



Australian Government

Australian Institute of
Family Studies



VICTORIA POLICE

Challenging misconceptions about sexual offending:

Creating an evidence-based resource
for police and legal practitioners



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Overview of resource

Reports of sexual offences crimes have increased over the last six years (Australian Bureau of Statistics [ABS], 2016). Despite the prevalence of sexual offending in our communities, there is a lack of understanding about these crimes. Myths and misconceptions about sexual offending are common (Cossins, 2013). This is understandable, because sexual offending is a profoundly hidden crime. Much of what we know about sexual crime is imagined or gained through mainstream media (O'Hara, 2012).

Most people would not be fully aware of the vast body of scientific literature regarding sexual offending. This is despite the fact that specialist knowledge is the key to effectively responding to sexual crime in the criminal justice system (Cossins, 2006). The purpose of this resource is to synthesise over 40 years of research evidence to present an accurate and updated picture of sexual offending. With specialist knowledge, we can work towards improving criminal justice responses and outcomes in cases of sexual crime.

- » This reference booklet addresses some of the most significant myths and misconceptions about adult rape and sexual offences, as well as child sexual abuse.
- » The evidence has been collated from an analysis of the psychological and criminological literature.
- » It provides a clear picture of what should be considered a misconception, alongside the current evidence of what is considered “typical” and “common” behaviour in both offenders and victims.
- » There are multiple ways that this resource could be used. It may be useful as a guide to assist fact finders at different stages of the criminal justice process.

Sexual crime: Ease of reporting and difficulty of defending



MISCONCEPTION 1

Reports of rape and sexual offences are easy to make and difficult to defend.



What does the empirical evidence say?

Easy to report?

National and international research consistently demonstrates that incidents of rape, sexual offences and child sexual abuse are significantly under-reported, under-prosecuted and under-convicted. There are a myriad of barriers to victims' reporting sexual offences:

- » confusion, guilt or shock about the offence (Long, 2006);
- » fear of the perpetrator (Cox, 2015);
- » fear that they will not be believed (Cox, 2015);
- » rape myth acceptance where victims do not recognise they have experienced sexual offences, or blame themselves for what has occurred (Heath, Lynch, Fritch, & Wong, 2013; Heath, Lynch, Fritch, McArthur, & Smith, 2011); and
- » the criminal justice system, which can be a difficult, stressful, expensive and time-consuming process that requires victims to expose themselves to police and public scrutiny, and potential cross-examination. This can have serious legal and psychological consequences for both the complainant and others involved (Wall & Tarczon, 2013).

It is difficult to report rape/sexual offences.



Further reading

Cossins, A. (2001). Complaints of child sexual abuse: too easy to make or too difficult to prove? *Australian and New Zealand Journal of Criminology*, 34(2), 149-168.

Daly, K., & Bouhours, B. (2010). Rape and attrition in the legal process: A comparative analysis of five countries. *Crime and Justice*, 39(1), 565-650.

Fitzgerald, J. (2006). *The attrition of sexual offenses from the New South Wales criminal justice system* (Crime and Justice Bulletin No. 92). Sydney: NSW Bureau of Crime Statistics and Research.

Hard to defend?

Evidence regarding prosecution and conviction rates suggest that **it is not difficult to defend cases of rape/sexual offences.**

- » Research indicates that conviction rates of sexual offences in Australia are extremely low. Between 2008 and 2009, only 11.9% of defendants in sexual offences cases who pleaded not guilty were convicted (ABS, 2009).
- » Research from NSW showed that 74% of alleged offenders in adult sex offence cases in the High Court were acquitted of all charges (Fitzgerald, 2006).
- » In Australia, Canada, England and Wales, Scotland and the United States, victimisation surveys indicate that only 14% of sexual violence victims report the offence to the police. There is significant attrition for those who do, with only 20% of cases judged in court, and 6.5% resulting in a conviction of the original offence charged (Daly & Bouhours, 2010).
- » Research has shown that conviction rates for sexual offences have significantly decreased over time (Daly & Bouhours, 2010; Larcombe, 2011). In Australia, the average conviction rates for sexual offences reduced from 17% in 1970-1989 to 12.5% in 1990-2005 (Daly and Bouhours, 2010).

High attrition and low conviction rates may be due to an array of reasons:

- » The nature of sexual offences crimes: they often occur in private locations with a lack of witnesses or medical evidence (Klettke & Simonis, 2011; Taylor, 2007).
- » Jurors may have negative attitudes or hold myths about sexual offences (Taylor, 2007; Victorian Law Reform Commission, 2004).
- » Rape law makes it difficult to prove that rape/sexual offences occurred (Larcombe, Fileborn, Powell, Hanley, & Henry, 2016).

Sexual crime: Delayed reporting



MISCONCEPTION 2

Real victims would report rape and sexual offences immediately.

People who delay disclosure are likely to be lying or falsely recalling rapes/sexual offences.



What does the empirical evidence say?

Real victims report immediately?

The majority of victims who experience rape and sexual offences delay disclosing and/or reporting, or never disclose/report their experiences:

- » Indeed, 83.1% of Australian women did not report their most recent incident of sexual offences to the police (ABS, 2013; Cox, 2015).
- » Only 6 out of 10 women who experience sexual offences seek advice/help from others (ABS, 2013).
- » There is national and international consensus in over 30 years of research literature that demonstrates the majority of people who experience sexual abuse in childhood do not disclose abuse until adulthood, and when disclosure occurs during childhood, there are frequently significant delays (see McElvany, 2015 for a detailed review).

Research from the Royal Commission into Institutional Responses to Child Sexual Abuse found that victims/survivors took an average of 22 years to disclose the abuse to someone (2014, Interim report, volume 1).

Why delayed reporting?

Common reasons for victims' non-reporting or delays in reporting/disclosure involve:

- » confusion, guilt, or shock about the offence (Long, 2006);
- » fear of the perpetrator (Cox, 2015) and the consequences of reporting (Cook, David, & Grant, 2001);
- » fear that they will not be believed (Cox, 2015); and
- » rape myth acceptance where victims do not recognise they have experienced sexual offences, or blame themselves for what has occurred (Heath, Lynch, Fritch, & Wong, 2013; Heath, Lynch, Fritch, McArthur, & Smith, 2011).

Women who experience sexual offences by a known perpetrator are more likely to delay seeking assistance compared to those who experience sexual offences by a stranger (Bicanic, Hehenkamp, van de Putte, van Wijk, & de Jongh, 2015; Millar Stermac, & Addison, 2002).

Current legislation

The *Jury Directions Act 2015* (Vic.) s 52(4) (a), (b), and (c) states, "(i) People may react differently to sexual offences and there is no typical, proper or normal response to a sexual offence; (ii) Some people may complain immediately to the first person they see, while others may not complain for some time and others may never make a complaint; (iii) Delay in making a complaint in respect of a sexual offence is a *common occurrence* [our emphasis]." Judges are prohibited from suggesting that it is dangerous to convict based on a delayed complaint.



Further reading

Cox, P. (2015). *Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012*. Sydney, NSW: Australia's National Research Organisation for Women's Safety (ANROWS).

Heath, N. M., Lynch, S. M., Fritch, A. M., McArthur, L. N., & Smith, S. L. (2011). Silent survivors: Rape myth acceptance in incarcerated women's narratives of disclosure and reporting of rape. *Psychology of Women Quarterly*, 35(4), 596-610.

Sexual crime: Offender relationship



MISCONCEPTION 3

Rapes are often committed by strangers to the victim.

Rapes cannot be committed during relationships with a boyfriend or husband.

People who consent to sex in the past are assumed to have consented again in the future.



What does the empirical evidence say?

Who is the offender?

The media often perpetuates the misconception that most rapes are committed by strangers wielding a weapon in a dark and isolated area.

On the contrary, **the majority of rapes are committed by someone known to the victim**, often in a familiar residential location. Rapes are often committed by family members or within intimate partner relationships.

- » According to the 2012 Personal Safety Survey, approximately 16% of women (aged 18 and over) had experienced sexual offences by a known person, compared to 5% by a stranger (ABS, 2013).
- » In a study of 400 rape cases in the UK, 70.7% were committed by someone known to the victim (domestic and acquaintance rapes) (Waterhouse, Reynolds, & Egan, 2016).
- » Out of 2,500 sexual offences cases in Denmark, 75% of victims had met the perpetrator before the sexual offences. Almost half reported the offender as a current or previous boyfriend, family member or friend. The female victims were most often assaulted in their own or the offender's home (Larsen, Hilden, & Lidegaard, 2015).
- » In Australia, a greater proportion of females than males report experiencing sexual offences in the context of intimate partner relationships (ABS, 2013; Tarczon & Quadara, 2012). Overall, 27,400 women reported experiencing sexual offences by their current partner at the time of the 2012 Personal Safety Survey. More than 250,000 women reported having been sexually offended against by a previous partner since the age of 15.

Current legislation

According to the *Jury Directions Act 2015* (Vic.) s 46(3)(c)(iii), evidence that on any particular occasion the person consented to another act that is sexual in nature (whether or not of the same type) with the accused or with another person is *not enough to regard a person as having consented to an act*.



Further reading

Australian Bureau of Statistics. (2013). *Personal Safety, Australia, 2012* (4906.0).

Larsen, M. L., Hilden, M., & Lidegaard, Ø. (2015). Sexual assault: A descriptive study of 2,500 female victims over a 10-year period. *BJOG: An International Journal of Obstetrics & Gynaecology*, 122, 577–584.

Waterhouse, G. F., Reynolds, A., & Egan, V. (2016). Myths and legends: The reality of rape offences reported to a UK police force. *The European Journal of Psychology Applied to Legal Context*, 8(1), 1–10.

Sexual crime: Injury



MISCONCEPTION 4

Real rape victims would sustain physical injuries at the time of the offence.



What does the empirical evidence say?

Rape always involves physical injuries?

The “real rape” myth that victims are often attacked violently by strangers suggests that victims would sustain serious physical injuries during the rape/sexual offences.

In reality, most offenders have a prior relationship with the victim and do not use violence (Tidmarsh, Powell, & Darwinkel, 2012). Offenders typically have power over their victims and groom their victims into compliance over time (see the Appendix for an explanation of grooming). In turn, victims may be more likely to freeze and cooperate rather than fight off the offender and sustain injuries (Gerber, Corman, & Suresh, 2009; Tidmarsh et al., 2012). It is important to recognise that grooming occurs with adults and not just children.

Overall, **injury rates during sexual offences are variable**; rape victims may or may not experience injury during an offence.

Some studies have found very low rates of injury during rape/sexual offences:

- » In a study of 317 rape reports in Minnesota, only 4% of victims experienced a physical injury, and only 11% sustained anogenital injuries requiring medical intervention (Carr et al., 2014).
- » Out of 400 cases of rape reported to the central UK police force, most victims (79%) sustained *no physical injuries* during the attack (Waterhouse, Reynolds, & Egan, 2016).

- » Other studies have found higher injury rates in their samples: Sugar, Fine and Eckert (2004) found that out of 819 female sexual offences victims, 52% had general body injury, 20% had genital-anal trauma, and 41% were without injury.
- » Maguire, Goodall, & Moore (2009) found that out of 164 cases of sexual offences, 61% sustained a general body injury, 39% sustained a genital injury and 18% were without injury.

Therefore, presumptions regarding the credibility of rape victims based on injury rates should not be made.

Where an ano-genital injury is present following rape/sexual offences, it is very difficult to determine whether that injury was sustained during consensual or non-consensual intercourse (Quadara, Fileborn, & Parkinson, 2013). Therefore, focusing on such evidence may be unproductive when assessing rape/sexual offences.



Further reading

Carr, M., Thomas, A. J., Atwood, D., Muhar, A., Jarvis, K., & Wewerka, S. S. (2014). Debunking three rape myths. *Journal of Forensic Nursing*, 10(4), 217–225.

Quadara, A., Fileborn, B., & Parkinson, D. (2013). *The role of forensic medical evidence in the prosecution of adult sexual assault*. Melbourne: Australian Institute of Family Studies.

Waterhouse, G. F., Reynolds, A., & Egan, V. (2016). Myths and legends: The reality of rape offences reported to a UK police force. *The European Journal of Psychology Applied to Legal Context*, 8(1), 1–10.

Current legislation

According to the *Jury Directions Act 2015* (Vic.) s 46(3)(c)(ii), evidence that the person did not sustain physical injury is not enough to regard a person as having consented to an act.

Sexual crime: Resistance



MISCONCEPTION 5

Offenders typically use physical force against their victims during rape and sexual offence.

Real rape victims would resist and fight off the violent offender.



What does the empirical evidence say?

Offenders typically use physical force?

Most sexual offenders have a prior relationship with the victim and do not behave violently during an offence (Salter, 1988; Tidmarsh, Powell, & Darwinkel, 2012). Offenders typically have power over their victims and gradually groom their victims into compliance over time (see the Appendix for an explanation of grooming). Victims may be more likely to **freeze and cooperate** rather than fight off the offender (Gerber, Corman, & Suresh, 2009; Tidmarsh et al., 2012). Likewise, offenders may build trust and psychologically groom their vulnerable victim so that they are desensitised and may not realise that something inappropriate is occurring (Craven, Brown, & Gilchrist, 2006).

How victims show resistance

- » In a study of 317 rape reports in Minnesota, 81% of victims did not actively resist at some point during the offence, with 57% of victims never actively resisting (Carr et al., 2014). In a study with 2,500 female victims of sexual offences, almost half of the women did not resist during the offence. Of those that did resist, **verbal resistance was the most common means** (as opposed to physical resistance) (Larsen, Hilden, & Lidegaard, 2015).
- » Women often match their level of resistance to the level of aggression displayed by the offender; women were more likely to use physical resistance strategies (e.g., physically fight, run away) if the offender used physical

force, whereas they were more likely to use non-physical resistance (e.g., reason, plead, quarrel) if the offender used verbal threats and less physical aggression (Gidycz, Van Wynsberghe, & Edwards, 2008).

- » Women with previous sexual victimisation histories tend to engage in less direct verbal resistance, such as **turning cold or freezing during an offence** (Gidycz et al., 2008).
- » Research has signalled that media influence and relationship control significantly predict sexual compliance; women often submit to unwanted sexual activity in an effort to maintain their partner's satisfaction, the relationship and/or to avoid negative consequences. Women note various forms of social coercion (e.g., fulfilling relationship obligations and sexual scripts) as reasons for partaking in unwanted sexual activity without resistance (Conroy, Krishnakumar, & Leone, 2015).



Further reading

Gidycz, C. A., Van Wynsberghe, A., & Edwards, K. M. (2008). Prediction of women's utilization of resistance strategies in a sexual assault situation a prospective study. *Journal of Interpersonal Violence*, 23(5), 571–588.

Conroy, N. E., Krishnakumar, A., & Leone, J. M. (2015). Reexamining issues of conceptualization and willing consent: The hidden role of coercion in experiences of sexual acquiescence. *Journal of Interpersonal Violence*, 30, 1828–1846.

Craven, S., Brown, S., & Gilchrist, E. (2006). Sexual grooming of children: Review of literature and theoretical considerations. *Journal of Sexual Aggression*, 12, 287–299

Current legislation

According to the *Jury Directions Act 2015* (Vic.) s 46(3)(c)(i), evidence that a person did not protest or physically resist is **NOT** enough to regard a person as having consented to an act.

Sexual crime: Misunderstanding memory



MISCONCEPTION 6

Memory of rape should be clear, coherent, detailed, specific, and not contain any inconsistencies or omissions.



What does the empirical evidence say?

Misconceptions about human memory contribute to the high attrition rates of rape cases in the criminal justice system (Hohl & Conway, 2016). The following are some modern facts about human memory.

How good is human memory?

- » Memories represent only short time segments of an experience, rather than a complete record.
- » Fragmented, confused, inconsistent, undetailed, unspecific memories are the *norm*. Omissions and differences between accounts are normal features of everybody's memories (Hohl & Conway, 2016).
- » Remembering many peripheral details of an event/experience is unusual (Conway, Justice, & Morrison, 2014; Howe, 2013).
- » Memories for details tend to become weaker over time (Murre & Dros, 2015).

There is no link between confidence and the accuracy of the memory (Hohl & Conway, 2016; Roediger, Wixted, & DeSotoe, 2012).

A clear memory of rape?

The following are facts about memory as it relates to the experience of rape/sexual offences:

- » Victims/survivors of one-off traumatic events typically recall only three to five clear details, therefore many details are often lacking (Holmes, Grey, & Young, 2005).
- » Following rape trauma, memories may be impaired with amnesic gaps, and/or may contain differences between accounts (Conway, Meares, & Standart, 2004; Holmes et al., 2005; McNally, 2003; Tromp, Koss, Figueredo, & Tharan, 1995).
- » Memories can be vulnerable to the effects of alcohol and recreational drugs. These substances could lead to amnesic gaps and/or memory inconsistencies (Conway, 2005). High blood alcohol concentrations can lead to blackouts in some people, where information is prevented from entering long-term memory (Wetherhill & Fromme, 2016).
- » Memories can also be affected by brain damage, psychological illness and pharmacological interventions (e.g., medication for illnesses). Victims who suffer from injury or illness during or following rape might experience memory loss and/or memory inconsistencies (Conway, 2005; Hohl & Conway, 2016).



Further reading

Hohl, K., & Conway, M. A. (2016). Memory as evidence: How normal features of victim memory lead to the attrition of rape complaints. *Criminology and Criminal Justice*. doi: 10.1177/1748895816668937

Sexual crime: False allegations



MISCONCEPTION 7

The rate of false rape allegations is high. Many people lie and fabricate reports of rape and sexual offences.



What does the empirical evidence say?

False rape allegations?

- » The rate of false allegations of sexual offences is **very low**.
- » Studies estimate 5% of rape allegations are false (meta-analysis of seven studies in Western countries: Ferguson & Malouff, 2016). Therefore, the overwhelming majority of sexual offence reports are true.
- » A range of personal and contextual factors can influence whether someone falsely reports a sexual offence. Often motives are complex and stem from fear or a need for assistance rather than maliciousness (Wall & Tarczon, 2013). It is important to understand the whole context of the report, rather than categorising and/or dismissing it as true or false.
- » The criminal justice system can be a difficult, stressful, expensive and time-consuming process that requires victims to expose themselves to police and public scrutiny, and potential cross-examination. These may have serious legal and psychological consequences for both the complainant and others involved (Wall & Tarczon, 2013).
- » The incorrect assumption that false allegations of sexual offences are common has negative consequences for victims of sexual offences by perpetuating the idea that victims will be met with disbelief and blame when they report the offence. This contributes to the under-reporting of rape/sexual offences (Wall & Tarczon, 2013).



Further reading

Ferguson, C. E., & Malouff, J. M. (2016). Assessing police classifications of sexual assault reports: A meta-analysis of false reporting rates. *Archives of Sexual Behavior*, 45(5), 1185–1193.

Wall, L., & Tarczon, C. (2013). *True or false? The contested terrain of false allegations*. Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies.

Sexual crime: Alcohol



MISCONCEPTION 8

Intoxicated victims consent to sex but regret it afterwards and allege rape.

People who are heavily intoxicated are responsible for their own rape. They could have prevented the rape by drinking less.

Intoxicated victims cannot adequately remember the incident.



What does the empirical evidence say?

The facts about intoxicated victims

Alcohol is involved in a high proportion of sexual offences. One study found that out of 2,541 reports of sexual offences, alcohol was involved in 60% of cases (Larsen, Hilden, & Lidegaard, 2015).

- » Alcohol can be used deliberately by perpetrators to facilitate sexual offences. The media often focuses on date-rape drugs such as Rohypnol when discussing drug-facilitated sexual offences; however, alcohol is, in fact, the most common drug of choice that perpetrators use to intentionally incapacitate a victim prior to sexual offences (Horvath & Brown, 2007; Wall & Quadara, 2014).
- » Perpetrators are opportunistic and take advantage of victims who are heavily intoxicated and incapacitated (by their own actions), a theme commonly voiced in interviews with Australian sexual offence survivors (Wall & Quadara, 2014).
- » Alcohol is a tool used by perpetrators to enhance their own confidence and increase victim vulnerability. It is often used by perpetrators as an excuse to reduce their own culpability and accountability; they take advantage of social attitudes that view drunkenness as being sexually available and consenting, as well as societal views that blame women for engaging in drinking (Wall & Quadara, 2014).
- » According to disinhibition theory, alcohol can limit impulse control and the ability to inhibit inappropriate behavioural responses. This may explain, in part, some acts of opportunistic sexual offences (Wall & Quadara, 2014).

Current legislation

According to the *Crimes Act 1958* (Vic.) s 34C(2)(e), a person does not consent to an act if the person is so affected by alcohol or another drug as to be incapable of consenting to the act.

Moreover, it is no longer a reasonable assertion that drunkenness allows a reasonable belief in consent. This is demonstrated in the *Jury Directions Act 2015* (Vic.) s 47(3)(b)(i): in determining whether the accused who was intoxicated had a reasonable belief at any time, if the intoxication was self-induced, regard must be had to the *standard of a reasonable person who is not intoxicated* and who is otherwise in the same circumstances as the accused at the relevant time.



Further reading

Lovett, J., & Horvath, M. A. (2009). Alcohol and drugs in rape and sexual assault. In M. Horvath & J. Brown (Eds.). *Rape: challenging contemporary thinking*, (pp. 125-160). Cullompton: Willan Publishing.

Wall, L., & Quadara, A. (2014). *Under the Influence? Considering the role of alcohol and sexual assault in social contexts*. Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies.

Sexual crime: Corroboration



MISCONCEPTION 9

There should be other witnesses/third party corroboration of the incident.

One person's word against another is not enough to convict rape; there needs to be more evidence.



What does the empirical evidence say?

Is corroboration needed?

There is a misconception that “real” rape involves an attack on a woman in an outdoor area, where physical corroborative evidence will be left behind (Waterhouse, Reynolds, & Egan, 2016). The reality is that most rapes/sexual offences occur in a residential location (away from public view), and corroborative evidence is not usually available. Sexual offence victims (and offenders) are often the only witnesses to the crime (Cossins & Goodman-Delahunty, 2013; Tidmarsh, Powell, & Darwinkel, 2012). There is also often a lack of forensic medical evidence to prove that a sexual offence occurred, especially if the incident occurred a long time ago (Cossins, 2001; Cossins & Goodman-Delahunty, 2013).

- » In 2011, 50% of reported sexual offences occurred in a private residence in Australia (ABS, 2013; Tarczon & Quadara, 2012) and, in 2013, two-thirds (67% or 13,270 victims) of sexual offences occurred in a residential location (ABS, 2014). **Most sexual offences occur in a residential location as opposed to a public space** (i.e., away from public view) (ABS, 2016).
- » Similarly, a study with 400 cases of sexual offences in the UK revealed that most rapes (74.4%) occurred inside a person's home (Waterhouse et al., 2016).

Current legislation

It is legally recognised that sexual offences do not need to be corroborated by other evidence. According to the *Evidence Act 2008* (Vic.) s 164(4), if there is a jury in a criminal proceeding, the judge *must not* (a) warn the jury that it is dangerous to act on uncorroborated evidence or give a warning to the same or similar effect; or (b) direct the jury regarding the absence of corroboration.



Further reading

Cossins, A. (2001). Complaints of child sexual abuse: Too easy to make or too difficult to prove? *Australian and New Zealand Journal of Criminology*, 34(2), 149-168.

Tarczon, C., & Quadara, A. (2012). *The nature and extent of sexual assault and abuse in Australia*. [Electronic resource]. Melbourne: Australian Institute of Family Studies.

Sexual crime: “Counter-intuitive” continued relationship following offending



MISCONCEPTION 10

Real rape victims would discontinue a relationship with the offender.



What does the empirical evidence say?

Why a continued relationship?

Despite public perceptions, sexual offending is often a relationship-based crime (Tidmarsh, 2016). The majority of rapes/sexual offences are committed by someone known to the victim, frequently in a familiar location. Rapes are often committed by family members or within intimate partner relationships (ABS, 2013; Larsen, Hilden, & Lidegaard, 2015; Waterhouse, Reynolds, & Egan, 2016).

Offenders often build up a relationship of trust, power and fear with the victim, rendering it difficult for victims to simply discontinue a relationship with their abuser after an offence. Offenders often engage in coercive control and a grooming process where they gradually manipulate the victim into thinking they are responsible for the abuse, and that there will be many negative consequences if they disclose the abuse (Tidmarsh, 2016; Tidmarsh, Powell, & Darwinkel, 2012).

It is important to recognise that grooming can occur with adults in many different relationship contexts; it is not a tactic reserved solely for children (see the Appendix for more information on grooming). The grooming process can be confusing for victims, often leading to counter-intuitive behaviours (Tidmarsh, 2016).

- » Victims often stay in a relationship with their abusers. This may be for a multitude of reasons: fear for the safety of themselves or others such as children, friends, family or pets; feelings of shame and responsibility for their own rape; belief they can change the abuser’s behaviour; the reality that they are isolated with no financial support, etc. (Long, 2006).
- » Leaving a relationship with an abusive partner is often associated with a heightened risk of violence, including lethal violence (Fleury, Sullivan, & Bybee, 2000; McFarlane, Campbell,

& Watson, 2002), therefore it is understandable why many women might choose to remain in a relationship with an abuser.

- » In a sample of 11,795 college students in Canada and the US, approximately 30% of women and 12% of men reported having been victims of sexual offence at some point in their lives. Of the victims, 23% of both sexes stated that they had sexual intercourse with their offenders on at least one subsequent occasion, and a substantial minority of female sexual offence victims continued to date and/or engage in sexual activity with their offenders following the offence. This was more likely if the offence resulted in completed sexual intercourse than if penetration was prevented by the victim. The study concluded that *some offenders were using assaultive tactics to secure sex partners beyond a single sexual episode* (Ellis, Widmayer, & Palmer, 2009).

For similar patterns of counter-intuitive behaviour with child victims, see page 17.



Further reading

- Ellis, L., Widmayer, A., & Palmer, C. T. (2009). Perpetrators of sexual assault continuing to have sex with their victims following the initial assault: Evidence for evolved reproductive strategies. *International Journal of Offender Therapy and Comparative Criminology*, 53, 454–463.
- Long, J. (2006). Explaining counterintuitive victim behavior in domestic violence and sexual assault cases. *The Voice*, 1(4).

Sexual crime: Emotion during report



MISCONCEPTION 11

Real victims should be upset and distressed when reporting rape to police and in court.



What does the empirical evidence say?

Should victims reporting rape appear distressed?

Research has found that lay persons, judges and police investigators tend to perceive emotional victims of sexual offences as more credible than unemotional victims (Bollingomo, Wessel, Eilertsen, & Magnussen, 2008, Bollingomo, Wessel, Sandvold, Eilertsen, & Magnussen, 2009; Klippenstine & Schuller, 2012). Despite these expectations of a “typical” sexual offence victim, emotional reactions and demeanours following a sexual offence (and during interviews/testimonies) can be highly variable.

Indeed, **many rape victims may respond in a calm and controlled manner, often as a coping mechanism** (Petrak & Hedge, 2003). Two basic responses to crime generally, and to sexual offences specifically, are (i) an emotional victim who visibly displays stress, and (ii) a numbed victim whose emotions are under control (Klippenstine & Schuller, 2012).

Moreover, some research has found that people expect sexual offence victims will respond consistently over time and, in turn, are less believable if they show varying emotional responses over time (Klippenstine & Schuller, 2012). This is in contrast to reality, where victims’ emotions may change during different stages of the legal system (e.g., potentially improved coping over time or via counselling: Klippenstine & Schuller, 2012).

For similar findings regarding the emotions of child victims, see page 17.

Current legislation

Section 52(4)(a) of the *Jury Directions Act 2015* (Vic.) states that where there has been a delay in a complaint or a lack of complaint, the judge must inform the jury that experience shows that, “people may react differently to sexual offences and there is no typical, proper or normal response to a sexual offence.”



Further reading

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Sexual crime: Gender of victims/offenders



MISCONCEPTION 12

Only women can be the victims of rape.

It is impossible for males to be victims of rape.

Only males can be perpetrators of rape.

Physiological responses (e.g., erections, orgasms) during sexual offences must mean the person consented.



What does the empirical evidence say?

Can men be raped?

There is consistent evidence that sexual offence is a gendered crime. The majority of sexual offence victims are female (84%: ABS, 2013), and the majority of sexual offence perpetrators are male (Turchick & Edwards, 2012).

It is important, however, not to overlook males as victims of sexual offence:

- » 4% (336,000) of Australian men (18 years and over) had experienced sexual offence since the age of 15, and 0.4% (37,000) had experienced sexual offence recently in the 12 months preceding the Australian Personal Safety Survey (ABS, 2013).
- » Of the 336,000 men, an estimated 252,600 (3% of all men) had been sexually offended by a known person compared to 139,000 men (1.6% of all men) who had been sexually offended by a stranger.
- » Statistics are likely to *underestimate* the true level of the crime given that many men are unwilling to report sexual offences due to a range of stigmas and barriers.
- » Men may be particularly vulnerable to rape in institutional settings such as the military and prison (Turchik & Edwards, 2012). However, they can also experience rape in a range of other settings: mother–son child sexual abuse (Stathopoulos, 2014a), within same-sex relationships (Turchik & Edwards, 2012), and forced by female partners (either while sober or under the influence of substances: Fisher & Pina, 2013).
- » Men who are raped can experience a range of physical and psychological consequences: anal lacerations, sexually transmitted infections, broken bones, skin and muscle damage, depression, lower self-esteem, anxiety, post-traumatic stress symptoms, suicidal ideation, substance abuse issues, social difficulties and sexual dysfunction (Turchik & Edwards, 2012).

Can women rape?

While the majority of sexual offences against both men and women are committed by men, it is also important to acknowledge that females can be perpetrators of sexual violence. Australian data indicates that women committed up to 1.6% (45 out of 2,875) of all sexual offences in the period 2011–12 (ABS, 2013). International statistics from five countries (including Australia) indicate that 4.6% of sexual offences were committed by women (Cortoni, Hanson, & Coache, 2010).

What about physiological responses?

Research has found that unwanted sexual arousal and physiological responses (e.g., erections, orgasms) can occur during rape/sexual offences, and such responses do *not* indicate that the person consented to sexual activity (Levin & van Berlo, 2004). Researchers have concluded that a defence based simply on the idea that genital arousal proves consent has “no intrinsic validity and should be disregarded” (Levin & van Berlo, 2004, p. 87).



Further reading

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Sexual crime: Disability



MISCONCEPTION 13

People with disabilities are rarely victims of rape and sexual offences.

People with mental health issues often fabricate reports of rape and sexual offences.



What does the empirical evidence say?

People with disabilities are rarely victims?

People with disabilities are **over-represented as victims of sexual offences**, and often face many barriers to reporting sexual offences (Murray & Powell, 2008).

- » Victoria police data has revealed that out of 850 reported rapes, 26.5% were identified as having a disability. Of this group, 15.6% had a psychiatric disability or mental illness, and 5.9% had an intellectual disability (Heenan & Murray, 2007).
- » People with intellectual disabilities may be particularly at risk of sexual abuse by carers, staff and other residents at residential settings, in addition to family members, intimate partners and ex-partners (Murray & Powell, 2008). Perpetrators often target those with intellectual disabilities because they perceive them as being powerless, vulnerable and unable to make accusations (Pillay & Sargent, 2000).
- » People with disabilities are often capable of relaying accurate details about their abuse, particularly if they are interviewed in a developmentally sensitive and non-intimidating manner (Pillay & Sargent, 2000).

People with mental health issues fabricate reports?

- » Case studies have revealed that people with mental health issues may make disclosures of sexual offences that appear implausible but are subsequently genuine (e.g., a patient claiming she was “raped by Santa Claus” was in fact raped by a groundsman who had a white beard and was wearing a red t-shirt). It is vital that police take disclosures at face value, until the matter is thoroughly investigated (Ashmore, Spangaro, & McNamara, 2015).
- » Disclosures may also be plausible accounts of current events, or may be disclosures of past abuse triggered by current traumatic experiences. It is important for investigators to take all disclosures seriously and remember that a lack of coherence does not equate to a lack of honesty (Ashmore et al., 2015).



Further reading

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Sexual crime: Age of victim



MISCONCEPTION 14

Only young attractive people are victims of rape and sexual offences.



What does the empirical evidence say?

Older women and sexual offences

Research has indicated that women in the 18 to 24 years age group are most at risk of experiencing sexual offences (ABS, 2013). According to the Australian Personal Safety Survey, more than half of sexual offence victims were aged under 35 (ABS, 2013). Nevertheless, it is important not to overlook older women as victims of sexual offences:

- » Approximately 5,812 women aged 55 years and over had experienced sexual offences in the 12 months prior to the Personal Safety Survey (ABS, 2013).
- » The rates of sexual violence against older women appear to be relatively low; however, existing prevalence estimates are likely to **underestimate the true extent of victimisation**. Older women face a range of barriers to recognising and disclosing their experiences of sexual violence, especially if they've grown up in an era where sex was a taboo topic, or where rape within marriage was not legally recognised (Fileborn, 2016).
- » The majority of older women victim/survivors do not (or are unable to) report to the criminal justice system. For those who do, their cases suffer from high levels of attrition. Living in an aged care facility may increase older women's vulnerability to sexual offences, where offenders can constitute other residents or staff/carers who have great power over older women, especially if they suffer from disability, cognitive decline or social isolation (Fileborn, 2016).
- » Research has shown that sexual offences against older women (55–87 years) share many characteristics with offences against younger women (15–30 and 31–54 years). Women in the older age groups were just as likely to be attacked by an acquaintance as by a stranger; just as likely to experience severe methods of coercion (e.g., restraint, physical violence); and sustained similar injuries to those incurred in younger age groups (e.g., lacerations, bruises) but suffered higher rates of vaginal injuries than younger women (Quadara, 2007; Tarczon & Quadara, 2012).



Further reading

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Quadara, A. (2007). *Considering "elder abuse" and sexual assault* (ACSSA Aware no. 15). Melbourne: Australian Institute of Family Studies.

Sexual crime: Child victims



MISCONCEPTION 15

Real child victims would report sexual abuse immediately to an adult.

Real child victims would show signs of hatred towards the abuser and discontinue a relationship.

Real child victims would resist during abuse, and appear to be upset/distressed following the abuse.

Sexual offending would not occur in close proximity to other people.

Real child victims should be able to clearly remember each episode of sexual abuse.

Children's evidence is unreliable. Children cannot be trusted as witnesses.



What does the empirical evidence say?

Dynamics of child sexual abuse

Child sexual abuse is most often perpetrated by someone known to the child, often within familial relationships (Quadara, 2014). Many children (and often family members) are groomed gradually over time. Offenders may build trust and psychologically groom their vulnerable victim, so that they are desensitised to sexual touching and may not realise that something inappropriate is occurring (Craven Brown, & Gilchrist, 2006).

Delayed complaint

- » There is national and international consensus in over 30 years of research literature that demonstrates that the majority of people who experience sexual abuse in childhood do not disclose abuse until adulthood, and when disclosure occurs during childhood, there are frequently significant delays (see McElvany, 2015 for detailed review).
- » Research from the Royal Commission into Institutional Responses to Child Sexual Abuse found that victims/survivors took an average of 22 years to disclose the abuse to someone (Interim Report, volume 1, 2014).

Continued relationship

- » Some research has found that it is not uncommon for children to willingly maintain a positive relationship with the perpetrator following sexual abuse (Kellogg & Huston, 1995). This can especially occur where a child has close and continuing contact with the perpetrator due to a familial relationship (e.g., parent). The child may behave in an affectionate way towards the perpetrator despite there potentially being significant acts of sexual molestation (Shackel, 2009a).

Emotional reaction

- » There is no scientific evidence for clear "symptoms" of abused children (Zajac, Garry, London, Goodyear-Smith, & Hayne, 2013). Research has indicated that children often do not display noticeable emotions during disclosures of abuse in forensic interviews (Castelli & Goodman, 2014; Katz et al., 2012; Sayfan, Mitchell, Goodman, Eisen, & Qin, 2008).
- » Research has suggested that positive emotions may have an adaptive value when coping with traumatic experiences (Bonanno, 2004; Tedlie Moskowitz, Folkman, & Acree, 2003). Dissociating from their emotions may also be a way of coping with negative events; the victim/survivor may learn to disguise emotional expressions and/or develop strategies to conceal feelings in situations related to the abuse, or to detach from the physical and emotional pain of events (Cole, Michel, & Teti, 1994; Melinder Burrell, Eriksen, Magnussen, & Wessel, 2016).

Sexual crime: Child victims (continued)

- » Although many children exhibit signs of fear or distress towards the offender, or symptoms of trauma following abuse (both short term and long term; e.g., Steel et al., 2004), **many other children do not react in this way** or show such signs. Research has revealed that a substantial group of child sexual abuse victims (approximately *one third*) lack any symptoms at the time of initial assessment (Bal, De Bourdeaudhuij, Crombez, & Van Oost, 2004; Shackel, 2009b). Therefore, reactions following child sexual abuse are *variable* and should not be a factor when assessing the credibility of the child's account.

Location of offence (proximity to others)

- » In many cases of child sexual abuse, the offender isolates the child, leaving them the only witness to the abuse (Cossins & Goodman-Delahunty, 2013).
- » Nevertheless, the majority of child sexual abuse occurs within familiar or familial contexts (Quadara, 2014b), and can often occur within close proximity to other people (Tidmarsh, 2016). For example, in a study with 113 Canadian teachers who sexually offended against children, 44% of offences occurred at school (Moulden, Firestone, Kingston, & Wexler, 2010). In another study with 182 child sex offenders in Queensland, the majority of offences transpired for less than 15 minutes, and offenders reported behaviours such as spending time with children in the presence of other adults and sneaking into the child's bedroom at night (Smallbone & Wortley, 2001).
- » One common form of grooming behaviour is to separate the child from other children (e.g., send siblings to bed early), indicating that child sexual abuse can occur in isolation, while simultaneously occurring in close proximity to others (Craven et al., 2006; Quadara, 2014b).

Children's accounts

- » Research has shown that children as young as 4 years old are capable of providing accurate and detailed accounts, particularly of events that they have experienced. Moreover, they are capable of resisting suggestive questions, and are unlikely to provide false accounts of events unless questioned in a highly coercive and interrogative manner (Cossins, 2008).
- » Contrary to some juror's beliefs, children's accounts are especially likely to be accurate and detailed when the interviewer asks non-leading, open-ended questions that request information in the child's own words (Cossins, 2008; Powell & Snow, 2007).
- » Some research has found that children who experience repeated events have improved recall for repeated details: however, they can confuse the timing of details when they change across events. Such research suggests that it is unrealistic to expect children to recount repeated events without some confusion about the timing of details (McNichol, Shute, & Tucker, 1999).

Sexual crime: Child victims (continued)

Current legislation

Section 33 of the *Jury Directions Act 2015* (Vic.) states that the trial judge, prosecution, defence counsel, or accused *must not* say or suggest in any way to the jury that:

- (a) Children as a class are unreliable witnesses.
- (b) The evidence of children as a class is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults.
- (c) A particular child's evidence is unreliable solely on account of the age of the child.
- (d) It would be dangerous to convict on the uncorroborated evidence of a witness because that witness is a child.

These provisions have been designed to address common misconceptions about the reliability of children's evidence.

Section 49B of the *Crimes Act 1958* (Vic.), focuses on the offence of "Grooming" for sexual conduct with a child under 16 years old. This legislation addresses predatory behaviour designed to enable later sexual activity with a child. See the following factsheet for an overview of grooming conduct: <assets.justice.vic.gov.au/justice/resources/df7994c3-9238-4de5-9ff1-a5c0cf79a7fa/grooming.pdf>.



Further reading

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Appendix: Grooming

Internationally, the term grooming has often been used in relation to children: “The process by which a child is befriended by a would-be abuser in an attempt to gain the child’s confidence and trust, enabling them to get the child to acquiesce to abusive activity. It is frequently a pre-requisite for an abuser to gain access to a child” (Gillespie, 2002 in Craven, Brown, & Gilchrist, 2006).

Victoria Police recognise that grooming can occur with both adults and children, therefore they adopt a broader definition: “the process by which a person prepares a victim for, and strengthens, a pattern of sexual abuse” (Tidmarsh, Powell, & Darwinkel, 2012). Moreover, their definition includes two stages: (1) non-sexual and (2) sexual.

In the first stage, the perpetrator grooms the victim and surrounding environment to establish power and control. In the second stage, the perpetrator begins to sexualise the relationship, often by beginning with non-threatening touches (e.g., hugging, tickling) before moving to sexual acts (Tidmarsh et al., 2012). The stages are a conceptual guide to understanding grooming and should not be viewed as rigid criteria. There are variabilities in how grooming can occur: the stages may occur consecutively or concurrently, and may progress over varying periods of time (Tidmarsh et al., 2012).

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