

Note 12:

Victims of Sexual Offences

Sexual offences are violent crimes that often occur in the absence of witnesses. People of all ages, backgrounds and genders experience sexual offending, but women and children are especially vulnerable. Victims can experience a wide range of emotions when reporting sexual offences and during the legal process, including shame, anguish, embarrassment and guilt.

Sexual offences are also a group of offences where there is most likely to be a dispute about whether a person is a victim of crime. To recognise this, the term 'complainant' is used before a jury finds the accused guilty, or before an accused pleads guilty, and the term 'victim' is used at sentencing.

Key understandings

- Sexual offences are significantly under-reported;
- Most rape offences are committed by a person known to the victim (often a family member or intimate partner in a familiar residential location);
- Sexual offences committed by strangers are rare;
- Most offending occurs away from public view;
- Most victims delay in disclosing or never disclose or report sexual offences for many reasons, including:
 - Blaming themselves for the offending;
 - Feelings of shame, confusion, guilt and/or shock;
 - Fear of not being believed;
 - Fear of the offender and the consequences of reporting the offence;
 - They know the offender and are protecting them;
 - They do not recognise they have experienced a sexual offence;
- Many victims are young women but older women are victims more often than the public is aware;

- Perpetrators often do not need to use significant additional violence;

Clearly, both digital and penile rape are inherently violent acts which the community will not tolerate.

R v Brown (2002) 5 VR 463 [57]

The crime of incest involves sexual penetration of a child which is, by its very nature, an act of violence.

DPP v Dalglish (a pseudonym) [2016] VSCA 148 [46]

- Perpetrators often have power over victims and groom them into compliance over time;
- Victims may consciously or unconsciously freeze or cooperate during offending;
- Unwanted sexual arousal and physiological responses can occur during sexual offences, and do not indicate that a person consented to sexual activity;
- Avoiding the perpetrator may not be a realistic option for the victim and could place the victim at risk of violence and death (see [Guidance Note 11: Victims of Family Violence](#));

- Victims of one-off traumatic events typically recall only a few clear details of the events;
- It is difficult for victims who have experienced repeated traumatic events within a relationship to isolate details of specific incidents. They may remember different things at different times;
- Memories are vulnerable to the impact of alcohol and other drugs, injuries, illnesses and previous experiences of traumatic events (see [Guidance Note 2: Understanding Trauma](#));
- Alcohol is the most common drug perpetrators use to incapacitate a victim before committing a sexual offence;
- Many offenders are opportunistic and take advantage of victims who are already incapacitated.

For more information on misconceptions about sexual offending, see [Challenging Misconceptions about Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners](#) – Australian Institute of Family Studies and Victoria Police.

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Victims giving evidence

Parliament has legislated extensively to ensure complainants are provided with the best opportunity to give their evidence in trials for sexual offences. Relevant provisions include:

- Limitations and prohibitions on evidence about a complainant's other sexual activity (*CPA 2009* Part 8.2 Division 2);
- Prohibition on the accused personally cross-examining the complainant (*CPA 2009* Part 8.2 Division 3);
- Prohibition on cross-examination at a committal hearing where the complainant is a child or a person with a cognitive impairment (*CPA 2009* s 123);
- Obligation to order the use of closed-circuit television and a support person when complainants are giving evidence (*CPA 2009* Part 8.2 Division 4);
- Limitations on who may be present when the complainant is giving evidence (*CPA 2009* Part 8.2 Division 2);
- Availability of police interviews to stand as the evidence-in-chief of a complainant who is a child or who has a cognitive impairment (*CPA 2009* Part 8.2 Division 5);
- Obligation to record the evidence of a complainant who is a child or who has a cognitive impairment (*CPA 2009* Part 8.2 Division 6);
- Availability of recordings of complainant giving evidence in a previous trial to avoid the need for the complainant to give further evidence (*CPA 2009* Part 8.2 Division 2);
- Mandatory jury directions about delay in complaint and inconsistencies in account (*Jury Directions Act 2015* Part 5 Divisions 2 and 3);
- Restrictions on what the judge and practitioners can say about the credibility of complainants and the significance of delay in complaint (*Jury Directions Act 2015* s 51).

For more information about these provisions, see the [Victorian Criminal Charge Book](#) and [Chapter 13 – Witnesses](#) in the [Victorian Criminal Proceedings Manual](#).

Credibility unrelated to emotional display

Victims can be visibly stressed, anxious, irritable, numb and/or controlled. Judicial officers, police, media and the public may unconsciously assess victims as more credible if they are visibly upset and emotional, even though credibility is unrelated to emotional display.

Victims may present as controlled as a coping mechanism, or because they have not received enough support.

Victims' emotions are likely to change throughout the legal process.