



Introduction

This eBook provides an overview of the offence of sexual assault in Australia. It is intended to help sexual assault victims gain a basic understanding of the crime and how the police and courts respond to sexual assaults.

This book contains general information. It is not a comprehensive guide to the law. Each state and territory has its own set of laws that define various offences coming under the umbrella of sexual assault. The laws, penalties, and procedures differ from state to state. A lawyer can advise you of the specific laws that apply where you live.

A lawyer can also give you legal advice if you need it. This book does not provide legal advice and is not a substitute for consultation with a lawyer. A lawyer can consider the specific facts of your unique situation and can explain how the law applies in your case.

What is sexual assault?

Sexual assault is a general term that covers several specific offences. The names of those offences differ from state to state, but the conduct that is prohibited by law tends to be similar in every state and territory.

As a general rule, a sexual assault involves sexual contact with an individual without that person's consent. Young children are generally regarded as incapable of giving consent, so the sexual assault of a child does not require proof of lack of consent.

Sexual assaults can be committed by a member of either gender against a person of the same or opposite gender.

Crimes commonly covered by the umbrella of sexual assault include:

- **Rape**, which involves the penetration of the vagina or anus by another person or object without the consent of the person who is penetrated. Some jurisdictions in Australia have replaced the term "rape" with generic terms like "sexual assault" or "sexual intercourse without consent."

- **Indecent assault**, which generally means intentional contact with the intimate body parts of another person without that person’s consent. “Intimate body parts” are usually defined as genitals, buttocks, and female breasts.
- **Child sexual assault** refers to rape or indecent assault committed against a child who is younger than a specified age. The law of each state and territory specifies that age. Those laws also provide that children who are younger than a specified age cannot consent to sexual intercourse or contact. The age of consent for most sexual assault offences is 16 or 17, depending on the state or territory. In some places, the law provides that consent is a defence if the child has reached a specified age and the accused is not older than the child by more than a specified number of years.
- Incest generally refers to sexual intercourse between close family members, other than a husband and wife. Consent is not a defence to the crime of incest.

A person can generally commit the offences described above either through his or her own conduct or by compelling another person to engage in the prohibited conduct.

When consent is a defence to the crime, the prosecution must prove that:

- the alleged victim did not consent and
- the accused knew the alleged victim did not consent, or
- the accused recklessly disregarded the possibility that the alleged victim was not consenting.

In some states, the accused’s mistaken belief that the alleged victim consented is only a defence if that belief was reasonable.

Reporting the Offence to the Police

If you believe you have been the victim of a sexual assault, you have the option of reporting the offence to the police. You have no obligation to report the crime. Some victims contact the police because they want to make sure the offender does not harm them again or to prevent the offender from harming someone else. If the offender is someone you know, reporting the crime is often the best way to protect yourself from another assault in the future.

If you are not ready to talk about the crime, you can wait and report it later. You should understand, however, that delay may make it more difficult for the police to find physical evidence or witnesses. If the offender is prosecuted, the defence might also ask the jury to regard your delay in reporting as evidence that you fabricated the incident.

If you decide to report the offence soon after it occurred, it is best not to wash, to change your clothes, or to eat or drink. The police may want to take you to a hospital for a sexual assault examination. That examination will be more likely to reveal evidence if have not taken steps to remove that evidence from your clothing or body.

You always have the option of withdrawing your complaint with the police if you do not feel capable to testifying or otherwise acting as a witness. Whether or not you report the offence, it is wise to obtain medical care if you were sexually assaulted, including blood tests to determine whether you have been infected with a sexually communicable disease.

If your child was the victim, you should report the crime to the police. Failure to do so may be regarded as a failure to protect your child from future assaults. That can have consequences if officials question your fitness as a parent.

The police investigation

The police will begin their investigation by taking your statement. In most places, your report will be taken by a detective who is trained to respond to reports of sexual assault with sensitivity. You may also be provided with a support person who will help you feel comfortable talking about the crime. You can choose to bring your own support person.

Your statement may be transcribed into written form. Since the statement may become evidence at a trial, you need to be certain that it is accurate. Read it carefully. Do not be afraid to make additions, deletions, or corrections before you sign it.

If the assault took place recently, the police may want you to go to a doctor or hospital for an examination. Sexual assault examinations are normally performed by specially trained doctors and nurses. The examination will look for evidence of semen in or on your body and for injuries that may have occurred during the assault, including injuries to your genitals and scratches or bruises caused by physical contact. The examiner may also look for hairs, fingernails, or other physical evidence that was transferred to your body by the person who assaulted you. You are not required to submit to an examination but it is best to do so if you want the person who assaulted you to be prosecuted.

The next step in the investigation is usually an interview with the person who assaulted you. If you are afraid that you will be threatened by that person after the police contact him, you should advise the police of your concern and ask for protection.

Depending on the strength of the evidence, the police may or may not arrest the person against whom you made the complaint. If an arrest is made, the Office of the Director of Public Prosecutions will decide whether to lay charges.

The court process

If the accused is charged with a crime, whether you will need to give evidence in court depends upon whether the accused decides to plead guilty. If the accused admits guilt, there will be no trial and you will not need to testify. If the accused exercises the right to a trial, you will most likely need to appear in court.

Describe the arrangements for the payment of the cost of the child's education.

The court that hears the case and whether the accused is entitled to a jury trial will depend upon the severity of the charge. There may be more than one court hearing although you will probably not be required to attend all of them.

At one of the early hearings, the court will decide whether to grant bail to the accused. If the accused is permitted bail, a condition of release will likely require the accused to initiate no contact with you. A breach of that condition could result in the accused returning to jail for the duration of the case.

If the accused pleads guilty or is found guilty after a trial, the accused will be sentenced. That sentence will be influenced by the severity of the crime, by the accused's criminal record (if any), and by the accused's character.

When it decides upon a sentence, the court will consider a "victim impact statement" that explains how the crime affected your life. You can prepare that statement by yourself or you can seek the assistance of a counsellor. Some jurisdictions have services that assist victims with the court process, including the preparation of victim impact statements.

If the offender is sentenced to prison, you can have your name placed on a victim's register. If you do that, you will be notified of the location where the offender is serving the sentence and of the date on which the offender will be released.