6 October 2017

To: Department of Justice
Have Your Say
Strengthening the Child Abuse Laws Discussion Paper

Dear Sir/Madam

Please accept this submission and its annexure for your consideration.

For my two sons, Clarence and Darcy, for Mozes, Rumirra, Callum, Niam, Hamish, Laura, Alex, Arnold, Ben, Bo, Zarah, Maddy, Phoebe, Isaac, Noah, Miles, Ethan, Mitch and Cooper. And for all the teenagers of NSW and their families.

Thank you

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Q28. Should a statutory defence of similar age be enacted in NSW? If yes, how should it be framed?

Previous relevant reports

The discussion paper gives the impression that the Model Criminal Code Officers Committee of 1999 is the first and only official report to recommend a similar age defence. This is not the case.

According to Brown et al. *Criminal Laws. Materials and Commentary on Criminal Law and Process of NSW*, Federation Press, 6th Edition 2015, page 722, there were three official reports prior to the Model Criminal Code all recommending the adoption of a similar age defence in NSW:

1985 Child Sexual Assault Task Force NSW

1987 NSW Violence Against Women and Children Law Reform Task Force

1997 Royal Commission into the NSW Police Force

The discussion paper's question, Q28 Should a statutory defence of similar age be enacted in NSW? seems insensible to the fact that not one but four official reports have already recommended it. An enlarged awareness of the existing literature might go a long way to answering the question without the need to press the public in yet more consultation.

The discussion paper also mentions the 2013 Department of Attorney General and Justice *Review of the Consent Provisions for Sexual Assault Offences*. This *Review* states that "the introduction of a 'similar age' defence is beyond the terms of reference" and "it was not an issue on which submission were sought." Yet the Review was concerned enough about "consensual sexual activity between young people close in age" being criminalised that it included a section 6.3.5 on 'Similar age' defence and reported submissions from the NSW Ombudsman and The Children's Court of NSW advocating the proposal. The review pointedly made the recommendation as mildly reported in your discussion paper despite it being outside its terms of reference.

The 2013 Department of Attorney general and Justice *Review* mentions two other relevant reports which the discussion paper also fails to mention.

2010 *Spent Convictions for juvenile offenders*, Legislative Council Standing Committee on Law and Justice.

2012 NSW Ombudsman, *Responding to Child Sexual Assault in Aboriginal Communities*.

The incompletely titled 2010 *Spent Convictions for juvenile offenders* 170-page report is, under its terms of reference, wholly to do with juvenile sex offenders. There is a section on consensual underage sexual intercourse or 'young love' offences (pp. 56-59). Submissions and the report spend some time trying to come to grips legally and legislatively with the consequences of juveniles being convicted for consensual underage sex. The problem is that in NSW there is legally no such thing as consensual underage sex, it is just 66c intercourse with a child under 16, a child sexual abuse offence where consent is not a factor. Consent can be a factor in sentencing but no finding about consent is required for a conviction. Thus the report and submissions all grapple with how to identify consensual underage sex offences. The report commented "The Committee recognises the substantial long-term consequences for juveniles convicted of consensual sexual intercourse with a person under 16." The ODPP submission to this report will be discussed later.

The 2012 Ombudsman report is 310 pages long by a well resourced department and has a chapter on law reform which includes a detailed section with close discussion on "Adolescent peer sex" pp164-165. The report recommends a "review of consent provisions, with the introduction of a 'similar age' defence in mind" p173. The Ombudsman is recommending a review with the intention of introducing a similar age defence.

Thus there are around half a dozen reports to recommend or suggest the introduction of a similar age defence prior to your discussion paper asking its seemingly unintelligent question.

Rethinking the question

I would propose for the purposes of this submission a rephrasing of question 28. A simpler more sensible question might be whether police/prosecution discretion is working. I think we all agree that there is a gap in the legislation. People who say that there is no need to change the legislation and that police discretion is working are really contradicting themselves: because if there is no gap or shortcoming in the legislation then there is no need or room for police discretion. If police discretion is not working then, yes, a statutory defence of similar age must be introduced.

The discussion paper implies, as do many other reports and authors, that in the absence of a statutory defence of consent adolescent peer sex can be managed by police/prosecution discretion. It is managed by police, but is it managed well? this is my question. The discussion paper seems to be presenting us with two options to consider - the status quo of police discretion or a legislative innovation, one other states have already implemented. I don't think this is an entirely helpful way of approaching the issue.

Police/Prosecution Discretion

The discussion paper, giving the impression that police management of adolescent

peer sex is well under control, states (p. 73):

“11.25 The NSW Police Force has internal guidelines in relation to voluntary sexual activity between two children.”

The discussion paper references this claim with footnote 307:

“307. Guidelines to the investigation of Adolescent Peer Sex, provided by the NSW Police.”

I have doubts about this. Is there a NSW internal Police document entitled "Guidelines to the investigation of Adolescent Peer Sex" as stated by the discussion paper? It doesn't look or sound like a proper document title, it is not dated, and is it even a police document? Here are my reasons for having doubts.

The NSW Ombudsman in the 2012 *Responding to Child Sexual Assault in Aboriginal Communities* report (p. 164) refers to:

JIRT Referral Unit's (JRU) "Adolescent Peer Sex Guidelines."

The identification of these Guidelines suggest that they may not be an internal police document. A JIRT is made up of police, community services and health officers. Any JIRT Guidelines might not be internal police guidelines, but shared, at least between JIRT members. Since there appears little agreement about what the internal guidelines are called and who is responsible for them, then we might be entitled to doubt their existence, or at least their operativeness.

The Ombudsman's 2012 report (p. 164) goes on to explain that the use of the JRU Adolescent Peer Sex Guidelines was suspended in December 2010 and that they were reinstated with an amendment in 2011. So do the authors of the discussion paper know if they were provided with current 2017 guidelines or amended 2011 guidelines or even 2010 unamended guidelines? Indeed, if their existence can be doubted, if we don't know what they're properly called or who authored them, and whether they are suspended/current or not, then they are almost certainly not being properly operationalised.

Going back to your discussion paper at 11.25 (p. 73), it purports to describe some of the contents of the "Guidelines to the investigation of Adolescent Peer Sex provided by NSW Police":

"In determining whether charges should be laid, police must consider the ages of the children and their maturity, any imbalance in age or power, whether consent was freely given, and the impact of any substance misuse. These guidelines..."

For all we know, this could have been read off the 2013 Department of Attorney

General and Justice *Review of the Consent Provisions for Sexual Assault Offences* which lists exactly the same factors for consideration in the same order on page 31-32. There is no reference as to the source of this information but the Attorney General's Review states these factors as "the policy of the NSW Police Force's Child Abuse Squad." Who exactly is the author or keeper of these guidelines?

I am also getting the impression that, if they do exist, if they can be found, they are going to be pretty brief, and pretty flimsy. Your paper and the Attorney General's report might be quoting the guidelines in their entirety. It might also be helpful to compare what is said here in the Attorney General's Review on the JIRT referral process (p.32) with what the Ombudsman's 2012 report says on the same process (p. 164). I can't follow either description of the process. So we end up with a flimsy shadowy document floating about in complicated multi-departmental processes.

Better guidelines are not the solution

The Royal Commission had plenty to say on ODPP guidelines, plenty, and it recommended that all their guidelines be documented and published. All of them, public.

However, this is no longer an adequate solution. The time for relying on NSW police/prosecutorial discretion in this matter, whether enshrined in public documents or not, is now and should forever be over. After 32 years since the first recommendation for a similar age defence in 1985, the teenagers of NSW and their families deserve a more substantial safeguard than improved guidelines. Especially if penalties for child sex offences are going to be strengthened. However, teenagers are already in dire need of protection from police discretion.

I recall the Royal Commission had detailed discussions of who could have oversight of the various state ODPPs. I would suggest that it is the legislators as representatives of all NSW inhabitants who could have the ultimate say so over the ODPP.

Police Discretion: a closer look

We can get a better idea about what police/prosecutorial discretion currently means not from chimeric guidelines highly likely to be inoperative if they ever can be located and identified, but from a statement in the discussion paper itself (p. 21):

"3.8 Where an accused is charged with aggravated sexual assault of child under 16 years (section 61J), it is not uncommon for a plea of guilty to be accepted to a charge of sexual intercourse with child under 16 years (section 66C). While it precludes the sentencing court from taking into account taking into account a lack of consent by the victim, such a plea also avoids the need for the victim to give evidence. The availability of a range of charges can assist in successfully resolving child sexual abuse matters without proceedings (sic) *to trial."*

Thus police are not uncommonly using their discretion to bring lesser charges against a child sex offender instead of more serious offences with twice the jail time. (The ODPP is happy to bring an accusation of raping a child back to 66C(3) where there are no circumstances of aggravation. How seriously is that taking the complainant's allegations?) There's an area for strengthening the laws to remove the uncertainty of police discretion. Of course, none of us want young people being cross-examined. But how do victims feel about a sudden drop in the charges? Do they feel that the ODPP is working properly to protect the public from child abusers? I recall the Royal Commission discussed this at length too.

What worries me is that, whatever the stated reasons given, whatever needs are avoided, a s66C makes everything easier for the prosecution. Everything. It lightens their workload. They don't have to think. Investigations and police interviews of complainants can made more efficient with an anticipation of a 66C conviction. It makes everything easier, and as everybody knows, the NSW ODPP is somewhat over-stretched. Or perhaps that should be lazy? Among other things, the presumption of innocence gets tossed. Is this appropriate for juvenile offenders? And what about for adolescents who may have been engaging in consensual sex getting caught up in 66C's?

As for "the availability of a range of charges", this is your document, right? The range of charges is zero. The lack of availability of a range of charges is exactly the problem. There are only child sexual abuse offences. Although consensual underage sex is illegal in NSW, there is no appropriate charge for the offence.

Section 66C is categorised as a child sexual abuse offence. It brings all the liabilities of child sex offences, including ten years jail, registration, criminal record, and working with children checks that sniff out the obligatory AVOs. All this and no defence. Again I ask is this really appropriate for juvenile offenders?

Ok, you say, but this section (3.8 in your paper p. 21) is not to do with juvenile offenders but adults. What does the ODPP do in the case of juvenile offenders? Sure, we know that juveniles can be child sex abusers. Perhaps despite or even because of the fact of widespread teenage consensual sexual activity, it might be thought the ODPP would be justified to treat juvenile offenders exactly the same as adult child molesters? Well, it does, and often. But that doesn't mean its justified.

Far from using its discretion not to prosecute consensual teenage sex, the ODPP runs the risk of criminalising it as vile child molestation. And far from having safeguards in place against it, it seems almost inevitable. So much so that I wonder if it is intentional: consensual underage sex **is** abhorrent child sexual abuse.

For evidence we turn now to the ODPP submission, mentioned previously, to the 2010 *Spent Convictions for Juvenile Offenders* report for evidence. The ODPP finished its submission with a section entitled "Juveniles and sexual offences" consisting of two

paragraphs. Here is the first:

"The ODPP prosecutes all summary child sexual assault matters including matters heard be the Children's Court. It should be noted that the Children's Court has jurisdiction to hear serious sexual offences committed on children by children (for example aggravated sexual intercourse without consent s61J(1) where the aggravation is that the victim is under 16 and aggravated carnal knowledge s66C(4) which can include the offender's being in company). In our experience there is a low incidence of the prosecution of what might be considered trivial sexual offending in the Children's Court. In the main the conduct involves the exploitation of a younger, more vulnerable child and is therefore indicative of abuse of power and trust. It is common in these matters to find scant evidence of the complainant's communicating that s/he did not consent to the young offender, so the carnal knowledge provisions are ***often*** *relied upon. The use of these provision should not be taken to mean that the activity was "truly" consensual."* (My emphasis)

Note first that the "not uncommon" in your discussion paper (3.8) has become or rather was originally, in the ODPP's own words and with specific reference to juvenile offenders, "often." (And let me assure you again that, despite the mention of s66C(4) in the above, the ODPP is pursing these matters even with s66C(3) where there are no circumstances of aggravation.)

In other words, the ODPP has no special policy as regard juvenile sex offenders, some of whom might be engaging in consensual sex. It has no policy at all. It just treats them the same as it does adult child sex abusers and seeks to convict them without trial. This goes against a widely acknowledged tenet that we treat juvenile offenders differently to adults.

The NSW ODPP does publish general prosecution guidelines. The current ones are dated July 2007. Guideline 21 Young Offenders is dated as 20 October 2003 with no amendments indicated. Special treatment for child offenders depends on the seriousness of the alleged offence. Excerpts from the UN Convention on the Rights of the Child are attached to the guidelines as Appendix G. Here I do not see any caveat about the seriousness of the charges. Article 40 2(b)(i) and (iii) guarantee that a child be presumed innocent until proven guilty and has the matter determined in a fair hearing. If the ODPP often substitutes 66C for 61J in cases of juvenile offenders, then that child is presumed guilty and is not allowed a fair trial. For the life of me, I can not see how using 66C to obviate the need for a trial can possibly be considered a successful resolution when the accused is a child. It goes against the UNCRC for a start.

It seems to me that the NSW Police Force and ODPP, far from being aware of adolescent peer sex, through guidelines or otherwise, both act as if it does not exist, as if there is no such thing. There is only child molestation, child sexual abuse. Paradoxically, teenage peer sex, consensual or not, carnal knowledge if you like, is an offence in NSW without a charge, for which there is no appropriate charge available. There are only child sexual abuse charges.

Those people who might say that police discretion is working and are afraid of changing the laws because they might incite licentiousness in teenagers, are really saying that it is OK to criminalise teenage sexual activity as vile and abhorrent child molestation. Perhaps that is their intention. Police and the ODPP seem to think this way too. They can shoot from the hip at almost any teenager they like with their 66C shooter.

Police/Prosecution discretion gives itself a tick of approval

The 2012 Ombudsman's report *Child Sexual Assault in Aboriginal Communities* states (p. 164) with regard to a similar age defence:

"*There is no such legal defence available in NSW, with adolescent peer sex being managed through the operation of discretion on the part of both police and prosecutors.*

The available evidence would seem to indicate that these types of matters have been dispensed with reasonably effectively (sic) *through the use of this discretion.*"

It then goes on to quote as evidence the ODPP's submission to the 2010 *Spent Convictions for juvenile offenders* report, which we are already familiar with. I can barely believe this, but the Ombudsman is relying on claims made by the ODPP itself to judge how the ODPP is managing adolescent peer sex. In the ODPP submission there are two paragraphs in the section on "Juveniles and sexual offences" and I have already quoted the first. Here is the second paragraph which the Ombudsman quotes in part as evidence of reasonably effective management.

"Recently the ODPP had cause to investigate how many "truly" consensual sexual intercourse cases are prosecuted where the victim was between 14 and 16 and the offender a juvenile. We were able to identify 8 matters in the last 5 and a half years where there was a consensual sexual relationship between a 14-16 year old female and the males in each case were 16-17 years of age. In 3 matters the victim became pregnant and the matter was referred to the police by a guardian. In one other case it came to the attention of the police through a parent complaining, rather than the "victim". In one case the victim said "no" during the act and the accused stopped. The results of these matters were in the main withdrawal or dismissal or if a plea was entered a bond without conviction was imposed."

Here it is a matter of the ODPP boasting that everything is working well. In five and a half years the ODPP found only eight matters of a consensual sexual relationship where prosecution was begun and none resulted in a conviction.

It takes pains to explain how these matters came to police attention. "In the main" charges were withdrawn or dismissed. It does not say in how many cases a plea was entered and a bond without conviction was imposed.

The Ombudsman went one better than the ODPP. It did its own screening and did not

identify any cases of peer adolescent sex which had proceeded to a hearing.

But what about the accused who entered a plea and was entered on a bond without conviction? Did those young persons also avoid the sex offender register? a criminal record? a negative WWCC because of an obligatory AVO? These are all still possible even with no conviction, yes, because the detailed rules around the register and spent convictions and WWCCs prevent and limit judicial discretion. The ODPP is silent on these consequences.

Notice that there appears to be no cases of the two participants both being charged. It amuses me a little that almost all commentators worry about both children in a consensual sexual activity being prosecuted. Police aren't going to go out and charge both parties. At least I don't think so. Realistically, its hardly a plausible scenario and expressions of concern over it seem somewhat naive. It will almost certainly be, as is implied in the eight matters discussed by the ODPP, only one party that is being prosecuted. And it is here that the use of 66c, with its no defence and absolute liability for a child sexual abuse charge, that I have my major concerns for a grave injustice being perpetrated against an accused child with the help of police/prosecutorial discretion.

The ODPP in its submission has limited itself to cases where there was a finding of consent. It did not consider that s66C convictions should be taken to mean the activity was truly consensual. It assumed that s66C convictions, even though there was no finding on consent, were non-consensual. Possibly, it did not consider wrongful convictions, not so much because they are difficult to discern, but because, with the creation of absolute liability offences with no defence, eg s66C, there can be no wrongful convictions.

Could this be why almost no one and no report ever talks about the wrongful conviction of juveniles for child sexual abuse? When s66c is being thrown about so willy-nilly?

Conclusion - This is not about lowering the age of consent

Teenage relationships can be and often are turbulent. I think that is fair to say. Add to that the fact that a large percentage of teenagers indulge in consensual sexual activity and that much of that activity is experimental, stumbling and often of a casual nature. I think that would be a fair thing to say too. Further add to the mix that teenagers are under a great deal of surveillance, from teachers, parents, and peers.

Okay. So say two teenagers hook up behind the school toilet block for some casual consensual sexual activity. One or both are under 16. They don't have much to do with each other afterwards. One party begins to regret partaking in the activity. They may not recognise the casual nature of their relationship and bitterly feel jilted. At the same time that same party comes under suspicion from an authority or a new partner for the very activity in question. Perhaps things generally are also not going well say with school and peers. This party then conveniently comes to decide, in order to alleviate their difficulties, that they were

sexually assaulted. Consent is withdrawn retrospectively and victimhood voluntarily assumed as a cover. The word rape is used.

I am not suggesting that adolescents are generally given to fabrication and lying. Nor am I suggesting that any particular type or gender of adolescents are so disposed. But in this scenario an innocent child is at risk of being convicted and labelled for life as a child molester.

When the matter comes before the police and prosecutors, the allegation of rape, far from being treated seriously, is immediately downgraded to a s66C. Saves a trial, makes it easier, etc. This is police discretion. But at the same time as the victim of a possible serious sex offence is slighted, the young innocent accused has their life forever devastated by an assumption of guilt with a charge of absolute liability and no defence. This is too is where Police discretion has got us.

All teenagers in NSW engaging in consensual sexual activity with a person under 16 are at grave risk of "false" allegations of child molestation. (Inverted commas this time because according to ODPP thinking with a s66C there can be no wrongful convictions and hence no false allegations.) The current legal situation is already a critically harmful intervention in the lives of all NSW teenagers and their families. Peers are required not to be just careful in their sexual relationships but to be downright cynical towards them. It might load them with lots of harmful feelings such as guilt, suspicion, fear, anxiety, depression. Let us not be abrogating our responsibilities and leaving it to mental health services alone to prevent suicides.

This is not about lowering the age of consent. The age of consent will remain at 16.

The suggestion contained in your paper to increase the penalties for s66C charges is total madness.

A statutory defence of a similar age is needed. It is the only thing that will force the reluctant prosecutors to have some decent regard for adolescent sexual activity. At the moment they treat it all, consensual and non-consensual, as abhorrent. Or rather I should say, they treat consensual sex between teenagers as not a thing. If prosecutors are forced to prove to some extent that an activity was non-consensual, then they will find that consensual sex between teenagers does exist and is not necessarily preventable, punishable, criminal or bad. They may even find it to be a good healthy thing.

I make no comment as to how a statutory defence should be framed. For the sake of all NSW teenagers and their families, just get it enacted.

Submission
No 4

INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

Organisation: Office of the Director of Public Prosecutions

Name: Mr Nicholas Cowdery AM QC

Position: Director of Public Prosecutions

Date received: 29/01/2010

Submission
of the Office of the Director of Public Prosecutions
to the NSW Legislative Council's Standing Committee on Law and Justice

Inquiry into spent convictions for juvenile offenders

Thank you for the invitation to make submissions to this inquiry concerning whether sex offenders' convictions should be capable of being spent under the *Criminal Records Act 1991* or whether they should become spent only in limited circumstances.

The Office of the Director of Public Prosecutions' (ODPP's) role in the prosecution of offences limits, to some extent, our contribution to this issue, particularly in terms of the impact on offenders and the experience in other jurisdictions. Accordingly, the following submissions are limited to our observations about sexual offences: their prevalence and distinctive characteristics in the criminal justice system, based on our experience in the prosecution of child sexual assault offences in all jurisdictions in NSW and other sexual offences in the District and Supreme Courts.

In respect of the options for a reform of the spent convictions scheme we favour option C, with its process of application to the court after the crime free period has elapsed. In our view the rationale for the exclusion from the scheme of most sexual offences is still valid. (We query, however, that if the rationale is really based on the seriousness of sexual offences, why then is the summary offence of obscene conduct an exempt offence in the current scheme?)

Prevalence of sexual offences in the criminal justice system

Sexual offences constitute a significant proportion of personal violence offences prosecuted by this Office. As at October 2009 sexual offences constituted a third of all personal violence matters on hand (including committals, summary prosecutions, sentences and trials). Child sexual assault matters made up 62% of the overall sexual offence matters. For the same period sexual assault trials listed constituted the largest category of personal violence trials (37.6%), with 21% being child sexual assault trials. In relation to trials overall, sexual offences made up 25% of all trials (10.6% adult sexual assault trials,13.5% child sexual assault trials). It is the Office's experience that the percentage of sexual assault matters proceeding to trial increases as more non-sexual assault offence matters plead at trial than do sexual offence matters.

The term "sexual offence" covers a very wide area of conduct from a fleeting indecent act to persistent sexual misconduct and violent assault. Offences may have been committed due to intoxication or misunderstanding as to consent. Factual circumstances are varied and the charge alone will not accurately convey the conduct; for instance, a single charge of indecent

assault may represent a course of conduct involving repeated assaults over a period or one isolated act. In addition and particularly in historical child sexual assault cases and where serious offences were alleged to have been committed, more serious charges are often unavailable due to the time frame. Most sexual assault cases are word against word and the facts presented on a plea by agreement with the victim may not reflect the entirety of the conduct. So we would suggest that simple reference to penalty and type of charge may not convey the whole picture and we accordingly favour a system where the case would be looked at in detail before determining that the conviction should become spent.

In this context it is also important to consider that numerous inquiries and surveys[1] have repeatedly found that there is a high incidence of sexual assault in the community and much of this is unreported. Further, even after a complaint is made to police the attrition rate is high. The reasons for the high incidence of sexual assault and low reporting are complex; however, in a generalised way it does means that the matters where a conviction is entered involve a degree of fortitude on the part of the victim which tends to correlate with the degree of harm suffered and hence the serious impact of sexual offending. It is important that the criminal records scheme maintains a hard line towards sexual offending to reinforce the message that this is unacceptable behaviour.

Against this we acknowledge that the steps the offender takes to address the conduct (such as whether a plea of guilty is entered and whether there is participation in rehabilitative programs) are highly relevant in terms of whether the offender has acknowledged the wrong doing, is likely to reoffend and whether the stigma of the conviction should remain.

Juveniles and sexual offences

The ODPP prosecutes all summary child sexual assault matters including matters heard by the Children's Court. It should be noted that the Children's Court has jurisdiction to hear serious sexual offences committed on children by children (for example aggravated sexual intercourse without consent s61J(1) where the aggravation is that the victim is under 16 and aggravated carnal knowledge s66C(4) which can include the offender's being in company). In our experience there is a low incidence of the prosecution of

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[1] Including Heroines of Fortitude Report 1996. Report on Child Sexual Assault Prosecutions, Legislative Council Standing Committee on Law and Justice. 2002
Non Reporting and Hidden Recording of Sexual Assault; Australian Institute of Criminology 2003, Prosecutorial decisions in adult sexual assault cases. Australian Institute of Criminology 2004; A Fair Chance: Proposals for Sexual Assault Law Reform in NSW November 2004. NSW Adult Sexual Assault Interagency Committee. No longer silent: a study of women's help-seeking decisions and service responses to sexual assault. Australian Institute of Criminology 2005. Responding to sexual assault: the way forward. NSW Criminal Justice Sexual Offences Taskforce December 2005 and
Breaking the Silence: Creating the Future Aboriginal Child Sexual Assault Taskforce 2006.

what might be considered trivial sexual offending in the Children's Court. In the main the conduct involves the exploitation of a younger, more vulnerable child and is therefore indicative of abuse of power and trust. It is common in these matters to find scant evidence of the complainant's communicating that s/he did not consent to the young offender, so the carnal knowledge provisions are often relied upon. The use of these provisions should not be taken to mean that the activity was "truly" consensual.

Recently the ODPP had cause to investigate how many "truly" consensual sexual intercourse cases are prosecuted where the victim was between 14 and 16 and the offender a juvenile. We were able to identify 8 matters in the last 5 and a half years where there was a consensual sexual relationship between a 14 -16 year old female and the males in each case were 16 - 17 years of age. In 3 matters the victim became pregnant and the matter was referred to the police by a guardian. In one other case it came to the attention of the police through a parent complaining, rather than the "victim". In one case the the victim said "no" during the act and the accused stopped. The results of these matters were in the main withdrawal or dismissal or if a plea was entered a bond without conviction was imposed.

Model Code Clause 9

We can suggest no improvement to the model code clause 9.

Office of the Director of Public Prosecutions
27 January 2010