of Sexual Assault was conducted by the Australian Institute of Criminology in 1992. In the survey 80% of respondents did not report the incident to the police. Reasons for not reporting to police included:

- didn't believe it was rape;
- didn't believe police would act;
- shock;
- shame;
- prior bad experience with police;
- fear of perpetrator; and
- knew perpetrator.

Note: Many respondents identified more than one reason for their decision not to report.

A CASA survey of 552 victims/survivors found that some of the issues regarding reporting were:

- a problem of timing;
- a problem of definition;
- a problem of repercussion;
- fear of secondary victimisation by the court;
- a problem of stereotypes;
- police attitudes;
- false reports; and
- demands of a police statement.

Ms. Hardiman, Acting Co-ordinator, Crisis Care Services, at the Royal Women's Hospital Centre Against Sexual Assault advised the Committee that:

"But of those victims who did not proceed with the report, a high percentage cited their fear of the legal process, their fear of the offender if the process was not successful, and their fear of retribution. Their experience of the police was, in some cases, seen to be not supportive and

sometimes even antagonistic. Those were the reasons given by many of the women who chose not to proceed" (Hardiman, Public Hearing, 15/6/1994).

The 1993 ABS victim survey, Crime and Safety Australia identified the following factors which influenced the victim's decision whether to report:

- lack of confidence in the police and the court system;
- concern about being identified;
- fear of reprisal from the offender;
- fear of relationship or family breakdowns;
- guilt and self-blaming; and
- uncertainty about what types of behaviour are legally defined as rape (ABS, Crime and Safety Australia, 1993).

Decision making in crisis situations is difficult and therefore the very best information and support must be available to victims to assist **them** make **their** decision. A lack of understanding of what constitutes a sexual assault and therefore a crime, or fears of disbelief by the system are additional factors. Lack of faith in the criminal justice system appears to be a recurrent theme which impacts on many victims of sexual assault.

#### **4.3 National Crime Victimisation Surveys**

The ABS conducted national surveys of crime victimisation in 1983 and 1993. The 1983 survey found that 0.4% of Victorian women aged over 18 years had been the victim of sexual assault in the previous year. In 1993 this estimate had risen to 0.6% and in 1994, was 0.5%. The 1993 crime victimisation survey found that 33.1% of Victorian sexual assault victims had reported the crime to police. The Committee, through its own investigation of Community Policing Squad records, has identified that not all sexual assaults, reported to Victoria Police, are in fact recorded within official crime statistics which makes these figures unreliable.

#### **4.4 Contemporary Research**

Very little census research has been done of the experiences of Victorian and Australian victims of sexual assault. Because of the high rate of under-reporting and under-recording, the numbers of sexual offences committed, and patterns in sexual offending, have been difficult to gauge in any complete or accurate way.

In the last decade, the rate of reporting of sexual offences to police has increased considerably, although the ABS study, Crime and Safety Victoria 1994, showed that only 12% of persons who had been sexually assaulted in the last 12 months had reported the offence to police. Evidence before the Committee suggests approximately 10% of adult female victims would report the offence to police.

In September 1992, the Australian Institute of Criminology undertook a survey of sexual assault survivors, using a "self-selected methodology". Of the respondents to the survey who said they had been raped in the previous 5 years, 30% reported to police. By contrast, only 22.5% of those who were raped five years earlier had reported to police. For those who had been raped ten years earlier, the reporting rate was even lower - 18% (Easteal 1993).

##### **4.4.1 Canadian Survey**

Whilst in Canada the Committee visited the Canadian Centre for Justice Statistics and discussed the results of the 1993 Violence Against Women Survey which incorporated interviews with approximately 12,300 women 18 years and older. The survey results revealed that of the 13,462 sexual assaults alleged by victims, during the interview only 6% reported to the police. The level of reporting to police was lower for sexual assault than for wife assault (26%) and physical assault (28%) (Statistics Canada, 1993:7).

The survey also revealed that 89% of sexual assaults resulted in no physical injury and of the 1,466 cases where injuries were sustained only 19% received medical attention (Statistics Canada, 1993:6).

#### **4.5 Rate Changes**

Extensive longitudinal research is needed to establish why reporting rates of sex offences are increasing and to identify those factors which influence change. It appears that the rise may be due to a combination of factors including: higher public profile being given to issues surrounding sexual assault; a greater number of agencies now available to support victims; mandatory reporting; the evolution of the Police Code of Practice for Sexual Assault Cases; an increased number of historical offences being reported and encouragement for victims to report sexual assaults through police phone-in campaigns such as operation Paradox and Pegasus.

Common problems with research on sexual assault include the use of widely varying theoretical and operational definitions of sexual assault; small samples; reliance on anecdotal; clinical or criminological reports; lack of comparison groups and lack of objective measures are some of the common problems in sexual assault research. (Poropat 1996, Rosevear 1996). In addition, a number of sexual assault agencies change their recording practices from one year to the next.

Many studies have found that women may be reluctant to report rape when they do not receive physical injuries. The Committee's investigations have supported this.

In recent times, most Australian jurisdictions have experienced substantial increases in the number of rapes reported to police (Walker 1994). Crime researchers including Wetherburn and Davey (1991) have assumed that this trend is attributable primarily, if not exclusively, to an increased willingness on the part of rape victims to report offences to police.

#### **4.6 Rape Profiles**

There are certain characteristics within some rapes which allow for broad categorisation of the incident. These categories may have significance in both a legal and often a clinical sense particularly in offender treatment. The categories are:

- a *stranger rape* is one committed by an unknown offender. It involves an offender and victim who have no association prior to the assault.

- *acquaintance rape* involves parties who are known to each other prior to the incident. It may include relatives, friends, work colleagues etc.
- a *Date rape* is reserved for non-consensual sexual penetration within a relationship where consensual sexual contacts may be considered appropriate.
- *marital Rape* is non-consensual sexual penetration within a marriage or defacto relationship (Koss and Harvey 1991:6).

Koss and Harvey in their 1991 book, The Rape Victim, Clinical and Community Interventions provide the following examples of rape types to assist in understanding the definitions:

- *Stranger Rape*
  - Rose, age 25, was accosted at knife point in a shopping mall car parking lot and forced by a stranger into his car. He drove to a rural area, raped her, stabbed her five times, set the car on fire, and left her. Although severely injured, she survived.
- *Acquaintance Rape*
  - Susan, age 23, went to the door of her house to find a man she recognised from one of her college classes. She opened the door to let him in the house, whereupon he threw her on the sofa and raped her.
- *Date Rape*
  - Diana, age 50, was vacationing in the Caribbean. She spent some of her time learning sailing and walking along the beach with a fellow guest. At a hotel dance, she danced with this man, and he asked her to walk outside. Once on the beach, this 6'4" man asked to have sex and forced her to co-operate by holding her down. Diana was too afraid to resist.

- *Multiple Rape*
  - Ann, age 21, was at a friend's home with a group of her peers. There were three men, one other woman, and herself present. When the other woman left, the three men raped her.
- *Marital Rape*
  - Unidentified caller, in her thirties, telephones a radio talk show in which marital rape is discussed. She describes her husband's sexual assaults and asks where to go for help (Koss and Harvey 1991:7).

The number of offenders may vary from the *individual rape* where a single offender commits the offence to a *pair rape* involving two offenders who act together to rape the same victim and a *multiple rape* involving three or more offenders. In a multiple rape not all offenders necessarily sexually penetrate the victim, however an active participation, through use of force or threat of force or some other coercion, is required to achieve sexual penetration by a co-offender. The Victorian Community Council Against Violence (VCCAV) study in 1991, revealed that in those rapes reported to police the majority of offenders acted alone. This was true in incidents which occurred both in the home and in public places (VCCAV 1991).

#### **4.6.1 Relationship Between Victim and Offender**

The Victoria Community Council Against Violence (VCCAV) Source Book of Victorian Sexual Assault Statistics, 1987 - 1990 provides some analysis of the relationship between victims and offenders of rape.

Of a total of 1366 respondents 39% were committed by a stranger, 31.7% were committed by a friend of the victim, 17.9% by an acquaintance and 11.3% were familial.

Community Policing Squad Data collected by the Committee broadly supports the level of stranger rape indicated above.

Of the 639 adult rapes or attempted rapes reported to Community Policing Squads during 1992/93, 35.5% were committed by a stranger. The offender was the victim's spouse in 5.1% cases and a former partner in

9.5% of cases. 35% of offenders were friends or acquaintances of the victim and 9.2% were familial relationships.

#### **4.6.2 Use of Alcohol and other drugs**

Results of the VCCAV study of police research shows that less than 10% of sexual assault victims had taken drugs and 33% had been drinking (VCCAV 1991). Offenders showed a similar pattern of alcohol and other drug use.

During investigations in the Northern Territory the Committee was informed of the seriousness and frequency with which sexual assault is occurring in that territory and the probable links between the sexual assault and the hot climatic conditions of the region. A relationship between sexual assault and alcohol was also strongly suggested.

#### **4.6.3 Incident Characteristics**

Research suggests the degree of planning which goes into the conduct of a rape may vary. A *planned rape* may see every detail of the intended offence meticulously planned by the offender. Selection of the victim, the location of the offence and even the method of the penetration may be considered in detail prior to the assault.

An *unplanned rape* is one of spontaneous impulse or opportunity. No planning takes place prior to the event. Factors which may influence the act may include alcohol or other drug, availability of a suitable victim and a sudden impulse to commit the offence.

Many rapes fall somewhere along these two extremes and are in fact *semi or partially planned rapes*. The offender may make a conscious decision to commit an offence of rape and thus goes in search of a victim. The offender may identify a potential victim and follow or stalk the victim until a suitable offence site is identified. The offender may even have prepared a location to commit the offence but has not yet identified the victim (Koss 1991:6).

#### **4.7 Intellectually Disabled**

**(3) The Committee recommends an inquiry be undertaken into sexual and physical abuse allegedly committed by and against intellectually disabled persons.**

Although the Committee received little direct evidence in relation to sexual assault involving intellectually disabled persons, it received sufficient evidence that would warrant the commencement of a separate inquiry.

The Committee was advised at a Public Hearing that,

“ . . . whilst about 13% of the general prison population are sex offenders, 52% of intellectually disabled prisoners are sex offenders. Apart from generally not being provided with adequate sex education this figure is likely to be so high as sex offences committed by the intellectually disabled are more easily detected and the offender tends to confess their crimes readily when questioned (most of them pleading guilty in court), they are more likely as a group to be detected and imprisoned than are non-intellectually disabled sex offenders” (Calabro, Public Hearing, 15/6/1994).

Intellectually disabled persons, whilst forming a significant proportion of offenders, also are victims of sexual assault. The extent of involvement in sexual crimes by the intellectually disabled is difficult to estimate within the scope of current data collection methods. The Committee acknowledges the seriousness of sexual assaults against intellectually disabled individuals and those committed by persons with an intellectual disability and has identified the need for a specific inquiry.

#### **4.8 Victim Profiles**

Ms. McCarthy of the Project for Legal Action Against Sexual Assault advised the Committee at a public hearing that,

“ The law sees it [rape] as being the second most serious crime after murder. Many victims of sexual assault will tell you they would rather they had not survived the rape because the consequences have been so severe” (McCarthy, Public Hearing, 15th June, 1994).



Whilst acknowledging that each circumstance is different, it is possible to identify consistent and repetitive issues/behaviours in victim/survivors to establish profiles.

In the 1992 National Victim Centre Study, Report to the Nation, rape was held to have a huge impact on the health of women. Compared to females who had not been raped, victims of forcible rape were:

- 6.2 times more likely to develop post traumatic stress disorder;
- 3 times more likely to have experienced an episode of major depression in their lifetimes;
- 4.1 times more likely to have thought seriously about suicide; and
- 6.4 times more likely to have used hard drugs or cocaine.

The problem of sexual assault goes well beyond the primary incident. Governments and communities must realise the potential long term effects of sexual violation as it applies to women and men.

#### **4.8.1 Victim Age Distribution**

Victim surveys and official crime statistics reveal the age demographics of victims of sexual assault. Unfortunately each set of data has been presented in different age groupings making comparisons between surveys almost extremely difficult.

**Table 12:**

#### **Age of rape victims 1993/94** **Victoria Police statistics**

Age in Years	Number	Percentage
Under 10	58	6.46
10 to 16	223	24.83
17 to 24	294	32.75
25 to 29	81	9.02
30 to 39	131	14.59
over 40	81	9.02
Unknown	30	3.34
<b>TOTAL</b>	<b>898</b>	<b>100.01</b>

Note: Total percentage not 100 due to rounding.

Source: Victoria Police Crime Statistics, 1993/94:26

The Australian Institute of Criminology (AIC) national survey in 1992 produced similar age distribution percentages for victims of sexual assault.

**Table 13:**

**Age of sexual assault victim**  
**AIC 1992**

Age	Percentage
Under 10 years	16.20
11 to 16 years	27.60
17 to 19 years	18.00
20 to 29 years	25.80
30 to 49 years	11.30
over 50 years	1.00
TOTAL	100%

Source: AIC, National Survey, Presentation by Dr. P. Eastaerl, to the conference "Without Consent: Confronting Adult Sexual Violence, 1992".

In the Police statistics over 57% of rape victims are aged between 10 and 25 years at the time of the rape. The national survey further indicated that 71% of victims were aged between 11 and 30 years at the time of the sexual assault.

#### **4.8.2 Victim Precipitation**

The role victims play in the occurrence of rape is complex and conflicting, research providing little clarification. Research including (Amir 1971; Kanin 1957; Myers et al 1984 and Selkin 1978) explored a vulnerability model of rape. Some research concluded that a victim's likelihood of being raped is increased by their personality characteristics including greater passivity and lower social poise. Koss suggests that such studies can be challenged on methodological and theoretical grounds such as sampling technique (Koss 1991:34).

In a 1989 paper, Koss and Dinero discussed the results of research involving 2,723 female college students. A major contributor to the risk profile of a rape victim was having been sexually abused as a child.

The most important finding was that the vast majority (between 75% and 91%) of victims and non-victims could not be differentiated. It was

concluded that rape either was predicted by circumstances in a victim's past, beyond her control, or it was not predictable (Koss 1991:36).

#### **4.9 Offender Profiles**

A central question to the issue of rape is, 'what motivates a person to rape?' Acknowledging that most rapes are committed by men against women, 'what drives a rapist to commit such an offence'?

Dr. Nicholas Groth identified three categories of rapist:

The *Power Rapist* is the most common form of rapist, accounting for approximately 95% of all rapists. Males who "power rape" rape to gain a sense of power out of the attack. They want to feel "in control" and use the assault as a means of meeting that need. Rarely is a victim/survivor injured during a "power rape".

The *Anger Rapist* is the second most frequent kind of rapist and accounts for approximately 4 percent of all rapists. Males who "anger rape" attack as a way of releasing feelings. Generally it results in physical injury to the victim/survivor.

The *Sadist Rapist* is the rarest form of rapist, accounting for less than one percent of all rapes. Due to the nature of these attacks, these are the most frequently publicised rapes. This form of rape will generally result in severe physical injury or death of the victim/survivor (Groth, 1993:171).

The categorisation of rapists suggested by Groth was supported during the Committee's overseas study tour, in a meeting with police in the Netherlands. The police advised the Committee that masculine authority or frustration were the most common rapist profile and were rarely violent. Anger rapists were less common but prone to higher levels of violence. Sadistic rapists as described by police in Amsterdam, were extremely violent. Serious injury of the victim/survivor was common.

Mark Crake delivered a paper at the 1992 conference "Without Consent - Confronting Adult Sexual Violence"(article 397). He stated that criminological and clinical researchers have noted that sex offenders generally have a relatively high incidence of convictions for non-sexual crimes and overlap between sexual and non-sexual crimes becomes stronger when aggressive, violent sex offences are considered alone (Crake 1992).

In Western Australia, Broadhurst and Maller (1992) found that rapists typically show a pattern of aggressive behaviour throughout their lives, suggesting that aggression rather than perversion is the more salient characteristic of some sex offenders.

Whilst numbers may be small it is important not to overlook that there are female sex offenders, offending against adult males and females. Evidence before the Committee suggests that they are usually co-offenders with another person, usually a male.

#### **4.9.1 Rape Myths Regarding Women**

Koss and Harvey (1991) nominated a number of myths regarding women and sex:

- all women make initial protests though they never really mean it;
- women love to be swept off their feet and taken by force;
- nice girls do not get raped;
- typical rape is a stranger in a dark alley;
- typical rape is violent; and
- it is impossible to rape an unwilling woman.

This supports the prejudice that a woman consented unless there were obvious signs of injury. Many behavioural scientists believe that the socialisation received by males pre-disposes them to dominate and abuse women, and other men, in a variety of ways. Pressure from other men to be sexual as a means of confirming masculinity also results in men participating in sexual encounters they may later regret (Berkowitz A., 1992:175 - 181). Most studies of the frequency of sexual assault amongst college students indicate that from 25% to 60% of college men have engaged in some form of sexually coercive behaviour (Berkowitz, 1992).

#### **4.9.2 Language**

In Rapaport and Burkhart's study only 39% of men sampled denied coercive involvement, 28% admitted using a coercive method at least once and 15% admitted forcing a woman to have intercourse at least once (Rapaport K., Burkhart B., 1984:162 - 170).

In another study, 57% of the men surveyed admitted to perpetrating sexual assault, with 51% reporting an incident during higher education (Muehlenhard and Schrag, 1991). Most frequent means used by these men was to simply ignore the victim when she said “no”, rather than using violence or overt force.

#### **4.10 Re-offending**

A number of studies, particularly those in Western Australia, have identified high levels of recidivism in sex offenders.

A study of prisoners released between July 1975 and 1987 showed that 41.3% of released sex offenders had returned to prison (Broadhurst and Maller, 1989, 1990, 1991, 1992). The high level of re-offending supports the urgency for appropriate action to be taken to better deal with sexual assault. Strategies for dealing with offenders are discussed later in this report.

#### **4.11 Summary**

Sexual assault has many facets which make it difficult to identify viable classifications which would provide meaningful information. The Committee believes it is important that trends and patterns be investigated and considered regarding sexual assault though ultimately each individual incident must remain unique. The services to the victim, the appropriateness of intervention and the method of investigation must be tailored to meet the individual needs of each situation.

## **CHAPTER FIVE**

### **VICTIM SERVICES**

#### **5.1 Introduction**

There are a number of government and non-government agencies which provide services to adult victims of sexual assault from the initial stages of reporting through to counselling and court assistance. A study by the Victorian Community Council against Violence in 1991 divided services available into the following categories:

- government Agencies - The Department of Human Services and the Department of Justice;
- services assisting victims of specific crimes - Centres Against Sexual Assault (CASA); Domestic Violence Incest Resource Centre;
- services for all victims of crimes - Victims of Crime Assistance League;
- agencies offering victim medical services - hospitals and Community Health Centres;
- general Interest Groups, self help and lobby groups; and
- bodies offering victim services to specific membership - large corporations (VCCAV, 1991).

Included above are private services where the victim may be covered by Medicare or may be required to pay a nominal fee. The principal service providers are Victoria Police and CASA's located in Melbourne and regional Victoria.

#### **5.2 Centres Against Sexual Assault**

##### **5.2.1 Historical Development**

The international women's movement highlighted the issue of sexual violence against women, prior to which it had largely remained a hidden crime. Growing public awareness and community concern became influential factors for Governments at State and National levels. In Victoria, five community managed Rape Crisis and Sexual Assault Centres

were established by 1985 (Standards of Practice for Victorian Centres Against Sexual Assaults, Final Draft, May 1996, Appendix 1).

The philosophy of CASA' is articulated in Appendix II of the Standards of Practice Manual:

“Victorian Centres Against Sexual Assault are committed to addressing inequalities within society based on gender, culture, race, age and class which result in the perpetration of sexual violence against women and children” (Standards of Practice, Final Draft, 1996).

CASA's therefore acknowledge that:

“Sexual assault is both a consequence and a reinforcer of the power disparity existing between men and women. It is a violent act of power which, in the main, is carried out by men against women and children (Standards of Practice, Final Draft, 1996).

The Committee believes such wording to be outdated and inappropriate in the context of recent developments in some CASA service provision which more fully supports male victims.

The Committee recognises and applauds the significant impact which the feminist movement has had in the development of much needed services to women and children who have been the victim of sexual assault by men.

The Committee has also been assured that some CASA's have, with some degree of reluctance, moved towards a more victim - focused service where the gender of the victim has less relevance .

The Committee was advised at a Public Hearing that:

“Although they have developed very much from a strong feminist philosophy with an emphasis on a victim rights model, their services are also provided for men and boys” (Stitz, Public Hearing, 11/7/1996).

### **5.2.2 Service Provision**

There are 15 Centres against sexual assault located throughout Victoria in addition to a free state wide telephone service.

The Committee believes that the growth areas within Victoria require adequate crisis care services. CASA's must be flexible and be prepared to relocate to meet client demand. A review of geographical locations based on client addresses, population trends and crime statistics would assist with future policy development. The needs of rural communities must also be addressed.

CASA's principal responsibilities are:

- provision of high quality and appropriate crisis care and support services to victims of sexual assault and sexual abuse;
- delivery of consultation services to relevant agencies and the education and training of health workers, legal personnel and relevant practitioners to ensure that they appropriately and sensitively meet the needs and concerns of people who have been sexually assaulted/abused; and
- facilitation of social change processes aimed at reducing the incidence of violence against individuals (Human Services, 1996).

All CASA's provide the following services:

- crisis care consultations;
- counselling consultations;
- court advocacy services;
- after hours telephone service;
- individual health education consultations;
- group health education consultations;
- professional training and development consultations;
- therapeutic group consultations; and
- support of self help groups (Human Services, 1996).

### **5.2.3 24 Hour Telephone Service**

The Royal Women's Hospital (RWH) provides a 24 hour telephone service to victims of sexual assault which is funded under the National Women's Health Program. Each of the existing CASA's use the RWH to provide an after hours telephone service, sometimes in addition to their own crisis care service. The service offers immediate crisis care counselling to recent victims of sexual assault, including medical and legal options as well as counselling and referral to past victims of sexual assault or sexual abuse.



## 5.2.4 Funding

(4) The Committee recommends a review of funding arrangements for CASA services.

CASA's are funded through State and Federal government sources. These sources include:

- National Women's Health Program (NWHP)
- State Women's Health Program (SWHP)
- Community Support Fund (CSF)
- Innovative Health Services for Homeless Youth Program (IHSYHP)

The following Table indicates the level of funding from each source between 1991 and 1995:

**Table 14:**

### **CASA funding sources**

<b>YEAR</b>	<b>NWHP</b>	<b>SWHP</b>	<b>CSF</b>	<b>IHSYHP</b>	<b>TOTAL</b>
1991/92	\$1,456,880	\$2,114,280	N/A	N/A	\$3,571,160
1992/93	\$1,830,880	\$2,156,590	N/A	N/A	\$3,987,470
1993/94	\$1,741,380	\$2,151,590	N/A	\$47,000	\$3,939,970
1994/95	\$1,852,790	\$2,151,590	\$230,748	\$50,000	\$4,285,128

Note: The Gatehouse Centre, Royal Children's Hospital received additional funding in 1994/95 of \$170,000.

Source: Human Services, 1996

## 5.2.5 CASA Client Base

CASA have realised a dramatic increase in clients utilising the various services across the State. The Department of Human Services, in their submission to the Committee, advised that new client numbers had increased from 10,584 in 1991 to 35,000 in 1995. Funding for the same period had increased from \$3,571,160 to \$4,285,128.

The Committee views the role of CASA's to be essential to providing high quality victim services. Adequate funding levels should be maintained as this would also reduce waiting lists. The Committee is concerned about the long term psychological damage which may be caused by delayed counselling to victims. Reducing current waiting lists should be a priority for the Department of Human Services.

There needs to be commitment at all levels of Government to supporting the ongoing role of CASA's. The Committee considers this to be fundamental to meeting the needs of victims of sexual assault.

The Committee in its first report strongly supported the extension of Medicare to cover psychological counselling to victims of child sexual assault. The Committee maintains this position.

### **5.2.6 Accountability of Centres Against Sexual Assault**

The Committee has been made aware of concerns regarding the accountability of CASA. This concern does not stem from any suggestion of impropriety but rather a failing in the established feedback and reporting processes.

“Under the funding of service agreement there is a requirement for the CASA's to report annually in terms of both financial reporting requirements and the service reporting requirements. The quality of that reporting is not as high as we would like” (Stitz, Public Hearing, 11/7/1996).

The Committee stresses the importance of two way communication between the Department of Human Services and individual CASA's. An inadequate reporting system highlights a lack of accountability within the process which needs rectification.

Ms. Stitz advised the Committee that the relationship between the department of Human Services and CASA's is such that:

“We require the level of accountability that is necessary to ensure that there is value for money and appropriate reporting around the expenditure of those funds” (Stitz, Public Hearing, 7/11/1996).

The Committee endorses this view and considers that not only must utilisation of public money be accountable but also the standard of service. The compilation of consistent data, the provision of standards of practice, the external evaluation of services and client satisfaction are issues which require attention.

It has also come to the Committee's attention that material supplied to victims from certain CASA's may not be impartial and in the best interests of the victim. Victims have highlighted anti-male material which has been offensive to some individuals.

Given the valuable work undertaken by Victoria's Centres Against Sexual Assault, the Police and other Community Groups, the publishing of such material is to be discouraged. With the increase in male clients, service providers must ensure professionalism is maintained.

### **5.2.7 Limitations of Centres Against Sexual Assault**

There appears to be a disparity as to the nature and frequency of counselling services provided to victims of sexual assault. Whilst programs in different CASA's could justifiably be different, given population and cultural issues, the Committee considers it important that minimum standards be established.

Professor Ryback of the Beth Israel Hospital in Boston U.S.A. met with the Committee and was most complimentary of the CASA service. The area identified as a major weakness in the service was its limitation of only six counselling sessions.

Professor Ryback made the Committee aware of a number of issues which it subsequently considered in this report. These included:

- research data has shown that sexual assault survivors take a minimum of 2 years to recover;
- the Rape Trauma syndrome and post traumatic stress disorder data are clear that there is a cycle of recovery; and
- good co-ordination and linkage between the people who see victims initially is essential. This minimises the necessity for victims to repeat details, a concern continually stressed to the Committee by victims and support advocates.

The Committee has been advised that a number of Rape crisis centre in Victoria and interstate have already moved away from the six session model of treatment. The Committee considers that this model is no longer appropriate and should be abolished.

The public consultation component of an inquiry conducted by the VCCAV into victim services in Victoria (1994) highlighted the need for longer term

counselling and information about the availability of counselling services, particularly in the victims locality. The following issues were also highlighted as difficulties:

- limited free or low cost counselling services;
- restriction to a limited number of counselling sessions provided by CASA's;
- limited counselling and support services for male victims of sexual assault;
- lack of out of hours counselling services; and
- long waiting lists for existing counselling services (VCCAV, 1994).

The Committee understands that unlimited counselling may not be financially viable, and is concerned that the best interests of victims are not being adequately provided for with the current short term model.

The Committee has heard evidence that the short term goals of counselling should be to assist victims in their dealing with the initial reactions to the trauma, to try and stabilise them and then prevent the onset of chronic post traumatic symptoms.

#### **5.2.8 Information Management**

**(5) The Committee recommends that data collection by CASA's be standardised, and that a central referral data base be developed to facilitate referral of victims to specialist service providers.**

The availability of information to clients and service providers is a key element of service provision and most CASA's develop various targeted information resource packages for their own use:

- information for women about rape;
- pamphlets dealing with relevant legal issues; and
- a video which targets service providers, students and the general community and seeks to promote a better understanding of the issues associated with sexual assault, the services available to victims and the associated legal processes (Human Services, 1996).

The Committee in its first report identified weaknesses in the collection, analysis and presentation of data from a number of agencies including CASA. The Committee acknowledges that following this report there has

been considerable improvement in the collection and availability of CASA statistics. Improvement in the areas of consistency and comparability of data is still required. Standardised data collection will enable greater comparison of client services which will aid policy development and future funding.

The Committee was advised that comparisons cannot be made or conclusions drawn on the basis of current data as there is no coherent, systemic data collection system available.

### **5.3 Hospital Crisis Care Units**

The Hospital Crisis Care Unit (HCCU) is a separate and private area of a hospital where victims are offered counselling support, advocacy and medical care. HCCUs were established to ensure that co-ordinated services are provided to victims of recent sexual assault in an environment conducive to the victim regaining a sense of safety, choice and control.

### **5.4 Staffing Issues**

**(6) The Committee recommends that the Department of Human Services establish minimum qualifications and experience for counsellors involved with sexual assault victims, and that career strategies be developed aimed at encouraging staff retention in CASA's.**

The Committee has heard conflicting evidence concerning minimum qualifications required by staff to be appointed to counselling positions within CASA and relevant organisations. Given that crisis care workers are often the first point of contact for victims of sexual assault, the Committee considers it to be crucial that appropriate minimum standards be developed with respect to accredited professional qualifications and minimum experience.

"I am not suggesting staff or a counsellor at CASA should have tertiary qualifications, but I believe you need outside supervision to monitor their expertise and the supervision should be by qualified counsellors or staff" (Thomas, Public Hearing 24/11/1994)

The Committee considers it appropriate that staff with less than five years professional experience be supervised appropriately. Given the demands placed upon staff working in an intensive, frequently disturbing environment, it is important that appropriate supervision including de-briefing be provided to staff on a regular basis.

#### **5.4.1 Staff De-briefing**

**(7) The Committee recommends that formal de-briefing protocols be developed by the Department of Human Services to assist CASA staff in accordance with identified needs.**

The Committee is concerned that at present staff de-briefing is being conducted on an ad hoc basis with little priority. This results in increased staff turnover, lack of continuity and experience which ultimately affects the quality of service provided to victims.

The Committee considers that the development of a more flexible workplace which better meets the needs of staff, will have a significant impact on the quality of employees, the longevity of employment and the overall productivity of individuals. Improved supervision with staff support strategies will, in the Committee's view, have a resultant positive effect on victims.

#### **5.5 Victim Advocacy**

**(8) The Committee recommends that where a victim's case reaches court, priority be given to ensuring adequate support and advocacy is available and that CASA staff receive adequate training in issues relating to court appearance, advocacy and support.**

The Committee heard at a public hearing,

"Some women are counselled and supported right through until they come to court and sometimes the counsellor advocates will attend. Sometimes the woman that attends no longer wants to be involved for a variety of reasons . . . maybe they need to step aside and maybe they do not want to become part of the political side of things as CASA is known as feminist" (Benjamin, Public Hearing, 26/10/ 94).

The Committee recognises the need for quality advocacy for victims of sexual assault. Such advocates must be skilled in the criminal justice system to a point where they can provide a quality service to victims. Advice on legal issues, rights and entitlements, information exchange and crimes compensation must be available to victims. Continuity of advocacy is important.

The Committee believes the advocacy role provided to victims by CASA should be expanded to ensure victims' needs are met. The CASA counsellor/advocate should remain the focal point of contact for each victim throughout the duration of the criminal justice proceedings.

## **5.6 Western Australia Model**

The Committee visited Western Australia and in particular examined the Sexual Assault Referral Centre in Perth. The Centre's current status is that of a semi autonomous community-based agency reporting through the chief executive officer to the Board of the combined centre for women and children's help.

Each staff member in addition to their normal duties, is also a liaison officer for a particular interest group. An example of this would be one staff member may specialise in working with youth, others the elderly or an ethnic group. They are developing multicultural access programs.

The service is currently structured into three sections. The first counselling, the second medical and the third education services.

The Committee considered the broader utilisation of crisis care workers into other areas including research, youth or elderly assistance programs to be commendable. This approach may be advantageous in averting burn-out in workers. Broader skills with reduced stress could result if managed effectively.

## **5.7 Cultural Issues**

**(9) The Committee recommends that all CASA's and relevant community organisations develop strategies that better cater to the needs of non-English speaking background clients.**

The Committee's investigations have revealed that proportionately low numbers of women from non-English speaking backgrounds have been accessing Victoria's Centres Against Sexual Assault. The Committee is concerned at this under representation, and believes that all CASA's should extend ethnic access programs to better represent Victoria's population.

### **5.8 Victims of Crime Assistance League (VOCAL)**

VOCAL provides counselling and referral to other support services and assists with other matters including Crimes Compensation. A VCCAV study in 1994 found that nearly one third of victims saw a private counsellor, one third VOCAL or CASA and the remainder were divided between medical practitioners, hospitals or psychiatrists, family violence / women's refuges etc. These figures are representative of crime generally and are not necessarily reflective of sexual assault.

The study also found that victims of crime are likely to seek support from a wide range of other health services for resolving emotional and psychological trauma including psychiatric services.

### **5.9 Supported Accommodation Scheme**

The Department of Human Services advised the Committee of the Supported Accommodation Assistance Program (SAAP) that assists women escaping domestic violence who may have been raped / sexually assaulted. Many SAAP services report difficulty in accessing appropriate counselling services for homeless people who have been raped / sexually assaulted. (H&CS Submission to the Committee, Attachment E, 1994)

### **5.10 Community Health Centres**

Victoria also has a strong network of community health centres providing a range of services including allied health services, nursing services and counselling. Community Health Centres in Victoria undertake a range of activities which are aimed at preventing sexual and physical abuse in the wider community. The activities which aim to have an impact on the level of rape and sexual assault in the community include:



- self defence groups for women
- domestic violence forums and workshops;
- sexual abuse forums and workshops; and
- community development initiatives.

With respect to counselling in 1993/94, community health centres employed 64 full-time social workers, 23 EFT identified as counsellors or case workers, 15 EFT welfare workers and 16 EFT psychologists. These positions provide various social support services including:

- skilled therapeutic counselling;
- crisis intervention counselling;
- resourcing and information provision;
- short term counselling;
- case management and support for specific issues such as financial and accommodation problems (Human Services, 1996).

Assistance to victims of sexual assault is a major part of community health workloads.

### **5.11 Community Based Support Groups**

**(10) The Committee recommends that community based support groups be funded to provide services to primary and secondary victims of sexual assault.**

The Department of Human Services advised the Committee of other services available in addition to CASA's which include:

- Women's Information Referral Exchange;
- Salvation Army;
- Victorian Women's Domestic Violence Crisis Centre,
- family violence prevention and support programs;
- regional program service components;
- women's support groups;
- child and adolescent support groups;
- men's behaviour change groups;
- regional family violence networks; and
- therapeutic and support groups (Human Services, 1996).

The Department also provides financial support to victims through the self-help program. Self-help groups also provide assistance to those secondary victims of sexual assault, and aim to increase the capacity of people with special needs to live independently by encouraging support and peer networks. These groups included:

- Adult Survivors of Childhood Sexual Assault;
- Western Region Sexual Assault and Incest Survivors' Group; and
- Release (sexual assault) Self Help Group, Box Hill.

### **5.12 Victoria Police Victim Services Strategy**

The Victoria Police have developed a Victim Services Strategy. This strategy requires that investigating officers care for victims in a sympathetic manner. In addition they are also required to:

- consider the immediate needs of the victim prior to the commencing the interview or investigation;
- reassure the victim that police are there to assist and support them;
- provide clear information about the process of a police investigation including future role (if any) of the victim;
- action that police will take and where possible provide a time frame;
- whether other police will be involved in the investigation and may have need to contact the victim;
- where appropriate, refer the victim to local support agencies; and
- provide the victim with a copy of any statement made.

After the initial contact the investigating member is required to comply with the following action:

- ensure that reasonable measures are taken to keep the victim informed of the progress of investigations;
- ensure the victim is informed if and when an offender is charged and the nature of the charges laid;
- inform the victim of the outcome of the investigation where it has been found that no criminal offence has been committed or where prosecution will not proceed;
- inform the victim if the person charged is granted bail or remanded in custody;

- advise the victim of their rights to apply for Crimes Compensation;
- advise the victim of their right to make a victim impact statement and provide assistance if required;
- ensure victims are informed of any court dates and whether or not they are required to attend;
- where the victim is required to attend court, inform them of their role and proceedings and consider referring them to a court based agency; and
- ensure the victim is kept informed of any outcome of proceedings (Victoria Police, 1996).

### **5.13 Crimes Compensation Tribunal**

The Crimes Compensation Tribunal was established in 1972 and currently provides a maximum of \$20,000 for pain and suffering to victims of crime, with up to an additional \$30,000 for medical and like treatment and loss of income. Mrs. A. MacDonald, Supervising Magistrate of the Crimes Compensation Tribunal advised the Committee at a Public Hearing,

“The aim of the tribunal is to provide compensation of a monetary nature to victims of crime and to incidentally provide an informal, compassionate and, I think, inexpensive forum for victims of crime” (MacDonald, Public Hearing, 9/7/1996).

The tribunal may compensate for a physical injury, which requires medical evidence in support of the claim. Psychological trauma may also be compensated.

“... in cases of sexual assault . . . most frequently there is not proof of physical injury. Applicants, who have to provide proof of injury, frequently appear before the tribunal with a report saying they have suffered a mental illness or disorder, and the most frequent is post-traumatic stress disorder” (MacDonald, Public Hearing, 9/7/1996).

The act requires that the applicant makes a complaint to the police, other than in exceptional circumstances, such as historical offences against children which were not reported at the time of the offence. The applicant in such claims would now be an adult. Mrs. MacDonald advised the Committee that the number of applicants with intellectual disabilities and the number of applicants who are survivors of sexual assault offences who are in the care of the State have increased.

The Committee acknowledges the important role the Tribunal performs in assisting victims of crime to financially cope with the physical and mental traumas of a crime. Evidence throughout the inquiry has led the Committee to be concerned that the Tribunal may only be able to offer assistance a considerable period of time after the actual sexual assault, and that this may be to the detriment of victims, particularly those who are low income earners. Counselling services should be available to all victims, not limited to those with financial means.

The Committee considers it important that victims should be able to access support services, as soon as possible after the assault. The availability of support must be immediate upon the needs of the victim. The Committee is aware that the Government is currently developing measures to overcome this identified problem.

#### **5.14 Summary**

The role Centres Against Sexual Assault and other victim support agencies play are vital and the Committee acknowledges the commitment of individual crisis care workers within these various organisations. The transition from victim to survivor is considerably advanced through the professionalism of most individuals within the system. The Committee has identified areas within the current structure which could be modified in order to enhance the service. Improved co-ordination, communication and co-operation between agencies will enhance the service and ultimately lead to a more integrated system. Traditional gender bias must be set aside in the development of a truly professional service to all victims.

## **CHAPTER SIX**

### **MALE VICTIMS**

#### **6.1 Introduction**

Adult male rape is a crime that must be acknowledged. Rape and sexual assault against adult men is under-reported and under-recognised. The Committee applauds the hard fought campaign of women advocates in denouncing sexual assault and appreciates that the vast majority of adult sexual assault victims are women. The community's response to adult sexual assault must now include adult males. Any male can be a victim of sexual assault whether it be as a child or as an adult.

The Committee has heard from a number of witnesses including the comparatively small number of counsellors and advocates who assist male victims. Doctors, psychiatrists, police, legal personnel and male victims also provided evidence..

"Society sees men as being tough, as being in control and as being strong and rape takes away your power and if you have no power, you are weak. That is how people view rape" (Marcus, Public Hearing, 19/12/1995).

##### **6.1.1 Language Barriers**

Rather than describe the offence as "male rape," terms like buggery, sexual violence, sexual attack and same sex assault are frequently used to diminish or disguise the extent of the crime.

In male dominated cultures, men fail to acknowledge that they can be, and are victims of rape, therefore very few rapes are reported. This was reflected in the slow response to the inquiry from service providers and victims. Public advertising and openly seeking victims and advocates to speak about their experiences proved difficult.

The Committee's investigations revealed a serious deficit of information, expertise and resources from which to establish a community assessment of the problem. Individuals within the field of law enforcement, forensic

processing, advocacy and sexual assault crisis and counselling were limited in numbers.

### **6.1.2 Popular Misconceptions**

“Male sexual assault is often considered or presumed to be a subset of homosexual behaviour, with implications and problems of definition extending beyond the genital act to sexual preference” (Jones, cited in Mezey and King, 1993).

“This is more problematic for other Australian states than it is for Victoria where consensual homosexual activity is still considered illegal or at least unnatural which often can still mean unacceptable or ‘disapproval’ by an otherwise unrepresentative yet dominant community opinion” (McMullen 1990).

The Committee reiterates that its investigations have refuted this assumption. As one witness told the Committee,

"We are here to acknowledge that a crime has been committed and the sexual orientation of the victim or perpetrator is irrelevant. It would be like your getting bashed in Collins street and being asked if you were homosexual or heterosexual" (Moran, Public Hearing, 19/12/1995).

### **6.1.3 Double Standards**

The Committee considers that any discussion of adult male rape must acknowledge the possibility of double standards where sexual assault or harassment against a man is concerned. Evidence before the Committee both in Victoria and interstate, has supported this notion. Youth worker Rowan Fairbairn elaborated in response to a young man being sexually abused or manipulated by a woman,

"Again the community response is, aren't you lucky it was an experienced woman who initiated you sexually, whereas if the shoe was on the other foot the man could not get away with it. That is the attitude in the community" (Fairbairn, Public Hearing, 5/12/1995).

It is uncommon for public education programs to provide information regarding the prevalence of male victimisation. Community groups and organisations formed to address rape law reform sometimes exclude men

and are expressly concerned with male attacks on women (Poropat and Rosevear 1993:221). Legal definition of sexual assault historically and currently may exclude males as victims or represent their victimisation as a lesser crime to the rape of women (McMullen 1990).

"Growing up male in this society is largely about measuring up to a standard of masculinity that is commonly described as being competitive, independent, dominant, powerful, in control, aggressive and tough" (Dawson, Public Hearing, 5/12/1995).

This reinforces the words of Michael Lew, author of Victims No Longer, who referred to the cultural stereotypes that impede the male victim. He stated, "Since women are expected to be passive, weaker, powerless beings, there is room for sympathy when they are victimised. . . . our culture provides no room for a man as a victim. Men are not supposed to be victimised. A 'real' man is expected to be able to protect himself in any situation. When he experiences victimisation, our culture expects him to be able to 'deal with it like a man'. Following from this, if men are not supposed to be victims, abuse becomes a process of demasculinisation. If men aren't supposed to be victims (the equation reads) then victims aren't men" (Lew, 1995).

## **6.2 Profiles**

Prior to commenting on current services provided to male victims, consideration must be given to relevant victim and offender responses.

"When a young man is sexually abused he may have feelings of shame, anger, depression or guilt; he may feel dirty or suicidal and he may experience fear and distrust.. often this behaviour is acted out through the use of alcohol and drugs, violence, homophobia or suicide because of not being able to cope with the shame and guilt they carry as a result of the sexual assault" (Wilson, Public Hearing, 5/12/95).

### **6.2.1 Common Reactions**

Evidence presented to the Committee supports the following as being common responses to sexual assault from men. The responses appear to parallel those of many female victims.

- Fear: This results from an anticipation or awareness of danger. This could mean the possible loss of a partner, job, status, perceptions of one's masculinity, and privacy.
- Self blame: is a major factor in non-reporting with both males and females. If the rapist was familiar and known to the male victim, he may be more likely to blame himself. If the rapist was a stranger, the victim is likely to blame himself, either for being in the wrong place at the wrong time, or for not being able to fight back. An added complication for males is that if they become sexually aroused or have a sexual, physiological response to the attack which is beyond conscious control, they are more likely to assume some degree of responsibility (Groth and Burgess 1980, Mezey and King 1989, 1993, Sarrel and Masters 1982, Smith, Pine and Hawley 1988, Crome 1995).
- Stigma: is the experience which can ultimately be a total response to all of the previously mentioned emotions and thoughts of the victim. For the heterosexual, the possibility or fear of being regarded as homosexual or bi-sexual can prevent reporting. For the homosexual it can mean being seen as promiscuously motivated. Regardless of sexual orientation, male rape victims may be seen as weak and less than complete men. This has been supported by evidence before the Committee.

### **6.2.2 Sexual Orientation of the Victim**

Evidence before the Committee supports recent research concerning the potential differences in the responses of homosexual and heterosexual men to the sexual assault. For heterosexuals abused by other males, research suggests victims may be disgusted by the sexual nature of the attack and are likely to assume the rapist was homosexual. They are likely to be greatly disturbed by their own sexual response and may fear that they are themselves homosexual or bi-sexual. They often do not realise that a sexual response to the attack can be a natural fear response over which they had no control under these circumstances (McMullen, 1990)

If they were violated by a female, homosexuality issues may not prevail but severe sexual dysfunction, mood disturbances, relationship breakdown and a phobia of women and intimacy are a few of the consequences of female attacks (Sarrel and Masters 1982). It must be acknowledged that only a small number of females offend against adult males.



For homosexual males, research suggests that openly gay males are much less likely to be victimised (McMullen 1990). Some gay males are targeted by male rapists, precisely and perhaps solely because they are assumed gay. This may have nothing to do with their physical appearance or demeanour, but something as simple as their proximity to gay venues or cruising areas, or because of the victim's mode of dress.

"Because gay relationships are commonly viewed as negative or abnormal, these men consider they do not have a leg to stand on when a partner or someone they have known in that capacity violates them in some way" (Crome, Public Hearing, 5/12/1995).

It is important to note that while gay males are raped, evidence before the Committee does not suggest it is a crime associated with the homosexual community, nor are they victimised in appreciably greater numbers than the general population. One witness told the Committee,

". . . the perception that homosexuals are more likely to be raped than heterosexuals only has merit in the sense that a homosexual individual may find themselves in a situation where their refusal to be involved in anal penetration has been preceded by intimate involvement with the offender" (Casteldine, 1995).

### **6.2.3 Contemporary Research**

To date there has been no comprehensive study into the experiences of the adult male victim of sexual assault. Recently the initial findings of an intensive Australian study by Crome (1995), of a preliminary sample of 60 adult male victims of rape and 60 adult female victims, have revealed interesting figures. It must be acknowledged that the bulk of victims are from a Victorian population. The high inquiry and response rate of males to the study supports the notion that most male sexual assault remains unreported. The study aimed to investigate factors surrounding a rape attack in combination with the characteristics of the individual and their response to the attack.

One finding of the study was that 60% of the male sample had been raped more than once, in comparison to 43% for females. This dispels many myths which relate to the ideology that women receive higher frequencies of sexual abuse as a victim population (Crome, 1995)

The study also found that men from a higher socio-economic backgrounds are more likely to go to a counselling service. Men from lower socio economic backgrounds are less likely to seek help, perhaps unaware any services exist.

In support of past findings (Groth and Burgess 1980, Mezey and King 1989, McMullen 1990), 42% of the male sample were raped by strangers as the more stereotyped notion of a rape attack, while only 21% of the females were raped by strangers. Of the male sample, 80% were attacked by males, 10% by females and 3% by both.

The study also noted that equally for both sexes, 50% to 60% of the adult victims had experienced childhood abuse at some stage. This related to past studies of re-victimisation (Dimock 1988, Fromuth and Burkhart 1987).

#### **6.2.4 Incident Profiles**

The assault can occur in various forms from gang bullying (anal penetration may be the final act of humiliation) to robbery. It may also involve the use of weapons. Research indicates that many of these assaults are opportunistic, involving attacks on vulnerable persons, often those in institutional or correctional settings.

Crome's study sample found that approximately 40% to 55% of the whole sample of victims were under the influence of drugs or alcohol at the time of the rape, with this being marginally higher for females (8%). Victims claimed that of the offenders, 30% were under the influence of drugs and/or alcohol. A broad range of studies, particularly in the United States support the association between sexual assault and drug abuse. (Struckman and Johnson 1988, Myers 1989, Mezey and King 1989.)

Clinical reports note the incidence of multiple assailant attacks among rape survivors; Mezey and King (1989) identified from a sample of 22 raped men, that 18% had been attacked by a number of assailants ranging from four to eight. Some 17 of these men were sodomised, the remainder engaged in forced oral sex, masturbation and urination. Gowyer and Eddleman (1984) assessed data from a military population of 13 men with psychiatric evaluations. Consistent with the findings of Mezey and King (1989) they found that 11 of the 13 men were sexually assaulted by more than one assailant.

Groth and Burgess (1980) found that 50% of survivors were forced to ejaculate. It was also found that male survivors of female sexual assault were judged more likely to have encouraged the sex act and it was assumed they enjoyed the experience. If the perpetrator was female, it seemed unacceptable that the sex was not consensual. If a male was a victim to a male perpetrator, it was not acceptable to be aroused or sexually controlled by another male. This fact has been supported by the Committee's discussions with male sexual assault victims and presents implications in the court room.

### **6.2.5 Long Term Consequences**

The long term reactions can be classified under psychological, physical and behavioural changes and experiences (Crome and McCabe 1994:2). Some of the long term changes may include eating disorders and severe sleeping complaints of insomnia and traumatic, disturbing nightmares, extreme homophobia, violent behaviour and substance abuse.

Goldman and Ravid (1980), found that men less frequently seek professional assistance for depression or anxiety, despite being three times more likely than women to suicide. This is supported by the Committee's inquiries where it became apparent that men are reluctant to seek help for a variety of reasons and often would present with other difficulties.

Dimock in his review in 1988, found that masculine identity confusion and the fear of being labelled homosexual have been related to an apparent need for many male victims to reassert their masculinity and power with aggressive anti-social behaviour. The Committee is concerned that these men be provided with adequate treatment during these earlier stages. The overall cost to the community in the long term would be lessened if earlier intervention were available.

### **6.2.6 Relationship to Alcohol / Substance Abuse**

The relationship between sexual assault, alcohol abuse, depression and suicide, especially among young men, cannot be ignored or underestimated. Organisations dealing or potentially dealing with male sexual assault victims must be mindful of this. While evidence before the Committee suggests men and women react in similar ways after a sexual assault, there is more likelihood that men will turn to substance abuse, be more verbal and question their sexuality. As one witness told the Committee,

"Once they stop using alcohol or drugs, many of the feelings they have about the offences that were committed against them come up and they have to deal with them in other ways, either by getting support from counsellors or by talking to people in groups and finding other men who have also experienced sexual assault" (Moran, Public Hearing, 19/12/95).

In addition, research has documented the fact that more than 70% of persons seeking help for substance abuse have been physically and sexually assaulted or abused at some time in the past. A senior psychiatrist John Briere in Los Angeles showed that 84% of persons presenting to the emergency departments of Psychiatric hospitals affirmed prior sexual victimisation if routine inquiry was made.

### **6.2.7 Offenders - Research Findings**

The Committee has heard considerable evidence that most victims are offended against by persons who would identify themselves as heterosexual. Most studies emphasise that sexual assault of one male by another seems to be used for non sexual, social purposes - usually control of one individual by another. The sexual content in male rape misleads the uninformed observer into thinking of the offender as homosexual, so this same sexual conduct is thought to be homosexually motivated when evidence does not support this presumption.

It has been argued that some rapists are gender blind and are likely to assault both males and females (Crome, 1994). As early as 1964 and 1979, McGeorge and Rossman, respectively revealed that only a relatively small portion of male offenders against other males are homosexual and that female offenders do exist (Meacham, 1993).

The factors which surround adult male sexual assault are many and varied and the Committee believes further academic research is required to provide a better understanding of the issues.

### **6.3 Prevalence - Under Reporting**

"Essentially rape and sexual assault statistics are difficult to access, despite the sex of the victim, due to differential definitions of the crime, the ratio of arrests resulting from reported complaints and the extent of the number of unreported assaults" (Crome and McCabe, 1994).

There is a deficit of information concerning the level of reporting by male victims within research, legal and policy development literature. Recent research (Crome and McCabe, 1995, Poropat and Rosevear, 1993) states that in the previous five years more men are coming forward to report their attacks and/or seek compensation.

The Committee considers it likely that issues of reporting for adult females may be exacerbated for adult males. Any statistics available should be read with caution as many may relate to incidents that occurred in childhood, as few data collection agencies appear to distinguish between the two.

Speculative conclusions are arrived at which suggest that these offences do not happen or only occur in small numbers (McMullen, 1990). The Committee has become aware that the extent of male sexual assault is higher than statistical evidence suggests. It is concerned that the overall system response, based on available evidence, will not adequately serve the needs of these victims, properly acknowledge the crime or assist in bringing offenders to justice, though must be acknowledged many of these incidents occurred in childhood.

There is no clear data available on which to make any quantifiable judgements. It is important to note that reasons associated with females not reporting rape are potentially the same for males, however levels may vary. Failure to report to authorities, friends and family may relate to a fear of disbelief and humiliation by the police and courts, "macho" and pro heterosexual social stereotypes of maleness, restrictions of males for feeling vulnerable, fear of repeated attack by the rapist and potential social isolation. (Anderson 1982, Dimock 1988, Groth and Burgess 1980, Mezey and King 1989)

Crome's study revealed that only 18% of the male sample reported the crime in comparison to 33% for females. For males that reported, despite the low figures, homosexual males (60%) were more inclined to approach counsellors as a referral point and heterosexuals were more likely to approach the police (40%) (Crome, 1995).

Inquiries in selected states reveal that South Australia recorded 140 adult male victims in 1991/92, 165 in 1992/93 and 187 in 1993/94. In 1994/95 New South Wales recorded 403 male victims which represents 19.4% of adult victims. This is the highest recorded level of reported male sexual assault in Australia (Crome, 1996). Victoria recorded 45 adult male rapes

in 1993/94 and 147 sexual assaults (non-rape) for the same period (Victoria Police, 1993/94). The data for 1994/95 revealed a slight increase to (50) in the number of adult male rapes but a decrease to 140 in the number of adult male sexual assaults (non-rape) (Victoria Police, 1994/95, 1995/96).

"One of the most serious serial rapists operating in this state right now is a male [victim] rapist" (Moloney, Public Hearing, 11/7/1996).

Current research (Crome 1995), service reports (CASA, 1993/94, Against Male Assault Network, 1993, Victorian Aids Council 1994 and police phone campaigns, Operation Paradox 1992/93) have collated figures of men in general reporting abuse history and seeking assistance. From the Committee's estimate that 80% to 90% of female attacks go officially unreported (Centres Against Sexual Assault Annual Reports 1993/94, VCCAV 1991) it is likely that 95% to 99% of male attacks go unreported (Crome 1995, McMullen 1990, King 1993, Roberts and Mohr 1994, VCCAV 1991).

The research project undertaken by the VCCAV as part of its inquiry into Violence in Public Places, April 1991 developed a source book of Victorian sexual assault statistics from 1987 - 1990. There was an inclusion for male sexual assault however there was no indication of the age of the victim at the time of the offence. In the study, 94 of the recorded victims were male out of total of 1,473 (VCCAV, 1991).

The Committee notes that at the Wimmera CASA, which provided comparative data for 1993/94 and 1994/95, the percentage of male victims more than doubled from 11.7% in 1993/94 to 26.1% in 1994/95. It is difficult to correlate CASA data with those of the Victoria Police. It would appear that a significant number of male victims, probably similar to or higher than female victims, do not report the crime to the police, nor do they seek professional assistance.

Operation Paradox conducted by the Victoria Police in 1994, revealed that of 368 phone calls, 96 were from victims with 25% from adult males, 72% of which were sexual offences. Of these offences 52% of them were reported to have occurred in childhood. Adult female callers constituted 30% of all victim calls. The Committee considers that it may be less likely women would have recourse to access an anonymous service, given current options available to them.

### 6.3.1 An International Perspective

Literature available to the Committee regarding adult male rape was very limited and tended to focus on assaults taking place within an institutional setting. In order to provide appropriate services for young male survivors, counsellors need to become more knowledgeable about the different ways in which young males disclose and importantly how professionals and others respond to disclosure.

The Committee acknowledges that progress is slow. Research from the United States, Canada and Britain has shown the need for legislative reform and community education in issues relating to adult male rape. In the United States prior to the 1960's, rape laws assumed that the victim was always female and that the perpetrator was always male. Until the progressive law reforms of the 1970's, most states and statutes did not recognise that males could be assaulted. Today 37 states have enacted sexual assault laws that are gender neutral (National Victim Centre, 1993).

In London an organisation named "Women against Rape" released a statement in 1994, which indicated that parliament finally acted to confirm that rape in marriage is a crime. Along with this amendment was a Bill (MP Barry Cohen) put forward that would,

" . . . widen the definition of rape so that the rape of women and children, **as well as men** are treated as the same grave crime, regardless of relationship, circumstances or the kind of penetration and recognise all forms of coercion, physical, financial, emotional as nullifying consent, abolish discriminatory rules of compensation for rape, sexual assault and violence (UK. Bill, Sexual Offences (Amendment) 1992).

International statistics indicate less than adequate data for the identification of adult male rape and sexual assaults, irrespective of definitional issues. The following examples indicate figures which represent a similar reporting rate to Australian states.

The results of a United States survey, documented in, Rape in America - A Report to the Nation (1992), indicates that most agencies (78%) are providing services to adult male victims.

**Table 15:**

**U.S.A. - Agency services  
by age and gender**

<b>Age</b>	<b>Percentage</b>
<b>Child under 12</b>	62%
<b>Adolescent 12-17</b>	78%
<b>Adult female</b>	95%
<b>Adult male</b>	78%

Note: No indication as to whether these males are survivors of adult sexual assault and rape of childhood and adolescent sexual abuse. 86% of agencies surveyed were non-profit organisations serving both city and country jurisdictions in all 50 states; 12% were governmental agencies and 2% were other.

Source: US, Rape in America, A Report to the Nation, 1992.

The Committee, whilst in Canada, met with the Canadian Centre for Justice Statistics and were advised of a 1994 survey which indicated that males accounted for a larger percentage of sexual assault victims than previous research had indicated. Roberts and Mohr (1994) comment on the National Reports in Canada for 1990, whereby males constituted 10% of the total reports. 18% of sexual assault victims recorded in their survey were male and of these 20% were over the age of 18 years. Their results included those for Canada and surrounding districts (Canadian Centre for Justice Statistics, 1996).

The Committee has identified that there is abundant evidence of inadequate reporting, processing and presentation of statistical information. More often than not, this information has not been collected, stored or categorised into some meaningful form. The Committee considers this limits any comprehensive investigation or attempted understanding of the nature of this crime against adult males and victim experience.

The Committee believes it is important future summary and inquiry documents stating statistical figures for adult male victims indicate some reference to under-reporting and reasons thereof. Statistics should also provide a breakdown of gender and details of the age / sex of victim / offender and the nature of the offence.



## **6.4 Current Services**

Professionals working with victims should be aware of the silence that surrounds adult male sexual assault and rape. They should be aware that most of the abuse will remain unidentified.

"Quite clearly there is a need for an awareness and an appropriate management model for these people"(Dr Wells, 1994).

"More funding for therapy / counselling because some places have to turn people away as they are under resourced. There needs to be more services for male victims of sexual assault" (Voice for Victims Phone In - Draft, 1994:22)

Whilst there has been evidence of slow movement towards treatment of male sexual assault victims, some victim support organisations do not cater for adult male victims and it appears those that do have an emphasis on treating victims of childhood or adolescent abuse. CASA's are funded to provide services to men, women and children. There also exists a small number of community based and private services receiving government funding. For adult male victims of sexual assault, there requires some level of expertise in dealing with the personal and social implications of the crime committed against them. Currently there are few places a man can go after hours, except public hospitals. It must also be acknowledged that some men, especially young men, may not feel comfortable going to a CASA as these centres have developed around the female experience of victimisation. In addition, many men may not realise they can access CASA's.

### **6.4.1 Centres Against Sexual Assault**

"CASA's report that depending on the particular CASA, adult male victims now comprise between 8% and 16% of the CASA client population and younger males between 32-35%" (Human Services, 1996).

A senior representative from the Department of Human Services, informed the Committee that CASA's recognise significant under-reporting by males but that there were, "increasing numbers of male victim / survivors accessing the services" (Stitz, Public Hearing, 11/7/1996).

“ . . . for that reason, we have been not only emphasising the issue of male sexual assault to the CASA's but also trying to look at an appropriate network of services . . . ” (Stitz, Public Hearing, 11/7/1996).

The Department also advised that all CASA's had made arrangements to deal with male victims and ensure appropriate referrals were in place.

The Committee believes that in treating men and women at the same facility consideration should be given to victims of either gender feeling comfortable. Potential violent behaviour from males (especially young males) and other difficulties associated with integrating male victims with female staff must be considered. The Committee believes these issues could be resolved with the provision of a separate waiting area for men and women.

The Committee's investigations in NSW, WA and a small number of Victorian CASA's have demonstrated the benefits to be gained by having a male staff member employed at the centre. Where attention is paid to providing a safe environment for both men and women, integration can and does work effectively. The Committee believes it is undesirable to establish sexual assault services targeted at specific societal groups.

#### **6.4.2 Men's Support Groups at CASA's**

The Committee has been made aware that a male sexual assault counsellor has been employed at both Northern and South East CASA, each in a part time capacity and that consideration is being given to extending this to other CASA's. Northern CASA has led the way in terms of providing a focal referral point for men.

“The position of Young Men's Worker has been created in response to concerns that the needs of young men are not specifically addressed within the CASA framework. This position will focus primarily on identifying the specific needs of young men, developing a model of service delivery that will meet those needs, researching its effectiveness and promoting the model” (NECASA, 1996).

“ . . . the use of a men's group provides the opportunity for male survivors to experience support and validation from other men in a safe environment. Male survivor groups when composed of both gay and non-gay men, offer an opportunity to explore feelings toward other men in a safe

environment. This encourages the men to begin to challenge and breakdown some of the homophobic attitudes that exist in our society" (Dawson, 1996).

This is commendable and whilst further changes are needed, the Committee has witnessed positive changes in the way CASA are approaching male sexual assault, with Northern CASA leading the way.

It is the Committee's view that the option of a male or female counsellor should be available to all sexual assault victims, however the Committee has received evidence that from a victim's perspective, professionalism, skill and rapport is of greater importance.

The Committee has heard some evidence that difficulties in the responses of homosexual and heterosexual men to sexual assault should be acknowledged and consideration be given to the appropriateness of treating both groups together in certain instances.

#### **6.4.3 Draft Standards of Practice Manual**

**(11) The Committee recommends that the Department of Human Services publish, and distribute widely, appropriate materials aimed at providing public information about available services, including those to male victims.**

Currently the draft Standards of Practice Manual for Victorian CASA's has virtually no reference to adult male victims. This includes a deficiency in their guidelines, which fails to isolate specific male coping issues and the various professional responses required by support workers. Their advocacy and counselling support principle is based on feminist practice and their standards of policies, rights, intake procedures, counselling agreements, counselling frameworks, systems advocacy and continuity of care have no prescriptions specifically pertinent to adult male victims and how their needs may vary to the female victims. A non-gender specific reference to victims / survivors would better reflect the change in CASA practices towards men, increase staff awareness of male sexual assault issues and present CASA as a generic service.

". . . the challenge facing all CASA is to critique service delivery as it impacts on women and children from diverse communities. Counselling and support will be provided within a framework that acknowledges the complex nature of sexual assault as a gendered crime where both sexism

and racism are inherent. Within a Victims Rights Model of service delivery, CASA's will respond to the counselling and support needs of victims / survivors by drawing on principles of feminist practice and crisis interventionist theory" (CASA Standards of Practice Manual, 1996)

Whilst the Committee acknowledges the vast majority of CASA clients are women, continued emphasis on sexual assault as a gendered crime is not conducive to encouraging men to report to CASA, nor is it reflective of the changing nature of services offered by Victorian CASA's. Services should move in the general direction of treating adult males without neglecting service to female clients.

#### **6.4.4 Community and Private Services**

**(12) The Committee recommends a review be conducted of existing services providing support to male victims, with a view to providing additional services, particularly in rural areas.**

"... we do not advertise the groups widely simply because we have enough people for each group and we do not want to advertise a service we cannot afford" (Moran, Public Hearing, 19/12/1995).

There are a small number of private and volunteer organisations which have catered to the needs of male victims. These services are largely unrecognised and in some instances under resourced. These include VOCAL (Victims of Crime Assistance League), MASA (Men against Sexual Assault), the Youth Affairs Council Rainbow and AMAN (Against Male Assault Network). Lack of funding to many of these agencies has resulted in them being reluctant to advertise, for fear of being unable to meet the anticipated demand.

"We have men who travel from rural areas to attend our group. We have men from all over metropolitan Melbourne who come and attend our group" (Moran, Public Hearing, 19/12/95).

It is also important to recognise that as issues resulting from sexual assault may differ for adolescent males as opposed to adult men, they may access youth centres, drug and alcohol centres. This reiterates the necessity for a community response to male sexual assault.

The Committee believes more attention must be paid to the minority support groups and networks that currently acknowledge adult male sexual assault. Against Male Assault Network (AMAN) submitted to the Committee the need for the development of a community project which addressed adult male victim needs in the area of counselling (AMAN, 1994).

"... would bridge the gap in service delivery and in doing so would serve to reduce the cost to the community, by increasing the ability of these males to control and manage their lives more effectively" (A.M.A.N., 1994).

The Committee has been advised that AMAN has since ceased operating, reportedly due to lack of funds, thus increasing pressure on other already over-loaded services.

Evidence received by the Committee suggests that many male sexual assault victims are referred to or voluntarily seek counsellors or psychologists in private practice. This reiterates the need to support the recommendation, from the Committee's first report, concerning Medicare rebates.

It should be acknowledged that men may not wish to attend a CASA, as traditionally this service has catered to the needs of women. The needs of men, particularly adolescent men, must be met through services which include rather than exclude CASA. The Committee recognises that the development of a gender neutral service will require a lengthy period of evolution, and therefore wishes to ensure the current availability of male services is appropriate.

#### **6.4.5 Service Co-ordination**

**(13) The Committee recommends that the Department of Human Services develop protocols linking existing agencies providing services to adult males and that a centralised free-call referral service be established.**

There are numerous lobby groups, organisations and volunteer groups which have either developed or recommended policies and strategies for sexual violence against women, yet with respect to men there is virtually no such documentation. To complement funding and program initiatives there is a need for development of policies which reflect the nature of services provided and the rationale behind their inception.

Whilst the aims and emphasis may differ between service providers a lack of an integrated response only exacerbates the difficulty for male victims in knowing what services are most appropriate for them to attend. This has been supported by professionals and volunteers both in Victoria and interstate. Several witnesses have stressed the need for a publicly known centralised contact point of referral.

The Committee is concerned by the apparent lack of co-ordination and integration of services, many of which receive government funding. The Department of Human Services should establish dialogue with each organisation to facilitate improved communication, co-ordination, co-operation and integration. The aim should be to link trained counsellors, clinicians, legal personnel and advocates trained in issues pertinent to the adult male victim.

## **6.5 Police Investigation**

A witness told the Committee

“It is important to realise that a concerted effort has been made to make CIB, CPS and the Rape Squad aware and sensitive to female rape issues but I do not think the same effort has been applied to male sexual assault victims” (Castledine, Public Hearing 19/12/1995).

Treatment of male sexual assault victims by the police is a contentious area. Most documentation, though limited, relays a negative image of police treatment of adult male victims (McMullen 1990, Mezey and King 1993, Crome and McCabe 1994, Crome 1995). Research suggests victims are rarely believed, are assumed to be gay and thought to be responsible for not being man enough to fight off the attacker. Reasons conjured for this alleged treatment, focus on the notion that most police officers are male and promote a ‘macho-image’ of their institution. Males find it very difficult to report and the disbelieving and assertive stance the police take explains, in part, why others refuse to report such a serious crime. Studies on women reporting to the police reveal a similar fear (Dukes and Mattley 1977, Peretti and Crozzens 1979, Independent police Complaints Authority of Victoria 1988, Crome and McCabe 1994, CASA 1993).

Evidence before the Committee stressed the need for all uniformed members to be aware of the issues surrounding male sexual assault, and to display professionalism in investigating the matter appropriately. Similar to the situation for women, complaints have been made regarding police responses, particularly CIB members and an apparent lack of sensitivity. Evidence before the Committee suggests that whilst members of the CPS appropriately respond to the needs of male victims, that this has not necessarily extended to members of the CIB and uniformed branches. It must be acknowledged that this is largely a reflection of the general public's lack of understanding of the issue.

### **6.5.1 Protocols**

**(14) The Committee recommends that Police Standing Orders be reviewed to ensure that male victims of sexual assault are provided with professional service which encompasses crisis care, forensic examination, counselling and support.**

Police policy documentation needs to include processing and procedures for adult male victims of rape and sexual assault. This requires the acknowledgment of the probability that adult males will start and continue to seek redress and assistance as the crime is exposed, either in an official or non official capacity (Crome 1995). Certain aspects of the Police Code of Practice and other practices should be reviewed and appropriate protocols developed between police and other agencies which deal with male sexual assault victims. This also recognises that not all males wish to be taken to a CASA for counselling. Consideration should also be given to ensuring, wherever possible, that male victims have the opportunity to nominate the gender of the officer with whom they interact. This is the same consideration shown to female victims.

### **6.5.2 Forensic examinations**

There is great awareness of the issue of forensic examination with female victims of sexual assault in that, where practicable, there should be opportunity to select the gender of the examiner. The Committee feels this opportunity should be extended to the treatment of adult male victims. Forensic medical officers should receive appropriate training in evidence collection with respect to male sexual assault and evidence gathering kits must be tailored to equally meet the requirements of either gender. The Committee has been made aware, both in Victoria and interstate, that the practical needs of male victims are not always accommodated.

"We need to work with CASA's and rape crisis centres because young men do not feel comfortable going to the services for a number of reasons, one being that they do not feel comfortable sharing waiting rooms with women . . . often there is inappropriate clothing for young men who have been sexually abused because they have to leave their clothing behind for forensic examination" (Fairbairn, Public Hearing, 19/12/1995).

## **6.6 Prosecution**

The Committee considers it appropriate that policy, which addresses the issues of male victims, should be developed within all prosecutorial services. The development of such policy, and its implementation, requires individuals with a level of knowledge and commitment to the area.

It is important that legal policy account for, and present operative strategies for the probability that issues of consent will vary for adult male victims seeking redress for adult attacks, in comparison to childhood or adult attacks. The issue of male responsibility and the fight back position is questioned. It also extends to the difficulties of prosecuting female offenders as the legal process is highly influenced by individuals of the jury and legal personnel who presume social stereotypes surrounding male sexuality (Adler 1993, Mezey and King 1993).

The prosecution by the Crown of an accused for sexual offences is done so on behalf of the state and not the victim. The victim is a key component of the case though may not be its focus. The Committee believes that the prosecuting team within the sexual offences section at the Office of Public Prosecutions (OPP) should be further educated on issues of male sexual assault and the likely tactics used by defence counsel.

Males raped and abused by other males have an additional burden of proof in response to the connotation of homosexual behaviour. In addition is their own physical response to the abuse, which may be interpreted as consent. The major responses being - they had an erection, they became sexually aroused, they ejaculated. This sexual reaction is a dominant feature with male rapes and assaults and is a powerful and significant indicator on their reporting the assault and the pursuit and success of legal proceedings.



Submission is not consent. Although a male victim may be manipulated or forced into submitting to a sexual assault, it is important that this not be considered consent.

The issues relating to the prosecution of offenders for male sexual assault are complex and considerable expertise is required to properly and competently present such a matter before the court.

### **6.6.1 Legal Definitions**

**(15) The Committee recommends that the definition of rape and sexual penetration within the *Crimes Act 1958* be reviewed to include situations where the victim is forced to penetrate the offender.**

Evidence presented to the Committee suggests the law must be reformed to recognise the breadth of conditions which constitute adult male sexual assault and rape. Such a change would facilitate a more serious crime being reported and offenders being brought before the courts.

In comparison to other states, it is granted Victoria's definition of rape and sexual assault is not gender specific however it does require that the adult victim be penetrated by the offender. This excludes reverse onus rape where the victim is forced to penetrate the offender. An example would be where a male is threatened with violence if they refuse to penetrate the offender. Such circumstances would not constitute rape but rather the significantly lesser charge of indecent assault.

In New South Wales relevant legislation is also protective of adult males with respect to unlawful penetration and assault with various parts of the body. Unfortunately like Victoria, reverse onus rape can occur where the penetrating party, may be held to be the offender. Therefore in some instances the victim is the 'offender', strictly speaking.

The Northern Territory, the Criminal Code Act (1991) essentially neglects the concept of male victims. Sexual assaults are defined under division 2 - Offences against Morality (p49) and there is no reference to specifications defining rape, sexual assault, penetration and consent. Males are not included in any category as victims, unless there is reference to gross indecency between males in public or private. The latter giving legal consent if the males are adult. Males are not included in carnal knowledge involving "mentally ill or handicapped" individuals, only females. For gross

indecent involving individuals under the age of 16, there is only reference made to females.

The situation is quite poor for victimised males in Queensland. There was no acknowledgment of offences against their body with sexual reference within the Criminal Law (Sexual Offences Act) 1978, until the Amendment Act 1990, no. 93, section 15 (e) whereby "assault with intent to have unlawful carnal knowledge by anal intercourse" could be considered an acknowledgment of male on male, anal rape as a crime.

There still requires clarification of the criteria for sexual assault and rape which includes adult males as penetrating victims. Some interstate definitions illustrate the inadequacy of Victoria's legal definition to encompass adult male sexual assault in a more thorough way. In Western Australia, the meaning of consent is thus defined; "is not freely and voluntarily given, it is obtained by force, threat, intimidation, deception or fraudulent means" (Criminal Code, Western Australia, 1985, S 324 G). However their meaning of sexually penetrate does include "to manipulate any part of the body of another person so as to cause penetration of the vagina or anus of the offender or victim". This example can be followed by Victorian legislation, in that the parameters defining penetration essentially broaden the definition of rape and sexual assault, the former carrying a greater sentence period for offenders.

In their submission to the Committee the Victoria Police stated,

"Under present legislation there is no provision whereby a male can be charged with orally raping a male if male "a" performs oral sex on male b, against b's will. This is due to section 38(2) (a) of the Crimes Act as amended whereby the penis must be introduced into the vagina, anus or mouth of another person. Without specific legislation any male who forcibly has oral sex without the consent of a male victim, cannot be charged with the offence of rape. This situation is also applicable when a female performs the same act against the will of male, thereby being no "introduction" by the person committing the act, no offence can be proven (Victoria Police, 1994).

These recommendations will support the three primary principles of the *Crimes (Rape ) Act 1991* (pg 1401):

- (a) clarify the concept of consent;

- (b) reaffirm the fundamental right of a person not to engage in sexual activity; and
- (c) greater protection to complainants in court proceedings.

The changes to the definition must also ensure that female offenders against male and female victims are appropriately encompassed. The Committee believes that there could be factors inhibiting a female offender from being convicted and these may include: loopholes in the legal definition of consent and penetration, community perceptions of women and lack of precedents in convicting female offenders.

The Committee believes that other states should follow the example of the *Victorian Crimes (Rape) Act 1991* and include gender non-specific language in their sexual assault legislation.

### **6.6.2 Rules of Evidence**

**(16) The Committee recommends that a review of the rules of evidence be undertaken to ensure that, just as a victim's past sexual activity cannot be raised in evidence, nor should their sexual preference.**

As previously discussed, there are physiological reactions that adult males may experience during a sexual attack over which they have no control, due to the nature of the male central nervous system. The Committee has also heard evidence of inappropriate questioning based on presumptions about the victim's sexuality. The sexual preference of the adult male victim should not be utilised as a deliberation point for the notion of consent for both heterosexual and homosexual activity.

"Constantly this was put to me, 'Marcus, I put it to you that you are a homosexual. Marcus, I put it to you that you are gay. That was asked over and over again" (Marcus, Public Hearing, 19/12/1995).

The Committee believes that raising a victim's sexual preference in court as a point of credibility, clearly discriminates against an individual and is an inappropriate line of questioning. Sexual preference ought not be an issue in a sexual assault case.

**(17) The Committee recommends that physiological responses of male sexual assault victims should not be interpreted as consent to the sexual assault.**

The Committee has heard considerable evidence from medical experts, counsellors and victims that men often experience erection and orgasm during the assault. This compounds the guilt they experience, perpetuates the self loathing and is often mistaken as consent.

## **6.7 Compensation**

The Committee has received evidence that male rape is not acknowledged sufficiently in Crimes Compensation hearings, this giving rise to inequitable situations in the granting of awards. There must be acknowledgment of adult male victims of rape and sexual assault in policy and procedures of institutions dealing with crime's compensation. These should be freely available and made practical in the form of structured standards of practice and guidelines. It is vital that male victims are made aware of the circumstances and processes through which a compensation claim may be made. The Committee believes compensation for pain and suffering should acknowledge claims pertinent to adult males. Male sexual assault victims should also be acknowledged in advisory and assistance advertisements.

The circumstances surrounding the sexual assault of males should be taken into account, particularly in situations where victims report after the prescribed claim period of 12 months.

## **6.8 Professional Training**

**(18) The Committee recommends that staff facilitating groups for victims of male sexual assault be appropriately qualified and adequately trained.**

The Committee's investigations have revealed a general lack of understanding of adult male sexual assault. This is unacceptable. To deal effectively with adult male sexual assault, a high level of expertise is required from the professional team, police staff, legal staff, academics, counsellors, social workers, medical clinicians, psychologists and volunteers. The Committee believes all medical, psychiatric, psychological, forensic staff and all related personnel operating in the domain of sexual abuse should undergo a minimum period of specified training in the area of adult sexual assault as specified by internal protocol policy, standards of

practice and Codes of Conduct. It would be appropriate for qualified and experienced personnel currently working with male victims to be fully utilised during this process.

There is limited expertise and interest within this area, due to its controversial nature and the lack of systematic, researched information available on the issues. Various pamphlets available to health professionals working with the victim population have no mention of treating male victims in general. The expertise of individuals currently working in the area of male sexual assault counselling should be utilised within a structured training and education program.

### **6.8.1 Police Training**

The Committee was advised by a senior police officer that,

"I believe that to complement the training, there is a need for our members to have the attitude that male rape exists, but there must also be better communications among the groups that exist" (Moloney, Public Hearing, 11/7/1996).

"In relation to the male rape issue, the training is not biased to male or female" (Casey, Public Hearing, 11/7/1996).

Training provided to all police must include specific components concerning male rape and the needs of male victims. Current training though brief, is non-gender specific and is targeted towards women and children as victims. There is a need for police officers to know what facilities are available and to fully recognise that male rape exists and will most often be unreported.

Training should emphasise the need to deal sensitively with males in light of the social stigmatisation surrounding homosexuality and control issues.

## **6.9 Violence in Correctional Facilities**

**(19) The Committee recommends that male sexual assault issues be mandatory in the training of correctional staff and that staff be encouraged to report incidents of sexual violence amongst prisoners.**

Consideration of adult male rape would be incomplete without addressing sexual assaults in institutional environments, particularly correctional

facilities. Evidence before the Committee suggests that whilst few of these offences are documented in prison statistics, its incidence is far higher and deemed to be part of prison culture. The Committee stresses the rights of incarcerated offenders to have a safe environment.

The Committee is concerned that many incidents of sexual violence within prisons may be dismissed as forced consent. Some problems associated with reporting a sexual offence in prison relate to fear, fear of being labelled homosexual and fear of being moved into protection which is considered a negative in the prison culture. These must be taken into account.

“Offences against adult males by adult males forms a special subgroup of rape victims. These offences tend to predominate in institutions such as prisons where rape is used as a form of punishment, degradation or for the establishment of a hierarchy” (Bigelow, 1996).

The Committee is concerned that tolerating sexual assault and other violent acts within correctional facilities may increase the likelihood of these persons becoming violent and possibly sexual offending beyond release.

The Strategy for Violence Prevention in Prisons and the Community was introduced by the Department of Justice in June 1995, to examine the implementation of government policy which stated that,

“ . . . imprisonment should prepare offenders for non-violent participation in the community on release and imprisonment should not engender a culture of violence” (Department of Justice, 1995).

The terms of reference required examination of the following:

- opportunities provided for violent offenders to participate in anti-violence programs; and
- whether there is a culture of violence in prisons, and if so to identify the factors that create and reinforce that violence.

Based on the data available, at least half the prison population, at any one time, have been subject to a most serious offence of violence or have been perpetrators of violence while in prison. Data regarding the incidence of prison violence is unreliable due to inconsistencies in how violent incidents are reported and recorded.

Factors contributing to violence within the prison system are:

- drugs, which can create debts and standovers; and
- situational factors, such as prison conditions and institutionalisation.

The Reference Committee comprised of senior correctional staff concluded that in developing a Violence Prevention Strategy for correctional services, attention needs to be paid to establishing a long term direction to reduce violent offenders within the community and in prisons and to establish short term practical measures.

Policy recommendations are:

- implementation of program path ways for serious recidivist violent offenders;
- implementation of standards for violent offender programs;
- staff training in communication skills, conflict resolution and pro-social modelling;
- development of a prison specific anti-bullying policy in maximum and medium security prisons; and
- training of prisoner peer educators in conflict resolution and mediation (Department of Justice, 1995).

Whilst in Perth the Committee was informed by prison officials that they have a demerit system for persons known to be predators, therefore if individuals display any form of predatory behaviour they are treated accordingly.

The Committee was advised of useful considerations within the prison environment to reduce violence:

- avoid dual cell accommodation;
- vulnerable prisoners isolated;
- de-merit point system for persons identified as exhibiting predatory behaviour;
- staff training and accountability in matters of sexual assault; and
- HIV prevention including condoms in prison, though the perpetrator may not use them.

The Committee understands that as at March 1996, NSW Corrective Services has introduced condoms in prison to combat AIDS. The Committee is concerned for the health and welfare of inmates and therefore supports a pilot program based on the NSW model be introduced in Victoria. A review of the results of the NSW model should be conducted by the Department of Justice with a view to establishing a pilot program within Victoria.

The Committee emphasise a potential association between these incidents and a potential for violence; substance abuse and unresolved psychiatric difficulties. This is because the prison culture means they will not report the incident thereby no counselling.

The Committee is concerned that many incidents of sexual violence within prisons may be dismissed as forced consent.

**(20) The Committee recommends that an extensive independent investigation be conducted of the nature and prevalence of sexual assault within the correctional environment, including private prisons.**

Correctional Services Division (Vic) advised that reported sexual incidents in the prison are quite low with only one reported in 1995. The low number is due to single cell accommodation, the high degree of supervision and keeping inmates in small groups of about 40. The reliability of such statistics is questionable and does little to convince the Committee that sexual assault within prisons is minimal. A need exists for independent examination and research of sexual assault within prisons, including private prisons, and the identification of strategies to effectively reduce its incidence.

## **6.10 Summary**

Without detracting from the reality that sexual assault is perpetrated by males against females, the Committee has identified a most serious problem within society. The rape and sexual assault of adult males is under-reported, under-recorded and inadequately responded to by the community. Disbelief that men can be victims or that men would offend against other men makes the task of service providers to properly accommodate male victim needs difficult.



The Committee has raised many issues regarding male victims which should be addressed by relevant government departments and the community as a whole.