

**From:** Mangan, Anita <ANITA.MANGAN@det.nsw.edu.au>  
**Sent:** Tuesday, 3 October 2017 10:38 AM  
**To:** Policy MailIn  
**Subject:** Discussion Paper - Strengthening Child Sexual Abuse Laws in NSW

Please see our submission for the Strengthening Child Sexual Abuse Laws in NSW Discussion Paper Questions

The following questions are raised in relation to child sexual abuse offences in this paper:

- Q1. Should the legislative framework for child sexual abuse offences be consolidated and simplified? If yes, what is the best option for reform? No
- Q2. Should the number of age categories be reduced? If yes, what age categories should be used? No – they should remain the same.
- Q3. Should any new offences be created? No
- Q4. Should any offences be repealed? No
- Q5. Should the separate offences of aggravated sexual assault of child under 16 years (section 61J(2)(d)) and sexual intercourse with child between 10 and 16 years (section 66C) remain? If yes, can their description be improved? Yes – consent is not a defence and should remain.
- Q6. Should the offence of sexual intercourse with child under 10 years (section 66A) be increased to include children under 12 years? Yes – to lessen the trauma of the experience for the child.
- Q7. Should the description of the offences of indecent assault and act of indecency committed against children under 16 years be improved? If yes, what option(s) is preferable? Yes – Option 2, to amend the offence of indecent assault to include any sexual touching between the victim and the offender.
- Q8. Should the term ‘indecent’ and the common law definition remain? Yes
- Q9. Should aggravating factors be removed as elements of child sexual assault offences? If yes, what is the best option for reform?  
Yes, option three is the best option for reform.
- Q10. Should a provision be introduced to permit the prosecution to rely on the offence with the lesser maximum penalty where the alleged date range includes more than one offence? Yes
- Q11. Should NSW adopt the Royal Commission’s recommendation that in historic child sexual abuse matters an offender is sentenced by applying current sentencing principles but in accordance with the historic maximum penalty? Yes
- Q12. Should the repeal of the limitation period for certain child sexual assault offences committed against females aged 14 and 15 years be made retrospective as recommended by the Royal Commission? Yes
- Q13. Should the repeal of the common law presumption that a male under 14 years is incapable of having sexual intercourse be made retrospective? Yes
- Q14. Should the NSW offence of persistent child sexual abuse be replaced by the model provision recommended by the Royal Commission?  
Yes
- Q15. Should the offence of persistent child sexual abuse be retrospective as recommended by the Royal Commission? Discussion Paper: Child Sexual Offences Review Page 13 of 119 Yes
- Q16. Should an offender being sentenced for an offence of persistent child sexual abuse receive a higher penalty than isolated offences to reflect the ongoing nature of the abuse? Yes
- Q17. Should a course of conduct charge, as introduced in Victoria, be enacted? Yes
- Q18. Should a course of conduct charge be available for historic offences? Yes
- Q19. Should the law be amended to implement the Royal Commission’s recommendation for a broader grooming offence? If yes, should the amendments be modelled on the provisions in Queensland or Victoria? Yes and they should be modelled on the provisions in Queensland or Victoria.
- Q20. Should an offence of grooming a person other than the child, such as a parent, with intent to obtain access to children be introduced as recommended by the Royal Commission? Yes
- Q21. Should other specific relationships be included in the definition of ‘special care’? Yes
- Q22. Should ‘special care’ offences apply to all forms of sexual offences including indecent conduct? Yes

- Q23. Should the Royal Commission's model for a targeted failure to report offence be adopted? If yes, how should it be adapted for NSW? Yes, it should follow the Royal Commission's model but it should also include professionals similar to the Victorian model.
- Q24. Should the failure to report an offence be made partially retrospective as the Royal Commission recommends? Yes, as people may still be in professions working with children.
- Q25. Should protection be afforded to people who make disclosures of child sexual abuse? Yes, such as whistle blower, maybe more likely to report.
- Q26. Should the Royal Commission's model for a targeted failure to protect offence be adopted? If yes, how should it be adapted in NSW? Yes, similar to Victorian model as suggested.
- Q27. Should a defence of honest and reasonable mistake as to age be enacted? If yes, should it apply only where the complainant is 14 or 15 years of age and should the onus be on the accused? Yes, it should be enacted and yes to it should only apply where the complainant is 14, 15 and the onus should be in the accused.
- Q28. Should a statutory defence of similar age be enacted in NSW? If yes, how should it be framed? Yes, the current NSW Police Force internal guidelines should be adopted, under 16 years within two years of each other.
- Q29. Should NSW introduce a defence to decriminalise consensual 'sexting' involving persons under 16 years? If yes, how should the defence work? No, it should remain at the discretion of the Police to whether the 'sexting is involved with other offences such as the products being shared to ridicule and no consent to share was given (this requires prosecution) and if groomed and asked to 'sext – no prosecution is made of the child.
- Q30. Should the Royal Commission's recommendation to ensure that child sexual abuse complainants are not required to give evidence on multiple occasions be adopted? If yes, what is the best option to achieve this reform? Yes, the use of one pre recorded evidence should be used and then adults and children dealt in their appropriate courts. This would limit trauma for victim.
- Q31. Should the approach to tendency and coincidence evidence proposed in the draft legislation at Appendix E be adopted? If not, should aspects of that approach or any other option for reform be pursued in NSW? Yes
- Q32. Should jury directions be partially codified as recommended by the Royal Commission? Discussion Paper: Child Sexual Offences Review Page 14 of 119 Yes
- Q33. Are legislative amendments required to permit judges to give directions to juries earlier in the trial? Yes
- Q34. Should the requirement to give a Markuleski direction be abolished? Yes
- Q35. Should the Royal Commission recommendation to permit and require judges to inform the jury about children and the impact of child sexual abuse be adopted? If yes, what judicial directions should be given? Yes, using the NCSARC's recommendations.
- Q36. Should the recommendation of the NSW Sentencing Council be adopted to increase the maximum penalty to 12 years and reduce the standard non-parole period to 6 years for the offence of indecent assault of child under 16 years? If not, is there another way to re-structure the maximum penalty and standard non-parole period for the offence? Yes.

Regards

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