



Hobart Women's Health Centre

**Response to the
TASMANIA LAW REFORM INSTITUTE**

**SEXUAL OFFENCES AGAINST YOUNG
PEOPLE**

ISSUES PAPER NO17

MAY 2012

Hobart Women's Health Centre (HWHC) welcomes the opportunity to comment on this issues paper. Given that sexual assault can lead to long term health issues we feel it is imperative to make changes to the law to ensure a robust protection of young people.

Young people need and have the right to experience a safe and caring environment in which to explore their sexual development and identity at an appropriate age and in order to grow into confident, healthy adults. All too often sexual offences and abuse violate children's right to a positive future.

We will respond to questions one, two and nine and offer evidence of the damage of sexual assault upon victims.

Hobart Women's Health Centre

HWHC has been operating since 1987. As well as delivering a range of health services, HWHC has a systems advocacy role. The centre works from a social model of health which recognises that:

- health is determined by a broad range of social, environmental, economic and biological factors
- differences in health status and health objectives are linked to gender, age, socio-economic status, ethnicity, disability, location and environment, racism, sex-role stereotyping, ageism, sexuality, sexual orientation and gender identity.
- alongside high quality illness treatment services, it is also necessary to address health promotion, disease prevention, equity of access to appropriate and affordable services and strengthening the primary health care system.
- information, consultation, advocacy and community development are important elements of the health process.

Question 1

- a. Should there be a no defence age for sexual intercourse with a young person, aggravated sexual assault, indecent assault and indecent act with a young person?
- b. If so, what should the defence age be?

- a) HWHC believes there should be a **no defence age** for sexual intercourse with a young person, aggravated sexual assault, indecent assault and indecent act with a young person.

Sexual Intercourse:

HWHC believes that there are many negative ramifications of early sexual intercourse including unplanned pregnancy and risk of sexually transmissible infections as many young women in particular are not confident to negotiate safe sex. There is also the possibility of damage to the vagina, urethra or anus. It opens them to manipulation and exploitation which increases the risk of mental health issues in their future (National Women's Health Policy, 2010. p.52-53). It can diminish their capacity to negotiate respectful, long-term intimate relationships.

The issues of sexual offence discussed in this paper can have serious and life changing implications for young people that they need not experience. An unplanned pregnancy can be a significant stressor for a young woman regardless of the choice she makes in relation to that pregnancy. Financial pressures associated with an unplanned pregnancy may set a young woman and her family up for a life of poverty.

Manipulation and exploitation is especially concerning for young people who are vulnerable, for example, young people who are homeless and/or who have no income. Anecdotal reports from youth workers suggest that many young people are sexually manipulated because of their homelessness status and they trade sexual favours for food and accommodation. We therefore believe the notion of consent by a minor is dubious because of their vulnerability. The case that instigated the Tasmanian Law Reform Institute's Issues paper highlights how young people are vulnerable to exploitation by adults who have their own agendas.

Research suggests that young women who have been exploited are at risk of ending up in domestic violence relationships where there is ongoing emotional control and financial abuse and social isolation (National Women's Health Policy, 2010. p.52-53) This results in young women being silenced, and they do not disclose their sexual behaviour or proceed with charges.

Aggravated sexual assault, indecent assault and indecent act with a young person:

Any sexual assault is reprehensible and even more so when that sexual assault is perpetrated on a child or young person who is under the age of legal consent. The damage to victims is both short-term and long-term. There are also broader family and community impacts.

Physical damage to a victim of sexual assault includes:

- Unwanted pregnancy and abortion (Wasco, 2003. Cited in Boyd, 2011, p.4)
- Increased risk of contracting sexually transmissible infections
- Damage to urethra, vagina and anus
- Gastrointestinal and sexual and reproductive health issues (Astbury, 2006)
- Pain syndrome and eating disorders, especially bulimia nervosa (Astbury, 2006)
- Pelvic pain
- Irritable bowel syndrome (Drossman et al., 1995, and Walker et al., 1993, both cited in Boyd, 2011, p.5)
- Chronic disease such as diabetes and arthritis (Golding, 1999 cited in Boyd, 2011, p.5)
- Headaches (Golding, 1999 cited in Boyd, 2011, p.5)
- Gynaecological symptoms, for example dysmenorrhea, menorrhagia, problems associated with sex (Golding, Wilsnack & Learmen, 1998 cited in Boyd 2001, p.5)

Psychological and emotional impacts include:

(Short-term)

- Anxiety and intense fear which can peak around three weeks after an assault and can last for more than a year for a significant number of survivors. (Peterson, Olasov & Foa, 1987 cited in Boyd, 2011, p.2)
- Ongoing fears can be related to reminders of the attack such as medical examinations, being in social situations with men, being in a location that reminds the person of the assault and legal proceedings (Boyd, 2011, p.2)
- Fear of future attacks (Crome & McCabe, 1995 cited in Boyd, 2011, p.2)
- Victims can experience the world as an unsafe place and this can restrict social participation (Brownmiller, 1975 cited in Boyd, 2011, p.6)
- Insidious trauma (Wasco, 2003 cited in Boyd, 2011, p.2)

(Medium- Long Term)

- Feelings of low self esteem and other adverse social and psychological outcomes such as anxiety disorders, increased depression, substance abuse and anti social behaviour (Fergus & Keel 2005, p.1).
- Self blame and guilt
- Suicidal ideation is more common among survivors of sexual assault than in the general population – younger victims of sexual assault can be particularly at risk of attempting suicide following rape (Pettrak, 2002 cited in Boyd 2011, p.3)
- Post Traumatic Stress Disorder affects approximately 16.5% of survivors an average of 17 years post assault. (Pettrak, 2002 cited in Boyd 2011, p.3)
- Difficulty to establish and/or maintain trust and communication and sexual intimacy in intimate relationships (Crome and McCabe, 1995 cited in Boyd, 2011, p.5)
- Financial impacts such as ongoing counselling costs, loss of future earning capacity

Social and Community Impacts

- Women feel vulnerable in public spaces
 - Work life disruption due to avoidance of social situations and feelings of low self worth and self doubt (Morrison, Quadara, & Boyd, 2007 p.6)
 - Negative reactions from family and friends can lead to avoidance coping mechanisms (Littleton & Breitkopf, 2006 cited in Boyd, 2006, p.6)
 - When the criminal justice and health and welfare system service responses are unhelpful and give blaming and minimising responses, this can compound the trauma and the survivor is re-victimised through systems abuse (Campbell & Raja, 1999, cited in Astbury, 2006)
 - Parenting issues can present in later life with victims of sexual assault being over-protective of their children, imparting anxiety to their children because of their fears of their children becoming victims
 - Secondary victims include partner and children of perpetrator, parents and other family members of the sexual assault victims (Morrison & Quadara, 2007 cited in Boyd, 2011, p.6)
 - Financial impact of recovery support for example, counselling, medical and income support to victims and/or their primary carers.
- b) HWHC believes the no defence age limit should be 15. We have chosen this age because we acknowledge that it is a stage where young people are developing identity and their independence by moving away from family relationships and placing greater value on relationships with peers. They challenge existing boundaries which can result in experimentation with drugs, alcohol, sex and

relationships. The Tasmanian Law Reform Institute issues paper (2012, p.6) refers to statistics for sexual activity of young people obtained through the 4th National survey of secondary students reporting that approximately 50 percent of year ten students are sexually active

This stage of upheaval results in increased risk-taking and they can make poor choices which have lifelong implications. Therefore it is socially responsible to keep a mantle of protection around them.

Question 2

Should the defence of mistake of age be retained?

HWHC does not believe this defence should be retained for any adult who is having sex with someone aged 15 years and younger.

HWHC recognises, as previously stated, that young people are sexually experimental and we do not believe a punitive approach to consensual sex where the age difference is no greater than three (3) years is beneficial for the emotional and social growth of any of the young people involved. With an age limit of 15 years, we see that anyone being charged under this legislation would be an adult under the law.

Question9

a) Should the defence of mistake as to age in s125A (5) be repealed?

HWHC agrees that this section of the current law be repealed.

b) Should maintaining a sexual relationship be redefined so that, provided at least one unlawful sexual act was committed in Tasmania, unlawful sexual acts committed outside the state can be taken into account?

HWHC agrees that maintaining a sexual relationship should be redefined to include unlawful sexual acts outside of Tasmania.

c) Do you agree that the offence be renamed 'persistent sexual abuse of a child'?

HWHC supports the renaming of the offence to 'persistent sexual abuse of a child' to more clearly reflect the exploitative nature of the crime.

References

Astbury, J. (2006). Services for victim/survivors of sexual assault: Identifying needs, interventions and provision of services in Australia. Australian Centre for the Study of Sexual Assault . Melbourne: AIFS. viewed on 28th June 2012 <<http://www.aifs.gov.au/acssa/pubs/issue/i6.html>>.

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