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PARLIAMENT OF TASMANIA

Report No. 31

LAW REFORM COMMISSION

Report and Recommendations on Rape and Sexual Offences

Presented to both Houses of Parliament by His Excellency's Command

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LAW REFORM COMMISSION OF TASMANIA

Report No. 31

REPORT AND RECOMMENDATIONS ON RAPE AND SEXUAL OFFENCES

On the 30 October 1979 the Law Reform Commission was given a reference by the Attorney-General upon the matter of rape and crimes of a sexual nature. The terms of that reference are set out on page ? of this the Thirty-First Report of the Commission. The twenty-four Recommendations of the Commission in respect of this reference are set out on pages 33–37.

Signed for and on behalf of the Law Reform Commission of Tasmania and by authority thereof.

J. B. PIGGOTT, *Chairman*

C. G. WOODHOUSE, *Acting Deputy Chairman*; and
Acting Executive Director

Dated this ninth day of December 1982.

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RECOMMENDATIONS FOR REFORM OF THE LAW OF RAPE

I. INTRODUCTION

Terms of Reference

1. On 30 October 1979, the Attorney-General referred the matter of rape and crimes of a sexual nature to the Law Reform Commission with the following terms of reference:—

'(1) Generally, to investigate and consider the law relating to the crimes of Rape, Indecent Assault, and other crimes of a sexual nature, and attempts to commit such crimes, and to recommend such changes (if any) as appear to be necessary.

(2) In particular, to recommend whether or not it should be made a crime for one party to a marriage to engage in sexual intercourse, and other sexual acts, within marriage, without the consent of the other party to the marriage.

(3) To recommend whether or not there should be any variations in the maximum scale of punishments applicable to such crimes or attempts, and, if so, whether this should depend on the severity of the violence or injuries suffered by the victim, or on other specific grounds.

(4) To make such recommendations, if any, as may seem desirable to any of the rules of **evidence** or rules of **court procedure** relating to the crime of Rape, or other crimes of a sexual nature, or attempts to commit the same.

(5) To consider whether any recommendations, additional to those contained in the Law Reform Commission Report and Recommendations for reducing harassment and embarrassment of complaints in Rape cases, are desirable in **relation to this reference.**

(6) Having regard to the *Criminal Injuries Compensation Act 1976*, and the provisions of the *Criminal Code*, to consider the adequacy or otherwise of measures providing for financial restitution or compensation of victims of Rape or other crimes of a sexual nature or attempts to commit the same, and to make such recommendations as may seen desirable and practicable in the circumstances.

In the consideration of the above reference due regard shall be given to the rights of the accused person as well as the rights of the victim.'.

2. The Commission considered that because of the controversial nature of the subject, and the lack of uniformity of the common law and procedure, the matter required a balanced consensus of informed public opinion to be reached on a national basis. Accordingly it was decided to plan a National Rape Conference, and to await its outcome before considering possible legislative changes. The Conference was organised by the Commission in association with the Australian Institute of Criminology and the University of Tasmania, and was held from 28 to 30 May 1980 in Hobart.

3. Following the publication of the Conference papers and resolutions[1] the Law Reform Commission organised the preparation and circulation of a working paper and questionnaire based upon the conference resolutions. The questionnaire and responses returned to the Commission appear in Appendix A. This thorough investigation of the reference has satisifed the Commission that substantial changes are needed to the law and procedure relating to rape and sexual assault.

II. THE SUBSTANTIVE LAW

The Existing Law

4. The crime of rape is set out in section 185 of the Criminal Code in the following terms:—

'(i) Any person who has carnal knowledge of a female not his wife without her consent is guilty of a crime which is called rape.

Charge: Rape.'.

5. It is clear that since the decision in *Snow* [1962] Tas. S.R. 271 the ingredients of a crime of Rape are first, an intentional act of penetration by the accused of a woman not his wife, and secondly, absence of her consent. An intention to have intercourse with the victim without her consent or regardless of whether she was consenting or not, is not an ingredient of the crime in Tasmania. If the accused mistakenly believed she was consenting his defence lies under section 14. This section provides that a mistaken belief must be honestly and reasonably held, and it has been decided that the burden of proving the existence of such a belief rests on the accused on the balance of probabilities. (*Martin* [1963] Tas. S.R. 103). This also appears to be the position in Western Australia and Queensland with regard to the mental element of the crime (See *Attorney-General's Reference No. 1* of 1977, [1979] W.A.R. 45 and *Thomson* [1961] Qd. R. 501, 516), although the burden of proof in relation to mistake rests upon the prosecution. The position in South Australia and Victoria and in the United Kingdom is different and is exemplified by the House of Lords decision in *Morgan* [1976] A.C. 182. In *Morgan's* case it was held by a majority that the mental element for the crime of Rape required proof beyond reasonable doubt of an intention to have intercourse without the consent of the victim, either aware that this is so, or aware that it might be so and recklessly determining to have intercourse whether she was consenting or not. It follows then that no man can be convicted of rape if the jury entertain a reasonable doubt about the existence of an honest although not necessarily reasonable mistake by the accused as to consent. The common law position in New South Wales has been changed by the *Crimes (Sexual Assault) Amendment Act 1981*, but sexual assault category 3 (sexual assault without consent) is broadly equivalent to the offence of Rape and the mental element remains the same.

6. In Tasmanian legal circles there has been some disquiet about the decision in *Snow*, and there were indications that it 'might need to be reconsidered on some suitable occasion' (per Neasey J. in *Bell* [1972] Tas. S.R. 127, 132). Some claimed the effect of *Snow's* case was modified by the decision of the Court of Criminal Appeal in *Ingram* [1972] Tas. S.R. 250. In *Ingram* it was held by Chambers J. that as it is almost impossible for a man to unintentionally effect penetration, the result of the decision in *Snow* was to reduce the mental element in rape to 'microscopic proportions' unless a liberal approach was taken to the operation of the defence of mistake. Accordingly he suggested that the jury should be directed to consider mistake wherever the evidence leaves room for it, even in the absence of a claim by the accused of a belief in consent and despite assertions by the accused that the victim orally consented. The opportunity for the Court of Criminal Appeal to reconsider *Snow* arose in 1981 but the Court unanimously refused to overrule its earlier decision and approved the interpretation given in *Snow* to the definition of Rape in section 185 (*Arnol*, Supreme Court Unreported Decisions, List 'A', Serial Number 34 of 1981).

7. Carnal knowledge is defined by section 1 of the Code as —

> 'penetration to any the least degree of the organ alleged to be known by the male organ of generation'.

Two points can be made about this definition. First, penetration of the vagina by inanimate objects is not included. Secondly, although penetration of orifices other than the vagina is not expressly excluded, in practice charges are only laid on the basis of vaginal penetration and judicial interpretation could well so confine it[2].

8. Consent is also defined by section 1 and means —

> 'consent freely given by a rational and sober person so situated as to be able to form a rational opinion on the matter to which he consents. A consent is said to be freely given when it is not provided by force, fraud or threats of nature.'.

Despite the apparent width of these words it would seem that their effect is not clearly settled. In *Schell* [1964] Tas. S.R. 184, Crisp J., following *Papadimitropoulos* [1957] 98 C.L.R. 249, held that in the case of Rape it is consent to the physical character of the act and to the identity of the male person only which is in issue. It follows then that sexual intercourse procured by fraud as to antecedent inducing causes or status or attributes of the accused does not destroy the reality of consent. However in *Woolley* v. *Fitzgerald* [1969] Tas. S.R. 65, Chambers J. raised some doubts as to the application of

Papadimitropoulos and suggested without deciding that if there was fraud as to 'the matter to which he consents' then there was no consent. On this view fraud as to other matters would vitiate consent, but the common law position would appear to allow fraud to vitiate consent only where a woman's husband is impersonated or where the victim is mistaken as to the nature of sexual intercourse rather than its purpose. A literal interpretation of the words would not limit 'threats' to threats of immediate physical harm to the victim, but in the absence of any Tasmanian authorities, there must be considerable doubt as to how far the courts would extend the words to cover threats of force to other persons, or threats of harm other than personal physical violence.

9. Other non-consensual sexual offences are —

(a) indecent assault, which consists in essence of an unlawful assault by any person upon a female in circumstances which are in the jury's opinion, indecent, (section 127);

(b) 'unnatural carnal knowledge against the order of nature'— sodomy — by a male of a male or female with or without consent, (section 122);

(c) indecent practices between male persons, which includes an indecent assault by one male on another as well as consensual acts between males, (section 123);

(d) forcible abduction, which consists of taking away or detaining a female by force against her will with intent that she be married to or carnally known by any person, and abduction, which covers similar conduct without force, (section 186);

(e) procuring defilement of a female, which deals with inducing a female to have carnal knowledge by threats, intimidation, false pretences or representations, or by administering drugs with intent to stupefy, (section 129).

10. The Commission now recognizes[3] that the Code position with regard to the mental element for rape represents a better balance between the rights of the victim and the accused than the common law position enunciated in *Morgan*. Nevertheless there are glaring defects in the substantive law of rape which require substantial changes to better protect the victims of sexual assault. In addition the terminology and substance of many other sexual offences is archaic and in need of amendment.

Immunity of Husbands

11. By virtue of the words 'not his wife' in the definition of rape in section 185 of the Criminal Code a husband does not commit rape if during the marriage, no matter what degree of estrangement exists short of final divorce, he forces his wife to have intercourse with him without her consent. This immunity does not extend to protect him from assault if he inflicts or threatens violence, or from any other indecent assault if he also assaults her accompanied by circumstances of indecency. The Code merely reproduces the common law on this point. The classic statement of the spousal immunity rule is to be found in Hale's *Pleas of the Crown*, 1736, (Volume 1, page 629).

> 'But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.'.

12. In other common law jurisdictions the classic common law position has been eroded by judicial decision[4] and by statute. In South Australia legislation passed in 1975 purposed to ensure that cases of rape within marriage involving violence and gross indecency would entail criminal responsibility for rape, but the situation fell short of simply abolishing the immunity[5]. In Victoria the *Crimes (Sexual Offences) Act* of 1980 provides that where the parties to a marriage are living separately and apart, the existence of a marriage shall not constitute or raise a presumption of consent to sexual penetration. In New South Wales only has the immunity been entirely abolished. The immunity automatically disappeared with the abolition of the common law offences of rape and attempted rape by the amendment of section 63 of the Crimes Act, but section 61A (4) puts the matter entirely beyond doubt by stating that the status of marriage shall not be a bar to conviction[6]. The Criminal Codes of Western Australia and Queensland incorporate the classic common law position of complete immunity.

13. A majority of the members of the Commission are of the opinion that the immunity of husbands from prosecution for rape should be abolished, and accordingly the Commission recommends this. The National Rape Conference passed a resolution in favour of total abolition, and 55 per cent of the respondents to the questionnaire favoured this course.

14. This recommendation is supported by the following arguments:—

(a) The immunity of husbands is archaic, unjust and unequal in the treatment of the sexes. It reflects a period of history when a wife had no separate property rights, could be assaulted for disciplinary reasons, and was regarded as the property of her husband. It can no longer be supported by sound principle and is much resented by many who regard it as an obstruction to the separate and equal status of women.

(b) The existence of the immunity gives rise to certain grave anomalies which make this law ridiculous. Firstly a woman who is cohabitating with a man can refuse him sexual intercourse, and her refusal if it can be shown, will make him guilty of rape if he proceeds. Secondly, a wife can unilaterally withdraw her implied consent to cohabitation and her husband has no right in law to detain her and can be prosecuted if he does[7]. Why then can she not withdraw her implied consent to sexual intercourse?

(c) Domestic violence should be officially discouraged. The National Rape Conference resolution noted that the abolition of the immunity for husbands would emphasize the community's condemnation of sexual violence within the family. In New South Wales the abolition is seen as of symbolic and educative importance, and the hope is expressed that the law will play some role in educating both men and women that violence within the family is disapproved of generally[8]. The Commission agrees that the law should be seen to condemn and not condone domestic sexual violence, even if in the short term removal of the immunity is unlikely to have much deterrent effect.

(d) The fear of unfounded and malicious prosecutions is not a valid and sufficient reason to retain the immunity, for the criminal law has sufficient safeguards to deal with false complaints of crime in police investigation procedures and discretion to prosecute, commital proceedings and finally by requiring proof beyond reasonable doubt. As Treloar argues, 'a vicious wife would get nowhere in the obstacle course of the justice process, meanwhile the law condones a free-for-all for vindictive husbands'[9]. Moreover, reforms in the United States and South Australia have certainly not resulted in a spate of cases.

(e) The argument that there will be difficulties in proving absence of consent cannot be accepted as sufficient reason for allowing husbands immunity. Difficulties of proof are not confined to rape within marriage. The law does not, and should not, turn a blind eye to offences which are difficult to prove. Illegitimacy and paternity hearings, fraud, prostitution and other sexual offences in private are not ignored on the grounds of difficulty of proof.

(f) Fears that family life may be undermined and prospects of reconciliation diminished by abolition of the immunity ignore the effect of subjecting an unwilling wife to sexual intercourse.

15. The Commission rejects compromise solutions such as the *Michigan Act* which abolished the common law rule in the case of parties living apart where one has filed for divorce, or the South Australian or Victorian reforms outlined earlier. Such solutions are complicated and confusing or create definitional problems. The difficulties with the South Australian reform are formidable and there are problems in interpreting the phrase 'living apart'. Moreover some women may not be able, or may not wish, because of children or some other reason, to take the step of living apart, and yet they are denied the protection of the law. Most importantly such solutions are objectionable in principle. They fail to acknowledge that married women should be autonomous individuals with rights equal to other citizens.

16. Two members of the Commission take the view that spousal immunity should only be abolished if the parties are living apart because total abolition could lead to frivolous and vindictive charges being laid against husbands. The Chairman adds the view that the powers available under the Family Law Act were sufficient for a wife to obtain an adequate remedy when there was no separation of the parties[10].

17. RECOMMENDATION 1

Immunity of Husbands — The Commission recommends the immunity of husbands from prosecution for rape be abolished.

Immunity of Males Under 14

18. Under the Code and at common law there is total immunity from liability for rape on the part of males under the age of 14 years, for they are conclusively presumed to be incapable of sexual penetration[11]. This does not prevent such a boy from being found guilty where appropriate as an aider, abettor, or instigator, nor from conviction for indecent assault, although in reaching such a verdict the jury would have to be directed to put out of their minds the fact that he had achieved penetration. This immunity has been abolished in South Australia, Victoria and New South Wales. At the National Rape Conference it was unamimously resolved that the immunity should be abolished, and only three (7 per cent) of the respondents to the questionnaire favoured retention of the presumption.

19. The Law Reform Commission recommends abolition of this unrealistic rule. If it was ever the case, it is certainly no longer true that males under 14 are necessarily incapable of the full sexual act. In England the Criminal Law Revision Committee regarded the participation of boys under 14 in rapes and 'gang bangs' in particular as a matter of public concern[12]. The fiction of disregarding sexual penetration by males under 14 should be abandoned.

20. The effect of removal of the presumption would mean that boys from 7 years of age to 14 years could be convicted of rape provided the prosecution could prove sufficient capacity to know the act was wrong[13]. No criminal liability for any offence attaches to persons under 7 years[14].

21. RECOMMENDATION 2

Immunity of Males Under 14 — The Commission recommends the abolition of the conclusive presumption in criminal law that males under the age of 14 are incapable of having sexual intercourse.

Gender Neutrality

22. The structure of the sexual offences in the Criminal Code is almost invariably to include within the definition of each offence the gender of the victim and sometimes the gender of the offender, e.g., rape in section 185 and defilement in section 124 and section 126, apply only to male offenders and female victims, and abduction (sections 186–189), aiding seduction (section 132), indecent assault (section 127), permitting defilement (section 123), incest (section 133), unlawful detention (section 130), encouraging and procuring (sections 128 and 129) apply to female victims only. Changes introduced in Victoria and New South Wales have ensured that sexual offences are sex neutral. The preamble to the *Crimes (Sexual Offences) Act* 1980 (Vic.) states —

> 'Whereas it is desirable for the law to protect all persons from sexual assaults and other acts of sexual coercion . . . And whereas it is desirable for the law to protect and otherwise treat men and women as far as possible in the same manner . . .'.

At the National Rape Conference it was resolved that males and females should be equally liable and equally protected by the criminal law. The majority of the respondents to the questionnaire supported gender neutrality.

23. The Law Reform Commission recommends that sexual offences be non-specific in terms of gender. It considers that in keeping with philosophical notions of anti-discrimination and equality, sexual offences should be sex neutral. Gender neutrality is also important if laws relating to sexual assault are to be placed on a similar footing with other criminal laws and the victims protected from stigma as far as it is possible. Such a change would provide clarity, clearly distinguishing between non-consensual and consensual sexual activity, and offer effective protection for victims of homosexual rape. Under the

existing law the same crime covers consensual and non-consensual homosexual practices, a position which does not adequately distinguish between the willing participants and those who are not. It is also an unnecessary proliferation to have one crime for indecent assault upon a female (section 127), and another for indecent assault by any male upon another male. Furthermore, there seems to be no reason why a woman should not be subject to the criminal process if she indecently assaults a male.

24. RECOMMENDATION 3

Gender Neutrality — The Commission recommends that in keeping with philosophical notions of anti-discrimination and equality, sexual offences should be non-specific in terms of gender.

Widening the Concept of Sexual Intercourse

25. At present the law in Tasmania would seem to confine rape to penetration of the vagina by the penis. Cases of sexual assault in which other forms of penetration occur are dealt with as indecent assault, and unless a case of unnatural carnal knowledge (penetration of the anus) can be proved, they generally attract lesser penalties. The continuation of sexual intercourse involving the penis and the vagina has also been held to be indecent assault rather than rape (*Richardson* [1978] Tas. S.R. 178). In other jurisdictions the definition of carnal knowledge or sexual intercourse has been widened. In South Australia sexual intercourse includes oral and anal penetration by means of the penis (*Criminal Law Consolidation Act* 1935–1976, section 5). In Victoria section 4 *(c)* of the *Crimes (Sexual Offences) Act* 1980 extended the definition of sexual intercourse to cover vaginal and anal penetration by the penis or other parts of the body, the use of inanimate objects in such penetration, and oral penetration by the penis. By virtue of the *Crimes (Sexual Assault) Amendment Act* 1981 sexual intercourse in New South Wales includes, as well as the situations mentioned in the Victorian provision, cunnilingus and the continuation of sexual intercourse.

26. There is considerable support for widening the concept of 'carnal knowledge'. At the National Rape Conference it was the subject of a resolution by a substantial majority of delegates and legislation followed in a number of States. The degree of support given by the respondents to the questionnaire, to the adoption of categories of sexual intercourse, varied, but the majority were in favour of all the suggested categories. (See Appendix A, Question 4.)

27. The Law Reform Commission urges the adoption of the following definition of sexual intercourse, which appears in section 61A of the *Crimes Act* (N.S.W.). —

'"sexual intercourse" means —

(a) sexual connection occasioned by the penetration of the vagina of any person or anus of any person by —

(i) any part of the body of another person; or

(ii) an object manipulated by another person,

except where the penetration is carried out for proper medical purposes;

(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person;

(c) cunnilingus; or

(d) the continuation of sexual intercourse as defined in paragraph *(a)*, *(b)* or *(c)*.'.

28. An adequate definition of sexual intercourse is necessary to ensure the recognition of the seriousness of other forms of penetration. The insertion of such objects as bottles into the vagina or anus is equally, if not more, degrading and may be much more injurious than forced sexual intercourse in its usual sense. This wide definition reflects the contemporary view that rape should no longer be separated from other sexual offences and treated as a special case but should be assimilated with other sexual assaults on men and women and viewed as an act of violence rather than excessive passion. The proviso in *(a)* relating to medical purposes is desirable to clarify the position of medical practitioners.

29. Paragraph *(d)* of the definition would cover the situation in *Richardson* which artificially and unrealistically deems carnal knowledge complete upon penetration. (Compare *Kaitamaki* [1980] 1 N.Z.L.R. 59.)

30. RECOMMENDATION 4

The Commission recommends the adoption of the definition of 'sexual intercourse' from section 61A of the *Crimes Act* (N.S.W.), cited in paragraph 27.

Restructuring Sexual Offences

31. The present structure of sexual offences under the *Criminal Code* has been briefly explained, (paragraphs 1–6). The existing position with regard to penalties for crimes is that the Code imposes an overall maximum sentence for indictable offences of twenty-one years imprisonment with the exception of murder or treason.

32. In Victoria and New South Wales changes have been introduced which involve grading sexual offences into categories by virtue of circumstances of aggravation, each grade attracting a different maximum penalty. The delegates at the National Rape Conference passed a resolution favouring a gradation of offences of sexual assault into degrees of seriousness. Restructuring sexual assaults into a ladder of offences attracting different maximum penalties was favoured by 80 per cent of the respondents to the questionnaire.

33. The Law Reform Commission recommends replacing existing non-consensual sexual offences with a ladder of degree of unlawful assault, graded according to the circumstances of aggravation. The Commission favours the offence structure adopted by the Draft Criminal Code of the Northern Territory[16], with the omission of sexual intercourse between spouses and sexual intercourse with animals. These offences, with the penalties proposed to be applicable in the Northern Territory, are —

(a) Aggravated Unlawful Sexual Intercourse — is committed when a person has unlawful sexual intercourse (defined as sexual intercourse carried out without the full and free consent of both parties) with another person and,

(i) in so doing or immediately before or after so doing causes grievious bodily harm to that other person;

(ii) by having that intercourse causes grievous mental harm to that other person; or

(iii) immediately before that sexual intercourse and in order to induce that other person to submit to that sexual intercourse or to a sexual act, threatens to injure that person with a dangerous weapon.

The maximum penalty for this offence is 14 years.

(b) Aggravated Unlawful Sexual Act — which is an unlawful sexual act accompanied by the same aggravating factors as aggravated unlawful sexual intercourse. The maximum penalty is imprisonment for 10 years.

(c) Unlawful Sexual Intercourse — with a maximum penalty of 10 years.

(d) Unlawful Sexual Act — with a maximum penalty of 2 years.

(e) Sexual Intercourse with a Young Person under the age of 16 years — with a maximum penalty of 10 years. This would apply to a person, male or female, who has sexual intercourse with another person (male or female) who is under the prescribed age.

The defences are discussed below, (paragraph 52 *inter alia*).

(f) Sexual Act with a Young Person under the age of 16 years — with a maximum penalty of 2 years.

34. The Commission considers this new structure of offences has the following advantages:—

(a) Classification of all non-consensual acts of sexual intercourse under the heading of rape, involves grouping together such a wide range of behaviour as pressing a relationship further than one partner wishes to a vicious attack by a stranger. Similarly, indecent

assault covers such gross acts as forcible oral intercourse as well as the relatively minor act of bottom pinching. Reluctance of juries to convict in all but the most serious cases may result. A range of charges reflecting the subtle range of sexual conduct would provide a more sensible alternative and enable juries to select a grade of the offence appropriate to the gravity of the case.

(b) Leaving a wide discretion in the court to impose an appropriate penalty is subjective and may result in widely varying sentences in similar cases. Empirical studies have demonstrated the existence of unwarranted sentencing disparities beyond doubt[17], and such disparities are unjust to the accused and subversive of criminal justice in general. The legislature has a duty to clarify the crime and to grade the crime according to seriousness.

(c) The problem of penalties being incurred in not very serious cases of rape which are heavier than penalties imposed for brutal and serious indecent assaults would be avoided.

(d) A gradation of offences would have an educative effect concerning standards of behaviour not acceptable to the community.

(e) A ladder of offences would introduce clarity and certainty. It would mean, assuming the recommendation in relation to consent is also adopted, that the following offences could be abolished:—

(i) Rape (section 185);

(ii) Indecent Assault (section 127);

(iii) Procuring the defilement of a female by threats or fraud or administering drugs (section 129)—This crime would be adequately covered by 'unlawful sexual intercourse' by virtue of the proposed definition of consent;

(iv) Sodomy (section 122 *(a)* and *(c)*), sodomitical assaults would be covered by 'unlawful sexual intercourse' by virtue of the definition of sexual intercourse, and consensual sodomy being no concern of the criminal law should be omitted;

(v) Indecent practices between males (section 123), homosexual assaults would be covered by 'unlawful sexual act';

(vi) Defilement of girls under 17 (section 124) would be included in the crime 'sexual intercourse with a young person';

(vii) Defilement of insane persons and defectives (section 126) would be adequately covered by 'unlawful sexual intercourse' by virtue of the proposed definition of consent (paragraph 40 *(h)*).

(f) However, the Commission considers that the ladder of offences, graded as to seriousness, is a sufficient indication of the public's attitude toward these offences. It sees no sufficient need to go further and include into the area of judicial sentencing discretion by stating maximum penalties for each specific offence. Such a course would mean that the general maximum penalties under the Criminal Code would be applied and thus the offender's sentence would reflect a judicial appraisal of the circumstances of the offender and the offence, which would otherwise be confined by the existence of specific maximum penalties lower than the current general maximum penalties.

35. RECOMMENDATION 5

The Commission recommends a new structure of offences as outlined in paragraph 33 at page 13.

CONSENT

36. One of the main complaints about existing rape law is that injustice is caused to the victim by the difficulty of proving absence of consent and by judicial interpretation of a valid 'consent'. Within the structure of a gradation of sexual offences it is possible to remove the primary emphasis from consent to objective factors such as the infliction of bodily harm or threats by a knife or gun, and to clarify the situation with regard to those circumstances which may vitiate consent.

37. The pioneering legislation in this area is the Michigan Criminal Sexual Conduct legislation which has four degrees of sexual assault and absence of consent is not an ingredient of any of the crimes, proof of objective factors (e.g., the use of a gun, or force or coercion) is substituted. The New South Wales initiatives retain the primary emphasis on consent in cases of sexual assault category 3 (sexual intercourse without consent) which with the exception of a clarification of the situation in relation to threats to injure a third party is in effect the same as the previously existing law of rape. The new Victorian Act retains consent as an ingredient of the four categories of sexual assault.

38. The Northern Territory Draft Code, which is very similar to the Womens Electoral Lobby Draft Bill, provides that unlawful sexual intercourse (or unlawful sexual act) means sexual intercourse (or a sexual act) carried out without the full and free consent of both parties, and the circumstances in which consent is not full and free are listed.

39. At the National Rape Conference a majority of the delegates resolved that consent should not be an issue in cases where grievious bodily harm is inflicted. The Commission's Working Paper set out the various models for consideration and the questionnaire purported to inquire as to which circumstances procuring consent should vitiate that consent and so make proof of absence of consent unnecessary. A majority of respondents agreed to all of the circumstances listed.

40. The Commission recommends the adoption in substance of the provisions in the Northern Territory Draft Bill as to the circumstances in which a consent procured thereby should not be full and free.

Clause 88 (2) of that Bill provides—

'For the purposes of the definitions of "unlawful sexual act" and "unlawful sexual intercourse" in subsection (1), but without limiting the generality thereof, the consent of a person to sexual intercourse or the performance of a sexual act is not full and free if it is brought about—

(a) by the application of physical force on the person or some other person in his presence;

(b) by the threatened use of physical force against the person, in his presence, where the person threatening the use of force is, in the belief of the person submitting to the intercourse or act, in a position to carry out the threat;

(c) by the threatened use of force or extortion against, or public humiliation or disgrace or physical or mental harassment of, the person or another person at some time in the future;

(d) by the administration to the person by the perpetrator, or by some other person to the knowledge of the perpetrator, of intoxicating liquor or a drug or anaesthetic which mentally incapacitates the person;

(e) by the perpetrator, or some other person to the knowledge of the perpetrator, inducing the person submitting to the intercourse or act to believe that the perpetrator is some other person;

(f) by or as a result of the fraudulent misrepresentation of some fact by the perpetrator, or by some other person to the knowledge of the perpetrator;

(g) by the use by the perpetrator of his position of authority over, or professional or other trust in relation to, the person to overbear, the will of the person; or

(h) by the person's physical helplessness, mental incapacity or inability to understand the nature of the act,

or where a person—

(j) submits while being, to the knowledge of the perpetrator, unlawfully detained; or

(k) is, to the knowledge of the perpetrator, the lineal ancestor, the sibling or lineal descendant of the perpetrator.'.

41. The Commission would prefer that instead of *(j)* the following provision be included:—

'*(j)* by reason of being unlawfully detained.'.

42. The Commission does not favour the inclusion of a provision for incest, which may be an act of two fully consenting adults, in this list of circumstances in which consent is vitiated by fraud, threats or exploitation. Accordingly, paragraph *(k)* should be omitted. It would nevertheless be possible to bring a case of unlawful sexual intercourse against a parent (or person *in loco parentis*) who has had sexual intercourse with his child by virtue of the lack of a full and free consent as provided for in paragraph *(g)* or *(h)* of clause 88 (2).

43. The question of the desirability of retaining a separate crime of incest (section 133 of the Criminal Code) has not been considered by the Commission.

44. The Commission recommends the legislative enactment of the objective circumstances listed in paragraph 40 which would render an act of sexual intercourse or a sexual act unlawful for the following reasons:—

(a) It removes emphasis from the issue of consent and focuses attention upon objective factors of the accused's behaviour rather than his perceptions of the victim's state of mind and the characteristics of the victim. If the rule of consent were minimized in this way, it would no longer be a major component of defence strategies and this should go a considerable way towards easing the experience of the victim in the witness box. The present focus on consent virtually demands that a defence counsel who is doing his job properly must challenge the sexual conduct and personal integrity of the complainant and attempt to present her in the most unfavourable light.

(b) It specifically identifies the behaviour that is proscribed. An extensive, but not exhaustive list of non-consensual situations avoids the problems of a vague generalised definition of consent. Such definitions have caused much confusion and resentment because it is felt that they can be interpreted to exonerate the accused in situations which many women would regard as non-consensual, e.g., where the victim is coerced by threats of public humiliation, by threats of violence to a third party, or by fraud as to some fact not amounting to fraud as to identity of the perpetrator or the nature of the act. There is concern also that only fear of death or grievious injury will be accepted as sufficient to render a consent invalid. The provision recommended would remove doubts in the area of force and threats of violence (paragraphs *(a)* and *(b)*) where the law is vague and extend it in the area of fraud (paragraphs *(e)* and *(f)*) threats of public humiliation and extortion (paragraph *(e)*) and exploitation of authority or position (paragraph *(g)*) where it has not gone far enough.

45. The issue of consent is not ousted. It is rather a matter of changed emphasis.

46. It is unlikely to be relevant in cases of aggravated unlawful sexual intercourse or aggravated unlawful sexual act. But it is possible that the accused in such a case could allege sado-masochistic activity for the mutual arousal of the participants, which was not unlawful because the victim freely consented. This would appear to be a valid defence unless the act of sexual intercourse or the sexual act involved an injury likely to cause death or a maim within section 53 of the Code.

47. In cases of unlawful sexual intercourse where intercourse is not denied, the issue of consent will still arise. The defence may argue in cases in which the prosecution alleges physical force procuring an apparent consent, that the victim consented both to the physical force and to the act of intercourse, and this would be an answer to the charge. In other cases the defence that the victim consented will merely be a denial of the prosecution's claim, e.g., that the victim was mentally incapacitated by intoxicating liquor (see paragraph *(d)* of the list).

48. The mental element for the various categories of sexual assault would require the prosecution to prove that the sexual act or the act of intercourse and the act causing the aggravating factors (if any) were voluntary and intentional. The defence of honest and reasonable belief in consent (section 14) would continue to operate in those cases in which there was evidence to support it.

49. RECOMMENDATION 6

The Commission recommends the adoption of paragraphs *(a)* to *(h)* in paragraph 40, and *(j)* in paragraph 41.

Sexual Intercourse and Sexual Act with a Young Person

50. The present position relating to sexual offences with young children is that carnal knowledge with girls under the age of 17 years is a crime under section 124 of the Code (defilement of girls under 17) subject to three different exculpatory situations according to the relative ages of the male and female. Section 127 (2) and (3) provide that the consent of a person under the age of 17 years is not a defence to a charge under section 124. Sexual intercourse and sexual contact involving boys under 17 years and females 17 and over is not an offence. Only girls are protected from heterosexual exploitation[19]. The gradation of offences recommended in paragraph 33 includes in categories *(e)* and *(f)* sexual intercourse and sexual act with a young person under the age of 16 years. These categories are in substitution for the crimes of defilement and indecent assault of a girl under the age of 17 years. The repeal of these provisions is therefore recommended.

51. It follows that section 125, 'permitting the defilement of a young girl on premises' should be amended to apply to permitting sexual intercourse with children under the age of 16 years on premises. The proposal has the effect of lowering the age of consent by one year. The question of age of consent is a vexed one. In Queensland it is 17, Victoria 18, New South Wales, Western Australia and South Australia 16. The Royal Commission on Human Relationships recommended that the age of consent be reduced to 15, on the grounds that this would be a more realistic reflection of the sexual behaviour of young people and their ability to make personal decisions. The Royal Commission stated that one hundred years ago carnal knowledge law applied only to girls under 13, yet, during that time, the age of the menarche has decreased from about 16 to about 13. It was also pointed out that in exceptional circumstances the law allows girls of 14 to marry[20]. The Commission is of the opinion that if girls may consent to marry at 14 then they should be able to consent to sexual intercourse at 16 years, and that the defences should be available where the participants are essentially the same age.

Defences

52. The existing position is that by virtue of section 124 (2) and section 127 (2) an honest and reasonable mistake that a girl is 17 years old is a defence to defilement and indecent assault, where the male is under the age of 18 years but not otherwise. In relation to consent, section 124 (3) (4) and (5) and section 127 (2) provide that this is a defence if the accused is under 21 years and the girl is over the age of 15 years, if the accused is under the age of 15 years and the girl is over the age of 12, or if the accused is under the age of 16 years and the girl is the same age or older. It follows that if the accused is 16 years old and the girl is 15, or if the accused is 15 years and the girl is 14 years, he has no defence.

53. The Commission considers that sexual activity between people of essentially the same age should be free from criminal sanctions. There is some evidence that a considerable percentage of 14 and 15 year olds are sexually active[21]. The Commission considers that sexual activity of the young should only be the concern of the criminal law where questions of exploitation arise. With these considerations in mind the Commission recommends that consent be a defence if the parties are of the same age or the accused is not more than 5 years older than the younger person, and that honest and reasonable belief that a sexual partner is at least 16 years old should always be a defence.

Criminal Responsibility of Victims

54. There is authority for the proposition that if a girl willingly co-operates in her defilement, she is guilty as a party under the Criminal Code[22]. The new provisions are an attempt to protect males and females from sexual assault and young people from exploitation. To make these young people criminally responsible is punitive rather than protective. The Commission therefore recommends the enactment of a provision which would make it clear they are not criminally responsible on the basis of accessorial liability.

55. RECOMMENDATION 7

The Commission recommends that section 124 and 127 (2) and (3) of the Criminal Code be replaced by the offence categories — sexual intercourse and sexual act with a person under the age of 16 years. It is also recommended that an honest and reasonable, but mistaken, belief that a person is at least 16 years old should be a defence, and consent should be a defence if the accused is no more than 5 years older than the other person. A provision making it clear that the young person is not criminally responsible on the basis of being an accessory to the commission of the offence is also recommended. Consequential amendments to section 125 will also be necessary.

Restructuring other Sexual Offences

Unnatural Crimes and Indecent Practices Between Males

56. Section 122 provides, 'Any person who — *(a)* has carnal knowledge of any person against the order of nature; *(b)* has carnal knowledge of an animal; or *(c)* consents to a male person having carnal knowledge of him or her against the order of nature, is guilty of a crime.'.

57. Sodomitical assaults upon a male or female would be covered by the proposed defence of 'unlawful sexual intercourse' by virtue of the proposed definition of sexual intercourse. Section 122 also covers consensual sodomy. The Commission is of the opinion that this represents an attempt to enforce a code of behaviour which is outside the proper function of the criminal law. The Commission also considers that carnal knowledge with an animal would be more appropriately dealt with under the cruelty to animals legislation if cruelty was involved[23], or perhaps as the crime of indecency under section 137 of the Code if it is in public or done with intent to insult or offend another person.

58. The Commission therefore recommends that section 122 be repealed noting that the behaviour prescribed can be adequately and more appropriately dealt with by other offences.

59. Reforms in the Australian Capital Territory and South Australia have had the effect that homosexual acts do not constitute an offence if committted between consenting male adults in private[24]. In 1977 the Royal Commission on Human Relationships concluded that 'A homosexual act should not constitute an offence as such, but only in circumstances where a heterosexual act would amount to an offence, e.g., in cases of rape and indecent assault, or where it offends against laws relating to public decency and order[25]. Similarly, in the following year the Select Committee of the Tasmanian House of Assembly on Victimless Crime recommended that homosexual acts between consenting male adults in private be no longer regarded as a crime.

60. The Law Reform Commission recommends that section 123 be repealed, and emphasises that boys under the age of 16 years old will be protected by the proposed offences of sexual intercourse and sexual act with a young person, and that sexual acts in public or in places to which the public have access, as well as acts intended to offend any other person, will be covered by the crime of indecency under section 137. As an alternative the Commission recommends, if this proposal is rejected, that in accordance with the aims of this report and notions of sexual equality, section 123 be made sex neutral.

61. RECOMMENDATION 8

The Commission recommends that sections 122 and 123 be repealed on the grounds that males are adequately protected from homosexual assault and young males from sexual exploitation by the proposed categories of sexual assault, homosexual acts in public are prosecuted by the crime of indecency and the Commission considers that homosexual acts by consenting male adults in private are outside the proper scope of the criminal law.

Bestiality will remain the crime of indecency, or the offence of cruelty to animals, if cruelty is involved.

Defilement of Insane Persons and Defectives — Section 126

62. Provisions such as section 126 have been criticised on the grounds that they have the effect of depriving mentally defective women of all sexual freedom. Both the South Australian Criminal law and Penal Methods Reform Committee[26], and the Royal Commission on Human Relationships[27] recommend that the law should intervene only when the mental state of a person renders them incapable of giving consent to sexual intercourse. In South Australia this has been implemented by replacing the offence which prohibited carnal knowledge with an idiot or imbecile where the offender knew that such a person was an idiot or imbecile with a provision making it an offence to have sexual intercourse with a person known to be so mentally deficient as not to understand the nature and consequences of the act.

63. The Commission considers the blanket protection given by section 126 is repressive and unjustified. Sufficient protection will be provided by the offence of unlawful sexual intercourse which is committed if consent is brought about by 'mental incapacity or inability to understand the nature of the act'[28].

64. RECOMMENDATION 9

The Commission recommends the repeal of section 126 on the grounds that such persons are adequately protected by the proposed offence of unlawful sexual intercourse, by virtue or paragraph *(h)* in the list of non-consensual situations.

Procuration — Section 128

65. Section 128 contains four alternative definitions of conduct which amount to procuration. Paragraph *(a)* provides that any person who 'procures a female under the age of 21 years, who is not a common prostitute or of known immoral character, to have carnal knowledge with any other person, either in this State or elsewhere; . . . is guilty of a crime'. In South Australia and New South Wales this offence has been repealed, and procuring is now confined to procuring persons to be prostitutes and procuring defilement by threats or fraud[29]. The Commission considers section 128 *(a)* to be unnecessary. Young females are adequately protected by other offences such as abduction and the like. Paragraphs *(b)* *(c)* and *(d)* of section 128 relate to procuring females to be prostitutes or inmates and the like of brothels. The Commission recommends that these provisions be amended to be made sex neutral.

Procuring Defilement of a Woman by Threats, Intimidation, Fraud or Administering Drugs — Section 129

66. Under the recent New South Wales reforms this offence has been limited to procuring for the purposes of prostitution and has been made sex neutral[30]. Section 129 applies to the case where a person procures a female by threats, etc., to have 'unlawful carnal knowledge' with himself as well as another, a situation which will adequately be covered by the proposed new offence structure by virtue of the definition of 'unlawful sexual intercourse'. Where a female is procured by threats etc., to become a common prostitute, section 128 *(b)* would be relevant. The Commission therefore recommends the repeal of section 129 on the grounds that is superfluous.

Unlawful detention in a Brothel or with Intent to Defile — Section 130

67. The Commission recommends repeal of this section. Detention upon any premises constitutes the crime of assault contrary to section 184, and submission to sexual intercourse by reason of being in a state of unlawful detention will be unlawful sexual intercourse by virtue of paragraph *(j)*[31]. It is true that section 130 (2) deems a person, who withholds clothing of a female, to detain that female, but this possibility does not warrant the existence of an independent crime.

Encouraging Seduction — Section 132

68. The Commission considers this offence is inappropriate in a modern statute. Subsection (2) makes it a criminal offence to allow a girl 'to consort with, or enter . . . in the employment of a prostitute or person of known immoral character'. The Commission views this provision as an attempt to enforce a particular standard of conduct in the care of female children which is outside the province of the criminal law. It is recommended that this offence be omitted because adequate protection for young girls is provided by offences proscribing sexual intercourse with young persons, general principles rendering aiders, abettors and instigators criminally liable, and the offence of permitting defilement on premises.

Custody of Young Girls in Certain Cases — Section 428

69. This section empowers a judge to divest a parent or guardian of all authority over a girl under the age of 17 years if it appears that seduction, prostitution or unlawful carnal knowledge has been caused or encouraged by such parent or guardian. This is a power which is rarely, if ever, invoked and involves matters which are more appropriately dealt with under the provisions of the *Child Welfare Act*. The Commission therefore recommends the repeal of this section.

Certain Offences to be Sex Neutral

70. The Commission recommends that the following offences be made sex neutral and the words 'carnal knowledge' be replaced with 'sexual intercourse'. Incest (section 133 (1)); permitting incest (section 133 (3)); forcible abduction and abduction (section 186); and abduction of a young girl (section 189). It is further recommended that section 189 be amended to refer to girls under the age of 16 years.

Abduction from Motives of Lucre, and with Intent to Defile — Sections 187 and 188

71. Section 187 is an historical anachronism which displays an attitude to women which must have been outdated in 1924. The Commission recommends repeal of this section. The repeal of section 188 is also recommended. The repeal of these two sections is recommended because adequate protection against abduction is provided by section 189 which has no sexual element but is obviously intended to cover the same mischief — girls under the age of 17 years leaving home or being taken from home without parental consent.

72. RECOMMENDATION 10

The Commission recommends the repeal of the following sections of the Criminal Code:—

Section 128 *(a)* —	on the grounds that it is unduly moralistic and in any event unnecessary;
Section 129 —	on the ground that it proscribes conduct which will be adequately covered by 'unlawful sexual intercourse' because of the circumstances in which consent is not full and free;
Section 130 Section 188	on the ground that they are unnecessary;
Section 132 Section 428 Section 187	on the ground that these provisions are inappropriate in a modern statute.

73. RECOMMENDATION 11

The Commission recommends that the following sections be made sex neutral in their application:

Section 133 —	incest;
Section 186 —	forcible abduction and abduction;
Section 189 —	abduction of a young girl.

III. THE EVIDENTARY LAW

74. The Commission is aware that much of the dissatisfaction with rape law is with the actual conduct of the trial. It is felt that the victim gets a bad deal, is in effect put on trial as well as the accused and is humiliated, harassed and embarrassed by the proceedings. The result is that rape victims are less inclined to report rape. Furthermore, critics suggest that the special evidentiary rules which apply in rape and sexual assault cases restrict and confuse juries, resulting in acquittals in clear cases.

75. The Commission has given detailed consideration to the following rules of evidence as they relate to the crime of rape and other crimes of a sexual nature:—

(a) the admission of evidence of the prior sexual history of the victim;

(b) the requirement of corroboration of the victim's evidence;

(c) the admission of evidence of early complaint or a failure to complain promptly; and

(d) the admission of unsworn statements from the dock.

Prior Sexual History

The Common Law

76. The common law position, now modified by statute in many jurisdictions, is that evidence of sexual history of the victim in rape trials is admissible on two grounds, the first is relevance to the issue of consent, and secondly relevance to credit.

77. Evidence that the complainant 'is of notoriously bad character for want of chastity or common decency . . . or that she is a common prostitute' may be given by the defendant, and she may be cross-examined as to such matters[32]. The evidence principally relates to the issues of consent, it being contended that such a woman is more likely to have consented to the sexual intercourse.

78. Evidence of sexual intercourse with others or general reputation is admissible if relevant to a fact in issue, e.g., to belief in consent, or to explain a pregnancy or the existence of semen.

79. Evidence of sexual intercourse with the defendant is admissible on behalf of the defence, and cross-examination of the victim is permissible 'because it is highly relevant to the issue of consent as acts of voluntary intercourse between the same two people are liable to be repeated'[33].

80. Cross-examination of any victim as to intercourse with other men, or with any particular man named to her, is permissible on the grounds of relevance to credit[34]. It is argued that such matters are relevant to veracity, for if a complainant is not chaste she is therefore not truthful and her evidence not believable.

81. In rape cases such cross-examination of the victim or evidence of her reputation is permissible, notwithstanding that it may cast a slur on the character of the complainant without exposing the accused's character to attack whereas in an ordinary criminal trial such an imputation by the accused may be sufficient to permit cross-examination about his bad character.

The Existing Position

82. With the aim of reducing the undue distress, and the humiliation of exposing the sexual past of the complainant, section 102A of the *Evidence Act* was passed in 1976 following a previous report of the Commission. This provides that questions in cross-examination of the alleged victim of rape with respect to her prior sexual behaviour with other persons are prohibited, unless in the opinion of the court the proposed question is directly related or tends to establish a fact or matter in issue. So the provision excludes questions as to credit, and attempts to tighten judicial control as to questions addressed to a main issue. In other parts of Australia similar legislation, striking in its lack of uniformity and terminology, has been enacted limiting judicial discretion to admit such evidence[35].

83. The Law Reform Commission recognises that section 102A has successfully eliminated cross-examination of rape victims which is allegedly relevant to credit. That chastity has any relevance to veracity has been strenuously and indignantly denied and section 102A prevents such a suggestion being made. However, the Commission considers that section 102A does not go far enough. The prohibition relating as it does to cross-examination is too narrow and the judicial discretion to relax the prohibition is too wide. Nor are the other provisions in the *Evidence Act* adequate to protect the rape victim from harassment and humiliation in court[36]. The prohibition is too narrow because section 102A does nothing to prevent the accused tendering evidence relating to the sexual reputation of the victim, nor from making damaging allegations in unsworn statements from the dock and nor does it prevent insinuations about her sexual behaviour. The discretion is too broad, leaving open the possibility that a judge or magistrate in exercising his discretion may consider a reputation for promiscuity or sexual activity with other persons is directly related or tends to establish consent or an honest and reasonable belief in consent. There are wide differences in attitudes about sexual behaviour and courts in the past have frequently taken the view that consenting sexual behaviour generally ought to be considered relevant to consent or otherwise in cases before them. Moreover the experience of commentators who have observed the operation of provisions of apparently similar effect in Western Australia and South Australia has been that the reforms are largely ineffectual, first because they leave too many loopholes, secondly because the application to cross-examine is rarely refused, and thirdly because the exercise of judicial discretion is difficult to upset on appeal and in any event, the humiliation involved cannot be reversed[37]. In Victoria, although the Attorney-General is satisfied with the operation of the restrictions imposed on cross-examination by section 37A of the *Evidence Act*, and it does impose an absolute prohibition on questions and evidence with respect to reputation for chastity, it would nevertheless seem to be open to similar criticisms as the South Australian and Western Australian provisions. For example, according to figures supplied to the Commission, although there were relatively few applications to cross-examine victims about their prior sexual experience, leave was granted in 70 per cent of applications. In New South Wales the *Crimes (Sexual Assault) Amendment Act* 1981 adopts a different approach from the other states by imposing a general prohibition on evidence which discloses or implies sexual experience or activity with certain specifically worded exceptions.

84. In addition to the reasons already mentioned (paragraph 83) the Commission is persuaded by the following considerations of the need to further restrict evidence of prior sexual history by a blanket prohibition with limited exceptions:—

(a) *Distressing nature of such evidence discourages reporting* — The admission of evidence which discloses or implies the sexual activity and behaviour of the complainant is humiliating and embarrasing and cross-examination in particular as to such matters is a distressing ordeal. The anticipated trauma of the court hearing clearly discourages the reporting of rape. In Western Australia Lee Henry found that 28 per cent of victims in her sample who did not inform the police mentioned court procedure as one of the reasons for not reporting rape[38]. In Queensland two of the sample of seventy unreported rape victims mentioned court procedures as the principal reason for not reporting the attack to the police[39]. Estimates of the number of victims of rape and sexual assault who fail to report to the police are obviously difficult. The survey of crime victims conducted by the Australian Bureau of Census and Statistics in 1975 indicated that for the preceding twelve months only 32·7 per cent of cases of rape and attempted rape were reported to the police[40]. A recently conducted 'phone in' in Tasmania resulted in 106 people reporting incidents of rape and sexual assault, fifty-five of whom had not reported the matter to the police[41]. The existence of this substantial figure for sexual assault is supported by statistics from the Sexual Assault Referral Service, North-Western General Hospital, Burnie. Of the fifty-five cases seen at the hospital from November 1976 to November 1981, twenty-six were 'non-police cases'. Investigations of the reasons for non-reporting indicate that the distressing nature of court procedures is by no means the predominant reason, but it is certainly a contributing factor. The Commission is impressed by the fact that an evaluation of the Michigan sexual assault reforms has described the prohibition of evidence of the victim's sexual conduct as recommended below, as one of the major contributors to the increase in reports and convictions of rape. It is also considered to be the most important factor in relieving the trauma of the court room experience[42].

(b) *Prejudicial nature of evidence leads to wrong acquittals* — Such evidence is highly prejudicial to the prosecution case, and impedes enforcement of rape law. Research has shown that the admission of evidence concerning the character of the victim interferes with the judgment of the jury as to the commission of the crime and leads to wrong acquittals. In a jury study, Kalven and Zeisel[43] showed that where there was an 'assumption of risk' by the victim, the alleged offender would be found not guilty (or guilty of a lesser offence where possible), although in most cases according to the trial judge it was a clear case of rape. Instances where such acquittals occured were where the victim had illegitimate children, where the victim was a prostitute or where the victim had a prior sexual relationship with the accused (her jaw was broken in two places in the course of the alleged rape). In a simulated jury study, it was found those questioned would nominate the act as 'rape' where the victim was a virgin before the event, but 'not rape' on the same facts where the victim was a divorcee[44]. Similarly, in an experiment by Sculthorpe, conducted at the University of Tasmania, significantly less convictions were recorded by the participants in the study where the victim was stated to be promiscuous although the facts were otherwise the same[45].

85. RECOMMENDATION 12

The Commission recommends that section 102A of the *Evidence Act* be replaced by a provision prohibiting all evidence including unsworn statements disclosing or implying that the complainant has or may have had sexual experience or lack of experience or has or may have taken part in any prior sexual activity with the exception of evidence of the victim's past sexual conduct with the defendant and evidence of specific instances of the victim's past sexual activity to explain the source of semen, pregnancy or disease, where it is relevant to a fact in issue and its inflammatory or prejudicial nature does not outweigh its probative value[46].

CORROBORATION

The Existing Position

86. There is a rule of practice created by judicial precedent which requires that the jury should be warned by the judge that it is dangerous to convict of rape (and sexual offences where there is a victim) unless the evidence of the complainant is corroborated in some material respect, in particular, by independent testimony implicating the accused. This appears to be accepted in Tasmania despite the absence of a specific provision in the Code. In contrast, the crimes of indecent assault, procuration, defilement and acts of unnatural carnal knowledge are required by the express terms of the Code to be corroborated, i.e., they are incapable of proof without corroboration[47]. The justification for the rule in the case of rape is that it is 'an accusation easily to be made' and the motivation for falsehood or occasion for inaccuracy is great but disproof is difficult[48]. Because rape is a serious crime and the consequences of wrongful conviction are severe, and because of the generally private nature of the act, it is claimed that it is essential that the jury be warned of the danger of acting upon the uncorroborated testimony of the victim. In particular, the danger of false accusation is stressed. Archbold states —

> 'the jury should be warned in plain language that it is dangerous to convict on the evidence of the complainant alone, because experience has shown that female complainants have told false stories for various reasons and sometimes for no reason at all'[49].

87. The propriety of giving the warning has been challenged in recent times. It is regarded as grossly offensive to women and discriminatory. That rape victims as a class should be more prone to falsehood and so treated automatically with undue suspicion is now questioned. Of course victims in sex cases are not invariably females, but there is not the same amount of emphasis upon the necessity for corroboration nor the same suspicion of the evidence of male victims as there is of the evidence of female victims. In Victoria, an amendment to the *Crimes Act* expressly abolished the rule of law or practice which requires corroboration for rape, indecent assault, sexual offences against young persons and incest, but for acts of penetration with intellectually handicapped persons, procuration, abduction and prostitution, corroboraton is required[50]. The recent New South Wales reforms provided for abolition of the 'dangerous to convict' warning in cases of sexual assault categories 1–4 as a compulsory rule of law or practice[51].

88. The Law Reform Commission has in a previous report recommended abrogation of rules of law requiring corroboration of evidence as a basis for conviction or mandatory warnings of the dangers of conviction without corroboration in all cases other than bigamy and treason, with the proviso that the trial judge should enjoy an unfettered discretion to comment on any evidence as he sees fit. No legislative result followed[52]. At the National Rape Conference in 1980 the delegates unanimously resolved in favour of the abolition of mandatory corroboration requirements and in the questionnaire responses 72 per cent of respondents favoured abolition.

89. The commentary on section 405C of the amended *Crimes Act* 1900 (N.S.W.) states —

> If the corroborating evidence is in fact flimsy, presumably the judge will then be inclined to give the direction in the traditional terms. But if there is substantial corroborating evidence, he will not be required to — although he may still — give the traditional direction. Under section 405C the judge will not be compelled to utilize the traditional formula of denigration which identifies women as especially untrustworthy '[53].

90. The following matters are mentioned to support the recommendation of abolition of mandatory corroboration requirements:—

(a) The requirement of corroboration, or at least a mandatory warning to the jury in all cases, has given rise to a degree of resentment by women as a class, and had resulted in the alleged victim, in the majority of cases, being treated automatically with undue suspicion with the result that she is practically as much 'on trial' as her alleged assailant. The result is that the victim is discouraged from reporting rape[54].

(b) The present law and practice relating to corroboration are too complex and must in many cases be unintelligible to juries and laymen. Abolition of special rules relating to corroboration would simplify trials and make them more easily understood[55].

(c) Abolition of corroboration requirements would not unduly prejudice the rights of the accused. He is adequately protected by the requirement of proof beyond reasonable doubt, appellate review for the sufficiency of evidence, and counsel and the judge's right to comment on any weakness in the prosecution case[56].

(d) It abrogates the jury's fact finding role. The task of the jury is to find guilt or otherwise on the evidence as presented. When warned in accordance with the rule, the jury may be confused into seeking something more than that which would convince them beyond reasonable doubt of the guilt of the accused. The authority of the judge in intruding into the territory of the jury may lead them to overreact in seeking proof beyond proof.

(e) The justification for the corroboration rule in relation to rape that it is an accusation 'easily to be made' and the motivation for falsehood is great but disproof difficult (see paragraph 62) is without foundation. A rape charge is not difficult to defend. Statistics show that rape has a high acquittal rate. Nor is it a charge 'easily to be made'. Victims are reluctant to report it and give extremely cogent persuasive reasons for not reporting it to the police[57]. Finally, the belief that a high proportion of rape complaints are false is a complete myth unsubstantiated by any sound evidence[58]. Of course, false allegations are sometimes made, as they are made in relation to other crimes, but as with other crimes the ordinary rules of evidence and burden of proof are sufficient protection.

(f) There is some evidence that corroboration rules affect the conviction rate for rape and sexual offences by lessening the chances of conviction. In New York State in the United States it was recently found necessary to relax the strict corroboration requirement for rape as it was virtually impossible to obtain a conviction[59].

91. **RECOMMENDATION 13**

The Commission recommends that for the six proposed categories of sexual offences (see Paragraph 33) and for other sexual offences the rules of law or practice that require the corroboration of evidence as a basis for conviction, or require that the jury be warned of the danger of convicting on the basis of uncorroborated evidence, be abrogated. There should be an exception in the case of child

witnesses. Section 128 (2) of the *Evidence Act* which requires corroboration of evidence as a basis for conviction in the case of the unsworn evidence of a child, should be retained, and the common law rule of practice requiring the dangerous to convict warning in the case of the sworn evidence of a child should be expressly retained. To implement this recommendation certain amendments would be required including the repeal of section 136 of the Code, which deals with corroboration in relation to crimes of morality. The effect of this recommendation will be to leave it to the discretion of the judge to assess the need for a warning in the traditional terms depending upon the weight of the evidence.

COMPLAINT

The Existing Position

92. On the charge of rape and kindred offences, the fact that a complaint was made by the victim shortly after the alleged offence, and the particulars of such complaint, may be given in evidence, not as evidence of the facts complained of, but as evidence of the consistency of the conduct of the victim with her evidence given at the trial[60]. The failure of the victim to make an early complaint is not evidence that she consented to the intercourse. It is a circumstance to be taken into account in evaluating her evidence that intercourse was without consent[61]. It would appear clear that the present complaint rule would apply to the new sexual assaults proposed in paragraph 33. It applies to all offences having a sexual flavour.

93. There is considerable disquiet about the recent complaint rule because if the victim does not complain as early as she might have done the defence will exploit this fact to cast doubt upon her veracity. The rule is said to be, echoing the words of Holmes J., uttered in 1898, 'a perverted survival of the ancient requirement that she (the prosecutrix) should make hue and cry as a preliminary to bringing her appeal'. Thus, the rule is based upon a false assumption, namely, that a person who delays before reporting a sexual assault is less trustworthy than one who complains immediately. A victim who delays in complaining may well have given much anxious consideration to the question of whether to report the matter at all. Studies of the reasons given for not reporting sexual offences indicate that there are powerful reasons which cause many to decide not to complain let alone to hesitate. Studies of the psychological after effects of rape indicate that because of social conditioning, depression and guilt are common. As Dr G. D. Woods, Q.C., points out in his commentary on the *Crimes (Sexual Assault) Amendmednt Act* 1981 (N.S.W.), this will often be why cross-examination as to the reason for late complaint or absence of complaint after the event is met by anguished silence or the unhelpful answer, 'I don't know '[62]. The reasons for a late complaint may be very difficult to articulate, particularly under the pressure of an aggressive defence counsel.

94. At the National Rape Conference the solution favoured by a substantial majority of the delegates was that evidence either that the victim complained or did not complain at an early time after the occurrence of the offence should be excluded. This was partly the approach adopted in South Australia by an amendment to the *Evidence Act* in 1976. Section 34 (i) (1) reduces the situations in which complaints can be admitted to cases where they were made in the presence of the accused or are introduced by cross-examination or rebuttal of evidence tendered by or on behalf of the accused. The solution adopted in New South Wales has been to retain the 'recent complaint' rule but to enact a provision requiring the judge, in cases where there is evidence of or a suggestion of absence of a complaint or delay in making a complaint, to warn the jury such absence or delay does not indicate that the allegation is false and to inform the jury that there may be good reasons why a victim of sexual assault may hesitate or refrain from making a complaint[63]. Fifty-three per cent of the respondents to the questionnaire favoured the Rape Conference solution and 38 per cent favoured the New South Wales provision.

95. In response to the criticisms of the present position it may be said that —

(a) The unfairness of the victim's position in cases where there has been a delay or failure to complain and it is implied that therefore she is not telling the truth is conceded. However, to deny the jury the opportunity to hear about this complaint, rather than disclosing as much of the story as possible within the existing constraints of the laws of evidence, would impede their fact finding role and perhaps give rise to unnecessary speculation about something which is obviously being withheld from them.

(b) Provision for a compulsory explanation to the jury will warn them and remind the judge and counsel that even though a rape victim has difficulty in explaining any delay or failure to make a complaint, that failure does not necessarily indicate fabrication. This should counteract any smear tactics by defence counsel and assist an understanding of the victim's position.

96. **RECOMMENDATION 14**

The Law Reform Commission recommends retention of the recent complaint rule and enactment of a provision similar in terms to section 405B of the *Crimes Act* 1900 (N.S.W.) to the effect that the trial judge be required to warn the jury that delay or failure to complain does not necessarily imply falsity.

UNSWORN STATEMENTS

Existing Law

97. Section 371 *(f)* of the Criminal Code provides that at a criminal trial an accused person may make an unsworn statement from the dock either verbally or in writing. The suggestion that this right of the accused be abolished has been canvassed for many years. In some common law jurisdictions debate has resulted in abolition, e.g., New Zealand and Western Australia. In Tasmania abolition was recommended by the former Law Reform Committee without legislative results[64]. Many of the objections to dock statements relate specifically to the abuse of the statement in rape cases. In such cases the accused has frequently used it, not only to put his version of the facts, but as a means of launching an unrestrained attack on the character of the victim without being liable to cross-examination upon such allegations and without the Crown being able to contradict material bearing on credit in the statement. And this after the jury has witnessed the victim being subjected to vigorous cross-examination by counsel for the accused. For this reason there is considerable support for the abolition of the unsworn statement from the dock at least in rape and sexual assault cases. At the National Rape Conference a proposal to prohibit the dock statement was passed and a majority of respondents to the questionnaire favoured abolition.

98. The Commission is of the opinion that dock statements should not be abolished in relation to sexual offences only. Rather they should be abolished across the board or retained. As such a general recommendation is not within the terms of this reference the following proposal is made.

99. The following recommendation is to the same effect as section 409C of the *Crimes Act* 1900 (N.S.W.), and the following matters are noted:—

(a) It is not entirely clear to what extent an accused person is bound by the rules of evidence when making an unsworn statement and therefore the position should be clarified[65].

(b) The recommended provision should prevent abuse of the unsworn statement in sexual assault trials. The commentary to the New South Wales *Crimes (Sexual Assault) Amendment Act* 1981 suggests that in a sexual assault case where a statement is contemplated the trial judge should inform the accused in advance (in the absence of the jury) of what he might or might not say.

100. **RECOMMENDATION 15**

The Commission recommends that the rule of law which allows an accused person to make an unsworn statement from the dock be retained with the following proviso:— that a provision be enacted which provides that a person may not in such a statement make reference to a matter which would not be admissible if given on oath, and that if a person has made reference in such a statement to a matter which would not be admissible if given on oath, the judge shall tell the jury to disregard the matter.

IV. PROCEDURAL MATTERS

COMPOSITION OF JURIES

101. In Tasmania the present position is that women are automatically liable to serve on juries, but may serve notice on the sheriff in writing electing not to be liable for jury service, such election being irrevocable for two years[66]. A 'family responsibility' that reasonably prevents a person from attending court is reasonable grounds for exemption from a particular sitting. This Law Reform Commission has previously recommended that women form at least half of the jurors in rape cases, noting that it has become a normal practice for the defence to object to women jurors[67]. The Royal Commission on Human Relationships recommended that in cases involving sexual penetration, juries should consist of at least four men and four women. However, there is considerable opposition to such proposals. At the National Rape Conference it was resolved with only one dissentient that no special rules be established in relation to the composition of juries in rape trials provided the law gives an equal opportunity to men and women to serve. A majority of respondents to the questionnaire shared this view, and most also endorsed the need for improvement in court facilities and administrative efficiency to encourage all members of the public to serve.

102. The Commission does not favour legislating to provide that women form a prescribed percentage of juries in sexual assault cases for the following reasons:—

(a) The actual effect of the composition of juries in terms of sex on the verdict in rape trials is open to question. Although counsel attach importance to sexual composition of juries, in South Australia a study of the sex composition of juries and verdicts in rape trials from 1966–1975 showed no signficant differences between the verdicts of male and female dominated juries, supporting the conclusion that women are at least no more likely to support a conviction of rape than men[68]. Such evidence indicates that there is no justification for requiring a charge of rape to be tried by a jury containing a specific proportion of women to men.

(b) Rather than making special rules applicable to crimes of sexual assault, they should be treated in the same way as other crimes as far as possible.

103. **RECOMMENDATION 16**

The Commission does not recommend that women form a specified proportion of juries in rape cases, but prefers the present position which renders men and women automatically liable to serve on juries giving women the right to elect not to be so liable. However, improvements to court facilities and administrative arrangements would be desirable to encourage all members of the public to serve. Provision of special child care services within the court complex, although ideal and supported by at least 57 per cent of the questionnaire respondents, may not be economically viable, but a permanent arrangement with the nearest centre could be made.

THE COMMITTAL PROCEEDINGS

104. Abolition of committal proceedings in sexual assault cases has sometimes been called for and the question has been considered and rejected by various law reform bodies in Australia. However, other less drastic suggestions have been made to ensure more privacy for the victim at the committal stage. Two of these, that committal proceedings be held in closed court unless the magistrate otherwise orders, and that committal proceedings be heard by a legally qualified magistrate, have been accepted and embodied in legislation[69]. It should be mentioned that section 56 (1) of the *Justices Act* already provides that the room or place in which committal proceedings are heard is not an open court, and justices may exclude any person other than counsel, prosecutors or the defendant.

Hand-up Brief Procedure

105. In order to relieve the victim of the ordeal of giving her evidence and being subjected to cross-examination twice, it has been suggested that a 'hand-up brief' procedure be adopted at the committal stage. The *Justices Act* provides that in all cases statutory declarations may be received as evidence, but

the justices may, if they think just cause exists, or shall, if the opposite party requests, require the witness to attend for further examination or cross-examination[70]. The position in South Australia, for example, is slightly different. A written statement may be tendered, but in sexual cases the complainant is no longer required to appear upon request by the defence unless the prosecution show special reasons for requiring oral examination. Such special leave must be granted by the magistrate[71]. A majority of respondents to the questionnaire favoured the existing position.

106. RECOMMENDATION 17

The Commission recommends no legislative change to the present position which allows the appearance of any witness to be dispensed with at the committal stage of a hearing and written statements accepted instead, if the defendant agrees, unless the magistrate thinks just cause exists requiring the witness to attend. However, the prosecution should endeavour to persuade defence counsel of the accused to consent to statements.

Publicity

107. Sexual offences are crimes which commonly attract sensational publicity causing further humiliation to the victim. It is argued that victims should be granted anonymity, not only to protect them from hurtful publicity, and to prevent distasteful and cheap sensationalism, but to encourage victims to report sexual assault to ensure that such assailants do not escape prosecution. Section 103AB of the *Evidence Act* provides that the court **may**, in rape cases, make an order forbidding the publication of the name of any party or witness and any reference or allusion to such a party or witness which could disclose his or her identity if it is desirable to do so in the interests of administration of justice.

108. The Commission considers that section 103AB, *Evidence Act* is inadequate because although it is within the court's power to prohibit publication, it is frequently not asked to do so, and so the aims of relieving the victim from further distress and encouraging the reporting of rape are frustrated. The criteria for forbidding publication are vague, and satisfactory criteria would be difficult to formulate. The practice of ordering non-publication must inevitably be uneven depending upon the victim's knowledge of her rights, the attitudes of the prosecution and the discretion of the judge or magistrate. Furthermore, by applying only to proceedings in rape cases it is too narrow. Victims in other cases of sexual assault should be protected by legislation. The Commission is particularly concerned about the impact upon a family of the publication of the names and details of incest cases. Clearly, the discretion of the press cannot be relied upon to refrain from publication.

109. RECOMMENDATION 18

The Commission recommends that section 103AB of the *Evidence Act* be amended to prohibit publication of the names of victims of all sexual offences unless the court grants leave to publish[72].

Place of Trial

110. The enhanced difficulties of maintaining anonymity for victims of sexual assault in some communities such as country towns, has given rise to proposals for the right to apply for a change of location for the court hearing. A majority of respondents to the questionnaire thought there should be a judicial discretion to grant such a change.

111. RECOMMENDATION 19

The Commission recommends that a victim of a sexual offence should be entitled to obtain a change of location for the trial at the discretion of the judge.

Time Limits

112. Substantial delays in bringing cases to trial thereby prolonging the anxiety of the victim, has resulted in suggestions for imposing time limits in cases of sexual assault where court proceedings are inevitably a distressing experience. In Victoria, for example, in response to such proposals, trials must be commenced within three months of committal, or within three months of charge in cases of no committal[73]. A majority of respondents to the questionnaire favoured a time limit of three months from charge to committal and three months from committal to trial in cases of sexual assault.

113. The Commission agrees that it is desirable that committal proceedings in sexual assault cases be conducted within three months of charge and the trials within three months of committal, but such time limits should not be made a requirement of the law.

114. RECOMMENDATION 20

The Commission does not recommend the legislative imposition of time limits on the hearing of sexual assault cases.

V. TREATMENT OF VICTIMS

115. Concern is frequently expressed about the unsympathetic and sometimes hostile attitude of police to rape victims and the inadequacy of assistance to the victim to cope with the social and psychological trauma following the rape and its investigation. It is further suggested that the financial compensation availabe is inadequate.

The Police

116. The Commission is aware that the police are criticised because their pre-occupation with the authenticity of complaints sometimes leads to cynical and harsh interrogation of complainants and to rejection of valid complaints. Lengthy delays and prolonged and repeated questioning is another criticism of police treatment of rape victims.

Rape or Sexual Assault Squads

117. Special police squads with social training and expertise in the handling of sexual offences have been established in some of the capital cities, e.g., Adelaide[74]. Such squads are clearly desirable in areas where there is a high concentration of population in a relatively small area. However, the Commission considers that in Tasmania economic constraints and the demography may not make the formation of sexual assault squads a viable proposal. Instead, all police officers should continue to be trained to deal with sexual offences.

Police Education

118. Police have for some years conducted victimology and crisis intervention courses for both cadets and for selected police officers involved in in-service training programs. In the C.I.B. courses, the members of which will be the police officers involved in dealing with complaints of sexual assault victims, particular attention is paid to instruction in procedures to be followed in interviews with sexual assault victims, including ways to alleviate emotional distress. Legal and forensic matters are also covered and use is made of outside speakers to deal with the psychological and sociological aspects of sexual crime, anxiety reduction techniques and crisis intervention.

119. The Commission is in favour of education programs for police in relation to sexual offences. However, it is concerned that such matters as false complaints of rape and victim precipitation be dealt with in such a way as to dispel rather than perpetuate myths surrounding the incidence of fabricated complaints and the responsibility of the victims for the assault[75].

Code of Procedure

120. The Commission considered, but does not recommend the enactment of a mandatory code of procedure to ensure compliance with appropriate standards of conduct and expedition in the receipt and investigation of the complaints of sexual assault victims. It is considered that such matters are better dealt with administratively by education of police officers and by liaison with others such as the Sexual Assault Referral Centres. It may well be considered desirable that the police give publicity to their procedures in handling sexual assault victims.

121. **RECOMMENDATION 21**

The Commission does not recommend the formation of specialist sexual assault squads in Tasmania. Instead, all police officers, and detectives in particular, should continue to be trained to deal sympathetically and efficiently with victims of sexual assault. The Commission does not recommend the legislative enactment of a mandatory code of procedure for the receipt and investigation of complaints in sexual cases.

MEDICAL AND COMMUNITY CARE

Sexual Assault Referral Centres

122. The Sexual Assault Referral Centre in Perth was Australia's first. It provides a 24-hour, 7-days per week service for victims of sexual assault, providing examination, treatment, counselling and follow-up by a team of counsellors and a panel of doctors[76]. In Tasmania there is at present a sexual assault referral service at the North-Western General Hospital, Burnie. This has been operating very successfully since November 1976 — seeing and examining fifty-five victims in a relatively under-populated area of Tasmania[77]. There is clearly a demand for such services in the other main population centres in Tasmania. Sixty-four per cent of the questionnaire respondents supported the setting up of sexual assault referral centres. In Hobart a committee formed in December 1981 is working to organise the setting up of a centre at the Royal Hobart Hospital.

123. **RECOMMENDATION 22**

The Commission supports the establishment of sexual assault referral centres in the major public hospitals, noting that the costs of such centres are negligible, and the advantages in terms of the victim and the preparation of the case if the police are involved, are considerable.

COUNTRY AREAS

124. Sexual Assault referral centres are only a viable proposal in large public hospitals. In country areas other means are needed of ensuring that rape victims receive appropriate treatment and counselling, and that forensic evidence is properly obtained. A majority of respondents to the questionnaire supported special education in counselling and examination of sexual assault victims for government district medical officers, and a substantial majority (72 per cent) favoured the provision of sexual assault kits and guides relating to collection of evidence for country doctors.

125. **RECOMMENDATION 23**

The Commission supports the provision of special education in crisis counselling and the medical examination of sexual assault victims by government district medical officers, the provision of information on sexual assault, and guidance relating to the collection of evidence.

RAPE CRISIS CENTRES

126. The National Rape Conference expressed support for autonomous 'rape crisis centres' as well as hospital based sexual assault centres, to give the victim a choice in the care available. In Tasmania there are no rape crisis centres at present. The questionnaire responses and the Commission's impression of the demand for such centres is that effort and resources would be best concentrated on hospital based sexual assault referral centres, given the limited finances available for such projects, and the size and decentralised nature of the population.

FINANCIAL COMPENSATION

127. The reference given to the Commission specifically requires consideration of the adequacy or otherwise of the financial compensation payable to victims of sexual assault. Under the *Criminal Injuries Compensation Act* 1976, compensation may be awarded where a person suffers 'injury' as a result of criminal conduct. Injury is defined as 'impairment of bodily or mental health' and 'becoming pregnant'. The maximum amount payable is $10 000. There have been fifty-six actions heard under the provisions of this Act, four of which have been in respect of rape or attempted rape[78]. In 1977 the Royal Commission on Human Relationships considered the maximum amount payable to victims of crime should be increased to $20 000. Only 8 per cent of the respondents to the questionnaire considered that the existing compensation was adequate. Of the majority some considered the maximum amount payable should be increased and the others favoured a scale similar to that used in Workers' Compensation legislation.

128. **RECOMMENDATION 24**

The Commission considers that the maximum amount payable to victims under the *Criminal Injuries Compensation Act* 1976 is inadequate. The fact that the Master has, in eleven cases, awarded the maximum indicates that some victims are not being adequately compensated for their injuries. With inflation, the position can only deteriorate[79]. The maximum amount payable should be increased.

VI. SUMMARY OF RECOMMENDATIONS

The Law Reform Commission considers the law relating to the crimes of rape and indecent assault and other sexual offences is archaic and abounds with glaring defects. Substantial changes are necessary.

1. (paragraph 17) Immunity of Husbands

The Commission recommends the immunity of husbands from prosecution for rape be abolished.

2. (paragraph 21) Immunity of Males Under 14

The Commission recommends the abolition of the conclusive presumption in criminal law that males under the age of 14 are incapable of having sexual intercourse.

3. (paragraph 24) Gender Neutrality

The Commission recommends that in keeping with philosophical notions of anti-discrimination and equality, sexual offences should be non-specific in terms of gender.

4. (paragraph 30) Definition of Sexual Intercourse

The Commission recommends the adoption of the definition of 'sexual intercourse' from section 61A of the *Crimes Act* (N.S.W.), as follows:—

"'sexual intercourse" means —

(a) sexual connection occasioned by the penetration of the vagina of any person or anus of any person by —

(i) any part of the body of another person; or

(ii) an object manipulated by another person,

except where the penetration is carried out for proper medical purposes;

(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person;

(c) cunnilingus; or

(d) the continuation of sexual intercourse as defined in paragraph *(a)*, *(b)* or *(c)*.'.

5. (paragraph 35) New structure of Offences

(a) Aggravated Unlawful Sexual Intercourse — is committed when a person has unlawful sexual intercourse (defined as sexual intercourse carried out without the full and free consent of both parties) with another person, and

(i) in so doing or immediately before or after so doing causes grievous bodily harm to that other person.

(ii) by having that intercourse causes grievous mental harm to that other person; or

(iii) immediately before that sexual intercourse and in order to induce that other person to submit to that sexual intercourse or to a sexual act, threatens to injure that person with a dangerous weapon.

(b) Aggravated Unlawful Sexual Act — which is an unlawful sexual act accompanied by the same aggravating factors as aggravated unlawful sexual intercourse.

(c) Unlawful Sexual Intercourse.

(d) Unlawful Sexual Act.

(e) Sexual Intercourse with a Young Person under the age of 16 years — This would apply to a person, male or female, who has sexual intercourse with another person (male or female) who is under the prescribed age.

(f) Sexual Act with a Young Person under the age of 16 years.

6. (paragraphs 40 and 41) Consent

The Commission recommends the legislative enactment of a non-exhaustive list of circumstances which would render an act of sexual intercourse or a sexual act unlawful. Such a provision should provide consent is not full and free if it is brought about —

(a) by the application of physical force on the person or some other person in his presence;

(b) by the threatened use of physical force against the person, in his presence, where the person threatening the use of force is, in the belief of the person submitting to the intercourse or act, in a position to carry out the threat;

(c) by the threatened use of force or extortion against, or public humiliation or disgrace or physical or mental harassment of, the person or another person at some time in the future;

(d) by the administration to the person by the perpetrator, or by some other person to the knowledge of the perpetrator, of intoxicating liquor or a drug or anaesthetic which mentally incapacitates the person;

(e) by the perpetrator, or some other person to the knowledge of the perpetrator, inducing the person submitting to the intercourse or act to believe that the perpetrator is some other person;

(f) by or as a result of the fraudulent misrepresentation of some fact by the perpetrator, or by some other person to the knowledge of the perpetrator;

(g) by the use by the perpetrator of his position of authority over, or professional or other trust in relation to, the person to overbear, the will of the person; or

(h) by the person's physical helplessness, mental incapacity or inability to understand the nature of the act;

(i) by reason of being unlawfully detained.

7. (paragraph 55) Sexual Intercourse and Sexual Act with a Young Person

The Commission recommends that sections 124 and 127 (2) and (3) of the Criminal Code be replaced by the offences categories — sexual intercourse and sexual act with a person under the age of 16 years. It is also recommended that an honest and reasonable, but mistaken, belief that a person is at least 16 years old should be a defence, and consent should be a defence if the accused is no more than 5 years older than the other person. A provision making it clear that the young person is not criminally responsible on the basis of being an accessory to the commission of the offence is also recommended. Consequential amendments to section 125 will also be necessary.

8. (paragraph 61) Unnatural Crimes and Indecent Practices Between Males

The Commission recommends that sections 122 and 123 be repealed on the grounds that males are adequately protected from homosexual assault and young males from sexual exploitation by the proposed categories of sexual assault, homsexual acts in public are prosecuted by the crime of indecency and the Commission considers that homosexual acts by consenting male adults in private are outside the proper scope of the criminal law.

Bestiality will remain the crime of indecency, or the offence of cruelty to animals, if cruelty is involved.

9. (paragraph 64) Defilement of Insane Persons and Defectives

The Commission recommends the repeal of section 126 on the grounds that such persons are adequately protected by the proposed offence of unlawful sexual intercourse, by virtue of paragraph *(h)* in the list of non-consensual situations.

10. (paragraph 72) Repeal of Certain Sexual Offences

The Commission recommends the repeal of the following sections of the Criminal Code:—

Section 128 *(a)*	on the grounds that it is unduly moralistic and in any event unnecessary;
Section 129	on the ground that it proscribes conduct which will be adequately covered by 'unlawful sexual intercourse' because of the circumstances in which consent is not full and free;
Section 130 Section 188	on the ground that they are unnecessary;
Section 132 Section 428 Section 187	on the ground that these provisions are inappropriate in a modern statute.

11. (paragraph 73) Certain Other Offences to be Sex Neutral

The Commission recommends that the following sections be made sex neutral in their application:—

Section 133	incest;
Section 186	forcible abduction and abduction;
Section 189	abduction of a young girl.

12. (paragraph 85) Evidence of Victim's Prior Sexual History

The Commission recommends that section 102A of the *Evidence Act* be replaced by a provision prohibiting all evidence including unsworn statements disclosing or implying that the complainant has or may have had sexual experience or lack of experience or has or may have taken part in any prior sexual activity with the exception of evidence of the victim's past sexual conduct with the defendant and evidence of specific instances of the victim's past sexual activity to explain the source of semen, pregnancy or disease, where it is relevant to a fact in issue and its inflamatory or prejudicial nature does not outweigh its probative value.

13. (paragraph 91) Corroboration

The Commission recommends that for the six proposed categories of sexual offences (see paragraph 33) and for other sexual offences the rules of law or practice that require the corroboration of evidence as a basis for conviction, or require that the jury be warned of the danger of convicting on the basis of uncorroborated evidence, be abrogated. There should be an exception in the case of child witnesses. Section 128 (2) of the *Evidence Act* which requires corroboration of evidence as a basis for conviction in the case of the unsworn evidence of a child, should be retained, and the common law rule of practice requiring the dangerous to convict warning in the case of the sworn evidence of a child should be expressly retained. To implement this recommendation certain amendments would be required including the repeal of section 136 of the Code, which deals with corroboration in relation to crimes of morality. The effect of this recommendation will be to leave it to the discretion of the judge to assess the need for a warning in the traditional terms depending upon the weight of the evidence.

14. (paragraph 96) Complaint

The Law Reform Commission recommends retention of the recent complaint rule and enactment of a provision similar in terms to section 405B of the *Crimes Act* 1900 (N.S.W.) to the effect that the trial judge be required to warn the jury that delay or failure to complain does not necessarily imply falsity.

15. (paragraph 100) Unsworn Statements

The Commission recommends that the rule of law which allows an accused person to make an unsworn statement from the dock be retained with the following proviso:— that a provision be enacted which provides that a person may not in such a statement make reference to a matter which would not be admissable if given on oath, and that if a person has made reference in such a statement to a matter which would not be admissible if given on oath, the judge shall tell the jury to disregard the matter.

16. (paragraph 103) Composition of Juries

The Commission does not recommend that women form a specified proportion of juries in rape cases, but prefers the present position which renders men and women automatically liable to serve on juries giving women the right to elect not to be so liable. However, improvements to court facilities and administrative arrangements would be desirable to encourage all members of the public to serve. Provision of special child care services within the court complex, although ideal and supported by at least 57 per cent of the questionnaire respondents, may not be economically viable, but a permanent arrangement with the nearest centre could be made.

17. (paragraph 106) Committal Proceedings

The Commission recommends no legislative change to the present position which allows the appearance of any witness to be dispensed with at the committal stage of a hearing and written statements accepted instead, if the defendant agrees, unless the magistrate thinks just cause exists requiring the witness to attend. However, the prosecution should endeavour to persuade defence counsel of the accused to consent to statements.

18. (paragraph 109) Publicity

The Commission recommends that section 103AB of the *Evidence Act* be amended to prohibit publication of the names of victims of all sexual offences unless the court grants leave to publish.

19. (paragraph 111) Place of Trial

The Commission recommends that a victim of a sexual offence should be entitled to obtain a change of location for the trial at the discretion of the judge.

20. (paragraph 114) Time Limits

The Commission does not recommend the legislative imposition of time limits on the hearing of sexual assault cases.

21. (paragraph 121) Police

The Commission does not recommend the formation of specialist sexual assault squads in Tasmania. Instead, all police officers, and detectives in particular, should continue to be trained to deal sympathetically and efficiently with victims of sexual assault. The Commission does not recommend the legislative enactment of a mandatory code of procedure for the receipt and investigation of complaints in sexual cases.

22. (paragraph 123) Sexual Assault Referral Centres

The Commission supports the establishment of sexual assault referral centres in the major public hospitals, noting that the costs of such centres are negligible, and the advantages in terms of the victim and the preparation of the case if the police are involved, are considerable.

23. (paragraph 125) Medical Treatment for Victims in Country Areas

The Commission supports the provision of special education in crisis counselling and the medical examination of sexual assault victims by government district medical officers, the provision of information on sexual assault, and guidance relating to the collection of evidence.

24. (paragraph 128) Financial Compensation

The Commission recommends that the maximum amount payable to victims under the *Criminal Injuries Compensation Act* 1976 be substantially increased.

FOOTNOTES

1. J. Scutt (ed.) *Rape Law Reform.*
2. Although Crawford J. has occasionally ruled that vulval penetration will suffice.
3. An earlier report recommended incorporating the decision in *Morgan* in the Criminal Code.
4. *O'Brien* [1974] 3 All E.R. 633; *Steele* (1977) 65 Cr. App. R. 72.
5. Section 73 *Criminal Law Consolidation Act* 1935–1976 (South Australia).
6. *Crimes (Sexual Assault) Amendment Act* 1981.
7. Certainly for assault and perhaps even abduction if he detains her with intent to have sexual intercourse.
8. G. D. Woods, Q.C., *Sexual Assault Law Reforms in New South Wales*, (Dept. of the Attorney-General and of Justice, 1981).
9. C. Treloar, 'The Politics of Rape — A Politician's Perspective' in J. Scutt (ed.) *Rape Law Reform* page 191, 194.
10. The majority consider the fact that protection is given by the Family Court should not disentitle a wife to the protection of the law of rape. Moreover recourse to the Family Court may involve high costs, substantial delays and the possibility of contempt of the court order by the husband.
11. Section 18 (3) Criminal Code.
12. Working Paper on Sexual Offences 1980, paragraph 27.
13. Section 18 (2) Criminal Code.
14. Section 18 (1) Criminal Code.
15. Of course, even without the proviso there would be no question of such bona fide investigations entailing criminal responsibility, the requirement of unlawfulness would be absent.
16. The relevant part of the Draft Criminal Code referred to is reproduced in Appendix B. This Draft has since been superseded.
17. E.g. R. D. Francis and I. R. Coyle, 'The Sentencing Process: A New Empirical Approach' (1978) 35 *Proceedings of the Institute of Criminology* 13.
18. This matter has been considered by the Royal Commission on Human Relationships, Volume 5, pages 222–226.
19. Compare the anomalous position in England where sexual intercourse between a boy under 16 and a woman is not an offence but lesser sexual contact is! See, *Faulkner v. Talbot* [1981] 3 All. E.R. 468, [1981] 1 WLR 1528 and [1981] Crim L.R. 705, where a woman put her hand on the penis of a boy aged 14, who had a rupture, pulled him on top of her and had intercourse with him. The woman was convicted of indecent assault.
20. Royal Commission on Human Relationships, Volume 5, pages 209–210.
21. The number of teenage confinements and abortions show a level of sexual activity among girls under 16, and a recent self-report study indicates that 40 per cent of a sample of 14 and 15 year old high school students admitted they engaged in sexual intercourse, see C. A. Warner, 'A Study of the Self-Reported Crime of a group of male and female High School Students', *A.N.Z.J. Crim.* (forthcoming).
22. *Preston* [1962] Tas. S.R. 141, distinguishing *Tyrrell* [1894] 1 A.C. 710.
23. See Morris and Hawkins, *The Honest Politician's Guide to Crime Control*, page 19.
24. *Criminal Law (Sexual Offences) Amendment Act* 1975 (S.A.); *Law Reform (Sexual Behaviour) Ordinance* 1976 (A.C.T.).
25. Royal Commission on Human Relationships, Volume 5, page 107.
26. *Special Report on Rape and Sexual Offences*, page 25.
27. Op.cit. 221.
28. See paragraph 40 *(h)*.
29. *Crimes Act* 1900 (N.S.W.) sections 91A, 91B; *Criminal Law Consolidation Act* 1935–1975 (S.A.) sections 62, 63 and 64.
30. *Crimes Act* 1900 (N.S.W.) section 91B.
31. Supra paragraph 40.
32. Archbold, *Criminal Pleading Evidence and Practice* (38th ed.) paragraph 2885.
33. *Cross on Evidence* (2nd Aust. ed.) paragraph 10.56.
34. Archbold, *op.cit.*
35. Section 37A, *Evidence Act* (Victoria) 1958; Section 36B *Evidence Act* (W.A.) 1906–1976; section 34 (i) *Evidence Act* 1936 (S.A.); section 409B *Crimes Act* 1900 (N.S.W.).
36. E.g. section 103, *Evidence Act* empowers the court to forbid any questions which it regards as indecent, scandalous, offensive or intended to insult or annoy.
37. L. Newby, 'Rape Victims in Court — the Western Australian Example', in Scutt (ed.) *Rape Law Reform*, page 115; R. O'Grady and B. Powell, 'Rape Victims in Court — the South Australian Example', in J. Scutt (ed.); *Rape Law Reform*, page 127; P. McNamara, 'Cross-Examination of the Complainant in a Trial for Rape' (1981) 5 Criminal Law Journal 25; Dr G. D. Woods, Q.C., *op.cit.*, (page 31).
38. 'Hospital Care of Victims of Sexual Assault' in J. Scutt (ed.); *Rape Law Reform*, page 171.
39. P. Wilson, *The Other Side of Rape*, page 58.
40. J. Braithwaite and D. Biles, 'Crime Victims and the Police' (1979) 14 *Australian Psychologist*, page 345
41. Women Against Rape, Phone-in on Rape, Incest and Sexual Assault, 6 and 7 November 1981.
42. V. B. Nordby, 'Reforming Rape Laws — The Michigan Experience' in J. Scutt (ed.) *Rape Law Reform* pages 26–27
43. H. Kalven and H. Zeisel, *The American Jury* (1966).
44. S. Felman-Summers and Lidner, 'Perceptions of Victims and Defendants in Criminal Assault Cases' (1976) 3 *Criminal Justice and Behaviour*, page 135.

45. H. Sculthorpe, Unpublished Criminology Paper, 1981.
46. The great majority of respondents to the questionnaire were not in favour of preserving the existing position, but there was division as to which approach should be adopted in its place.
47. Section 136 Criminal Code.
48. E.g. *Hale's Pleas of the Crown* Volume 1, page 634.
49. *Op.cit.* paragraph 1430.
50. *Crimes Act*, sections 62 (3), 51 (2), 54 (2), 55 (2), 59 (2).
51. *Crimes Act*, section 405C.
52. Law Reform Commission of Tasmania, Report No. 21, 1978.
53. G. D. Woods, Q.C., *op.cit.* page 28.
54. See Law Reform Commission of Tasmania, Report No. 21, (1978), page 10.
55. *Id.* 15.
56. *Ibid.*
57. L. Henry *op.cit.* page 170.
58. C. A. Warner 'False Complaints of Rape: An Obstacle to Reform' (1981) 6 *Legal Services Bulletin*, 137.
59. Royal Commission on Human Relationships, *op.cit.* paragraph 53.
60. E.g. see Archbold, paragraph 2884.
61. *Kilby v. The Queen* (1973) 129 C.L.R. 460.
62. *Op.cit.* page 26.
63. Section 405B *Crimes Act*.
64. *Recommendations for Revision of the Criminal Code* (No. 1).
65. See *Cross on Evidence* (2nd Australian ed.) page 180.
66. *Jury Act 1899* section 4, as amended by the *Jury Act 1974*.
67. Law Reform Commission Report No. 3, 1976, paragraph 13.
68. Criminal Law and Penal Methods Reform Committee, *Special Report on Rape and Other Sexual Offences*, 1976.
69. Section 185 (2) *Criminal Code* added by *Criminal Code Act (No. 2) 1976*.
70. Section 57 (2) *Justices Act*.
71. Section 106 *Justices Act* 1921 (S.A.).
72. Eighty-one per cent of the respondents to the questionnaire supported this change. Similar provisions exist in some other states, e.g., Victoria, *Judicial Proceedings Reports Act*, 1958, section 4.
73. Section 359A *Crimes Act 1958*.
74. Forty-four per cent of the questionnaire respondents favoured their formation in Tasmania.
75. C. A. Warner, *op.cit.*
76. For a description of its operation, see L. Henry, *op.cit.*
77. Written submission to the Law Reform Commission of Dr Mary Kille of the Sexual Assault Referral Service, Burnie.
78. Statistics for the period ending 22 February 1982.
79. The value of $10 000 in 1976 has depreciated to $5 640 in 1982 (on the basis of an annual inflation rate of 10 per cent).

APPENDIX A

QUESTIONNAIRE

[The questionnaires returned to the Law Reform Commission were analysed and the number favouring each of the replies is indicated].

1. *Immunity of Husbands* (paragraphs 8–17)

Do you consider the exemption of the criminal liability of husbands for rape should be—

(a) abolished 26
(b) retained 1
(c) abolished where the parties are 'living apart' 12
(d) abolished in the following cases:— actual bodily harm, or threats of bodily harm, acts of gross indecency, or threats of the commission of a criminal act against any person 13

2. *Immunity of males under 14 years* (paragraphs 18–21)

Do you consider the irrebuttable presumption that males under 14 years of age are incapable of achieving sexual penetration should be abolished?

(a) Yes 42
(b) No 3

3. *Gender neutrality* (paragraphs 22–24)

Do you consider sexual offences should be sex neutral?

(a) Yes 38
(b) No 5

4. *Widening the definition of sexual intercourse* (paragraphs 25–28)

Which of the following should the definition of sexual intercourse include?—

(a) vaginal penetration by the penis 47
(b) anal penetration by the penis 43
(c) oral penetration by the penis 37
(d) vaginal penetration by means of inanimate objects 29
(e) anal penetration by means of inanimate objects 26
(f) vaginal penetration by other parts of the body 27
(g) anal penetration by other parts of the body 26

5. *Categories of Sexual Assault* (paragraphs 29–41)

Should existing non-consensual sexual offences be replaced by a ladder of degrees of unlawful sexual assault graded according to circumstances of aggravation and attracting different maximum penalties?

(a) Yes 37
(b) No 9

6. *Offences against children* (paragraphs 31–32)

Should sexual offences against children be included within the framework of the categories of sexual assault (as in the Michigan legislation) or dealt with separately?

(a) included 20
(b) dealt with separately 21

7. *Consent* (paragraphs 42–52)

Do you favour the legislative enactment of a list of situations in which absence of consent or unlawfulness is presumed?

(a) Yes 26
(b) No 16

8. *Non-consensual situations* (paragraphs 42–52)

Upon proof of which of the following circumstances, if any, should absence of consent or unlawfulness be presumed?

(a) none 16
(b) infliction of grievous bodily harm 29
(c) infliction of bodily harm on the victim or another 28

APPENDIX A — *continued*

(d) threats of bodily harm with an offensive weapon 30
(e) overcoming the victim by force or violence 30
(f) coercion to submit by threats of force or violence to the victim 28
(g) coercion to submit by threats of violence to a third person 30
(h) coercion to submit by threats of future punishment (including physical and mental punishment, extortion or public humiliation or disgrace) to the victim or another 28
(i) mentally incapacitating the victim by administering drugs 30
(j) impersonation 29
(k) fraud as to the character of the act 28
(l) exploitation of the victim by a person in a position of trust or authority 27
(m) mental deficiency of the victim 29
(n) submission while being unlawfully detained 30

9. *Amalgamation of rape and indecent assault* (paragraph 55)

Rather than the existing law or the graded sexual offence model, do you favour amalgamating rape and indecent assault into one offence of indecent assault?

(a) Yes 7
(b) No 37

10. *Prior Sexual History* (paragraphs 58–70)

Indicate which of the following options you favour for dealing with the issue of admission of evidence of the prior sexual history of the complainant:—

(a) the exclusionary approach; there are two models—

(i) to prohibit all evidence of prior sexual history with the exception of evidence of the victim's past sexual conduct with the defendant and evidence of specific instances of the victim's past sexual activity to explain the source of semen, pregnancy or disease, where it is relevant to a fact in issue and its inflammatory or prejudicial nature does not outweigh its probative value 13

(ii)—

(A) to prohibit cross-examination of the victim about sexual behaviour with persons other than the accused, except after application by the accused in the absence of the jury where such evidence is part of a defence by the accused that he did not have sexual intercourse with the victim and that the presence of semen, pregnancy, disease or injury was caused by some other person, or such evidence is relevant to rebut a claim that the victim was a virgin or that around the relevant time she had not had intercourse with other persons 11

(B) to prohibit cross-examination of the victim about previous sexual behaviour with the accused, except where it relates to an ongoing or recent relationship between the accused and the victim 9

(b) The procedural approach, which involves the abolition of the special rules applicable to rape and indecent assault and application for leave to admit evidence of sexual history on the grounds of relevance according to the general rules of admissibility of relevant evidence 7

(c) The discretionary approach, which involves closing the loopholes of the existing statutory amendments to the common law rules (i.e. redrafting S. 102A of the *Evidence Act*), and a requirement that application for leave be heard and determined in the absence of the jury 7

(d) The existing discretionary approach 2

11. *Corroboration* (paragraphs 71–83)

Do you favour abolition of the rules of law and practice requiring corroboration or mandatory warnings of the need for corroboration in cases of sexual offences?

(a) Yes 31
(b) No 12

APPENDIX A — *continued*

12. *Complaint* (paragraphs 84–89)

Do you consider the rule of evidence which allows admission of the evidence that a victim complained or did not complain shortly after the alleged offence should be—

(a) abolished 25
(b) retained 4
(c) retained with the proviso the trial judge be required to warn the jury that delay or failure to complain does not necessarily imply falsity 18

13. *Unsworn statements* (paragraphs 90–98)

Do you consider the rule of law which allows the accused to make an unsworn statement from the dock either verbally or in writing should be abolished?

(a) Yes 26
(b) No 15

14. *Composition of Juries* (paragraphs 99–106)

Which of the following alternatives do you favour?:—

(a) amendments to ensure that at least half of the juries in rape trials consist of women; or 1
(b) amendments to ensure that women are equally liable for jury service as men; and/or 34
(c) improvements in court facilities (e.g. provision of child care) and administrative efficiency to encourage all members of the public to serve; or 27
(d) the present position 6

15. *Committal proceedings* (paragraphs 107–111)

Do you consider the appearance of a victim of a crime should be dispensed with at the committal stage of the hearing and written statements accepted instead, unless, in the magistrate's opinion, there are special reasons requiring her appearance?

(a) in all cases 12
(b) in sexual offences 13
(c) in all cases only if the defendant agrees (the present position) 21

16. *Publicity* (paragraphs 112–119)

Do you consider the existing law which provides that a court may prohibit publication of the name of a party or witness in cases of rape should be amended to forbid publication of the names of victims of all sexual offences unless the court grants leave to publish?

(a) Yes 42
(b) No 4

17. *Place of Trial* (paragraph 120)

Do you consider a victim of a sexual offence should be entitled to obtain a change of location for a court hearing?

(a) in country towns 11
(b) in all areas 16
(c) never 2
(d) as of right or at the discretion of a judge 25

18. *Time Limits* (paragraphs 121–123)

Should there be time limits of three months from charge to committal and from committal to trial in cases of rape and sexual assault?

(a) Yes 29
(b) No 13

19. *Rape Squads* (paragraphs 126–128)

Do you favour the formation of special squads of police men and women to deal with sexual offences in Tasmania?

(a) Yes 23
(b) No 19

APPENDIX A — *continued*

20. *Police Education* (paragraphs 129–131)

Do you favour improvements in the education of police in relation to sexual offences, e.g. more extensive crisis intervention programs?

(a) Yes 42
(b) No 2

21. *Police Procedures* (paragraphs 133–135)

Do you favour the enactment of a legislative code of procedure to ensure compliance with appropriate standards of conduct for receipt and investigation of complaints of sexual assault victims?

(a) Yes 31
(b) No 11

22. *Treatment of Victims* (paragraphs 136–149)

Which of the following measures for the treatment and counselling of rape victims of sexual assault do you support?

(a) Sexual Assault Referral Centres in the major public hospitals 30
(b) panels of doctors rostered to attend sexual assault victims in the major public hospitals 29
(c) provision of special education in crisis counselling and medical examination of sexual assault victims for government medical officers 30
(d) provision of sex evidence kits and guides relating to collection of evidence for country doctors 34
(e) Rape Crisis Centres 18

23. *Financial Compensation* (paragraphs 150–152)

Do you consider the existing financial compensation available to victims of crimes including sexual assault is—

(a) adequate 4
(b) inadequate and the maximum amount payable should be increased 11
(c) inadequate and should be replaced by a scale similar to that used in Workers' Compensation schemes 27