



Barwon CASA
Counselling
Services

What Does the Law Say about Sexual Assault? 2014

In 1991, The Victorian Government passed the Crimes (Rape) Act 1991. The purpose of this Act was to reform the law relating to rape and indecent assault in order to clarify the concept of consent, reaffirm the fundamental right of a person not to engage in sexual activity and to give greater protection to complaints in court proceedings.

The physical acts covered by the offence "rape", are now non-gendered and include not only penetration of a vagina by a penis, but the insertion of a body part or an object into another person's vagina, anus or mouth. Penetration can be to any extent and the definition of a vagina includes the external genitalia, as well as a surgically constructed vagina. It is also irrelevant, for the purposes of sexual penetration, whether or not there is an emission of semen.

The law states that "consent" means free agreement. A person is not regarded as having freely agreed to a sexual act, if they agreed to the act because the other person threatened to harm them or someone else, or detained them against their will until they agreed. It is rape if a person has sexual intercourse with another person who cannot freely agree because they are asleep, unconscious or greatly affected by alcohol or another drug.

It is rape when a person has sexual intercourse with another person without their consent, or knowing that the other person has not consented, or might not be consenting. It is rape when a person continues to have sexual intercourse with another person who has initially consented, but has changed their mind and requests the other person to stop and that person does not stop.

People aged 10 years or older can be charged with rape.

Various laws prohibit sexual acts with, or in the presence of children who cannot legally consent to sexual acts involving adults.

Sexual acts other than those involving sexual penetration, including touching a person's body, buttocks, penis or breasts is indecent assault.

Areas Where the Judge Must Direct the Jury:

The Act states that a Judge presiding over a rape case must direct the jury in the following areas: The fact that a person did not say or do anything to indicate free agreement to a sexual act, is usually enough to show that the act took place without the person's free agreement.

A person is not to be regarded as having freely agreed to a sexual act just because they did not protest or physically resist, or they did not sustain physical injury, or on that, or an earlier occasion, they freely agreed to engage in another sexual act with that person, or a sexual act with another person.

In considering the accused person's alleged belief that the complainant (victim) was consenting to the sexual act, it must take into account whether that belief was reasonable in all the relevant circumstances.

Legal and Court Processes:

Under the law, a person accused of a crime is innocent until proven guilty.

Barwon CASA

Barwon: (03) 5222 4310 Wimmera: (03) 5381 1211

Sexual Assault Crisis Line 24x7: 1800 806 292

Barwon CASA has reproduced the information contained within this fact sheet with the permission of South East CASA. 2013

When the police Sexual Assault & Child Offences Investigation Team (SOCIT) charge a person with rape, a legal process begins in which the accused person is tried for the crime of rape, found guilty or not guilty, and convicted and sentenced if found guilty. The complainant will be involved in the court process. The complainant is considered a witness to the crime because rape is legally defined as a crime against the community, even though the complainant is the one who has suffered from the crime. Because of this definition the community will prosecute through the Office of Public Prosecutions (OPP) and the complainant will not need to engage legal representation. If an accused person pleads guilty to the charge of rape, the complainant may not be required to attend court. If the accused person pleads not guilty the complainant will be required to attend court.

The Charges:

SOCIT will charge the accused person with rape or attempted rape in one of the following categories:

- 1. Rape - penalty up to 25 years in prison**
- 2. Attempted rape - penalty up to 15 years in prison**
- 3. Sexual penetration of a young person - penalty up to 20 years in prison, depending on the age of the victim**
- 4. Indecent assault - penalty up to 10 years in prison**
- 5. Abduction and threat to life may be added to the above charges.**

Barwon CASA

Barwon: (03) 5222 4310 Wimmera: (03) 5381 1211

Sexual Assault Crisis Line 24x7: 1800 806 292

Barwon CASA has reproduced the information contained within this fact sheet with the permission of South East CASA. 2013