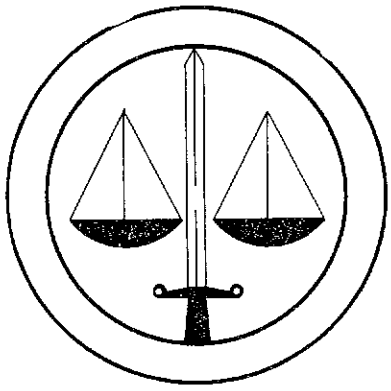
BUREAU OF CRIME STATISTICS AND RESEARCH

Crimes (Sexual Assault) Amendment Act, 1981
Monitoring and Evaluation

Interim Report No. 1 - Characteristics of the Complainant, the Defendant and the Offence



N.S.W. Bureau of Crime Statistics and Research
Attorney General's Department

Crimes (Sexual Assault) Amendment Act, 1981
Monitoring and Evaluation

Interim Report No. 1 - Characteristics of the Complainant, the Defendant and the Offence

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Bureau of Crime Statistics and Research
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REPORT SERIES

This report is one of a series of interim reports produced by the Bureau of Crime Statistics and Research as part of its monitoring of the Crimes (Sexual Assault) Amendment Act, 1981.

Interim Report No. 1 aims to establish the characteristics of the complainant, the defendant and the offences which will be discussed in Interim Reports Nos. 2 and 3.

Interim Report. No. 2 will analyse acquittals, convictions, sentences and the change in sentence structure after 1981.

Interim Report No. 3 will examine the Court Process at both Committal and Trial with particular emphasis on the application of s.409B of the Crimes (Sexual Assault) Amendment Act.

GLOSSARY OF TERMS AND ABBREVIATIONS

For brevity, the Crimes (Sexual Assault) Amendment Act of 1981 will henceforth be referred to as the Amended Crimes Act. Section and sub-sections mentioned in this report will, unless otherwise stated, be sections and sub-sections of the Amended Crimes Act.

The Study or post-legislation population refers to cases dealt with under the Amended Crimes Act.

The Control or pre-legislation population refers to cases, dealt with under the Crimes Act, 1900, prior to the 1981 amendments.

INTRODUCTION

The Crimes (Sexual Assault) Amendment Act was introduced to Parliament on July 14, 1981. At this time the then Attorney-General, the Hon. Mr Frank Walker, QC, MP, instructed the Bureau to monitor the operations of the legislation for an 18-month period, with a view to bringing to light any anomalies in its operation and recommending any amendments requisite to giving fuller effect to its intentions.

The aims of the legislation were to rectify perceived major defects in the law relating to rape and sexual assault. In particular, it was anticipated that the new laws would protect complainants from further victimization under the legal process; encourage victims to report offences; facilitate the administration of justice and the conviction of guilty offenders whilst preserving the traditional rights of the accused; and serve an educative function in further changing community attitudes to sexual assault victims (Hansard 1981).

Major Provisions of the Act

The common law offences of rape and attempted rape were abolished and replaced with three categories of sexual assault of differing seriousness and correspondingly varying sentence structures. (Under the old legislation the only penalty available for rape of all kinds was life imprisonment).

The amended Act broadened the definition of sexual intercourse to include the penetration of the vagina and anus of any person by any part of the body of another person. Foreign objects inserted into the anus and vagina, except where the penetration was carried out for proper medical purposes, would also constitute sexual intercourse within the meaning of the Act, as would the introduction of any part of the penis into another person's mouth.

The immunity from prosecution of husbands, and youths aged less than fourteen years, was removed. Perhaps, most importantly, the Act provided for severe limitations to be imposed on the admission of the complainant's sexual biography in any court proceedings. Reference to the complainant's sexual reputation prior to the alleged offence was to be totally prohibited.

Unlike the English law, which allows complete judicial discretion in the admission of prior sexual history, the New South Wales legislation clearly articulated the conditions which must be satisfied before a judge or magistrate could agree to any such information being tendered. Their reasons for admitting information were to be recorded and counsel making applications were to do so in the absence of the jury.

The major provisions of the Crimes (Sexual Assault) Amendment Act of 1981 are shown in Appendix 2.

THE BUREAU STUDY

The present study is perhaps one of the more comprehensive examinations of sexual assault legislation yet attempted. Whilst one English study (Alder: 1983) examined some of the questions addressed by this study, it was restricted to an examination of the operation of one London higher court. The Scottish study by Chambers and Miller (1983), on the other hand, concentrates exclusively on police investigation of sexual assault complaints. The Bureau study examined court records in both magistrates and higher court jurisdictions and analysed these across a broad range of dimensions (see Appendix 2) at each phase of the committal, trial and sentence hearings. Aspects of police investigations of sexual assault complaints are being examined in a parallel series of studies to this one.

The present report seeks to provide a framework within which the discussion of specific aspects of the Amended Act in the next two reports may be placed. The aim of the report is to provide information on various characteristics of the offence, the offender and the victim analysed in terms of whether the offence was dealt with by the court before or after the Amended Crimes Act came into effect. Specifically, the present report examines characteristics of the offence, including

1. reported offences and offence types
2. police response to reported offences
3. time of the offence, and
4. location of the offence

characteristics of the alleged offender, including

5. age
6. sex
7. marital status

8. occupational status
9. employment status, and
10. alcohol consumption

and characteristics of the complainant, including

11. age
12. sex
13. relationship between complainant and alleged offender
14. injury to complainant
15. threats to the complainant
16. injuries to third parties
17. threats to third parties; and
18. resistance by the complainant

Design

The study is based on a pre- and post-legislation offence population of 18 months. The offences counted were all charges under sections 61B, 61C and 61D, plus 61F attempts of all categories under the Amended Crimes Act, together with the common law offences of rape and attempted rape.

For inclusion in the samples a case had to satisfy two criteria: the alleged offence must have been committed and, in relation to that offence, a formal committal hearing commenced during the 18 month period. Once a case had satisfied these conditions, no further time constraints were imposed on the completion of the higher court or other proceedings.

There was a total of 684 reported cases in the Control period and 790 cases in the Study period. The full set of data recorded for each case is detailed in Appendix 1.

Data Sources

The New South Wales Police Department provided the Bureau with computer printout of all s.61B, C, D and F offences known to them between July 14, 1981, and January 13, 1983. A Control Group (pre-legislation) printout was constructed of rape and attempted rape cases known to them for the period January 14, 1979, to July 13, 1980. Each case in both samples in which the arrest of at least one of the alleged offenders occurred was traced through the criminal justice system until final disposition.

The committal hearing was chosen as the entry criterion rather than the trial so that the results could take into account those cases which lapse at committal or in which a Nolle Prosequi is found between committal and trial. However, the major focus of the study is on those cases which were dealt with at a higher court as either a contested or sentence matter.

To ensure that no cases were missed, the police data were supplemented by examination of the indictments held at the Prothonotary's Office of the New South Wales Supreme Court. Indictments show the date of the alleged offence and also the date on which the defendant was committed for trial or sentence.

This approach was adopted because of the probability that police data were to some extent inaccurate. No criticism is intended in stating this fact but police printouts will only show the clear-up rate at the time the information is printed. If an offence is cleared by a subsequent arrest, the printout is only amended if a Further Information Report is forwarded. This is not always done.

Delays in finalising the study have unfortunately been unavoidable. This is because a case which entered committal during the 18-month period might not be finalised in a higher

court for some considerable time afterwards, especially if the defendant is bailed, pleads not guilty, or a no bill application is lodged between the committal and higher court hearing. Even at the end of the higher court proceedings the case might still be active because of appeals or compensation hearings.

Generally, it is only at the completion of all matters that researchers can obtain the court transcripts. Cases which lapsed at committal, and were sound recorded, had to be re-taped for the Bureau Study.

CHARACTERISTICS OF THE OFFENCE

OFFENCES KNOWN TO THE POLICE

Tables 1 and 2 show the offences reported to the NSW Police Department for the Control (Table 1) and Study (Table 2) periods. An examination of the totals* in all categories in each table reveals an increase of 15.4% in the number of reports subsequent to the new legislation. It might appear, therefore, that the legislation has achieved one of its primary aims: that of increasing the ease with which people which may report sexual assaults. Similarly, there might have been an increase in the incidence of offences. There is reason to be cautious in these assessments, however, for the following reasons:

The types of offence listed in the Study Group are different from those of the Control, in some respects. This is because of the expanded definitions of sexual intercourse and other provisions contained in the amended Crimes Act. For example, a s.61B offence in which grievous bodily harm was inflicted previously might have been charged as an attempted rape. However, it could also have been dealt with as an assault occasioning grievous bodily harm, with no reflection in the charge of the sexual attributes of the offence.

Similarly, some s.61D charges definitely would not have been classified as rape prior to 1981, because penetration was into some part of the body other than the vagina, with some part of the body other than the penis.

* Total reports are an unduplicated set of offences since only themost serious or principal offence is counted. Consequently, if a person were charged with a s.61B and a s.61D offence in relation to the same event, only the s.61B offence would be counted. Otherwise analyses in subsequent reports will state the totality and combinations of charges laid.

Table 1

Frequency of Reports of Rape and Attempted Rape by Police Classification (Control Group)

	TOTAL REPORTS+		ACCEPTED REPORTS		REJECTED REPORTS		CLEARED REPORTS	
	No	%	No	%	No	%	No	%
Rape	567	82.8	268	47.2	299	52.7	147	25.9 (54.8)
Attempt Rape/Accessory	117	17.2	95	81.1	22	18.8	60	51.2 (63.1)
Total All Categories	684	100.0	363	53.0	321	46.9	207	30.2 (57.0)*

* Brackets around percentages express clear up rate as proportion of accepted offences.

\+ Total reports refer to cases reported rather than the numbers of defendants involved in each case. Some cases involve more than one defendant.

Table 2

Frequency of Reports of Sexual Assaults under the Amended Crimes Act by Police Classification (Study Group)

	TOTAL REPORTS+ No	TOTAL REPORTS+ %	ACCEPTED REPORTS No	ACCEPTED REPORTS %	REJECTED REPORTS No	REJECTED REPORTS %	CLEARED REPORTS No	CLEARED REPORTS %
CATEGORY 1 (INFLICT G.B.H.) ss. 61B (1) & (2)	9	1.2	8	88.8	1	11.1	4	44.4 (50.0)
CATEGORY II (INFLICT A.B.H.) ss. 61C (1) (a) or, 61C (2) (a)	127	16.0	118	92.9	9	7.0	56	44.0 (47.4)
CATEGORY II (THREATEN) ss. 61C (1) (b) or, 61C (2) (b)	99	12.6	88	88.8	11	11.1	36	36.3 (40.9)
CATEGORY III (COMPLETE) s. 61D	514	65.0	368	71.5	146	28.4	215	41.8 (58.4)
CATEGORY III (ATTEMPT) s. 61F	41	5.2	37	90.2	4	9.7	16	39.0 (43.2)
TOTAL ALL CATEGORIES	790	100.0	619	78.3	171	21.6	327	41.3 (52.8)*

* Brackets around percentages express clear up rate as proportion of accepted offences.

\+ Total reports refer to cases reported rather than the numbers of defendants involved in each case. Some cases involve more than one defendant.

The question naturally arises then, as to whether the number of sexual assault offences reported has risen when Study Group offences falling outside the ambit of the old legislation are excluded. Unfortunately, the issue is too complex to address in this context. The matter however will be dealt with in greater detail in the second interim report in this series. We turn then to other features of Tables 1 and 2 pertaining to police classification of reports.

Cleared Reports

The proportion of reports which are cleared by arrest may be viewed in two ways - either as a percentage of total reports or of accepted reports. Since by definition, reports which are not accepted cannot be cleared, the percentage of accepted reports cleared is the appropriate index of clearance in the two periods. On this basis, there were slightly more cleared cases in the Control population - 57.0 per cent, compared to 52.8 per cent in the Study.

Accepted and Rejected

The most notable differences between the Study and Control Groups were the levels of accepted reports (Study: 78.3%; Control: 53.0%) and its corollary, levels of rejected reports (Study: 21.6%, Control: 46.9%).

It is difficult to know, in the absence of additional information, if the decline in rejections can be attributed to the Amended Crimes Act. The fact that the level of rejected complaints had fallen from 65% in the period 1973-1975 to 46.9% before the sexual assault amendments means that the reduction after the legislation may have simply been the continuation of an existing trend. Other factors might also have influenced the decline. For example, sexual assault units had been installed in major Sydney and country hospitals and improved training schemes for women police in handling sexual assault cases had been implemented in the NSW Police Department.

Bases of Analyses

The analyses which follow are based upon distinct complainant, distinct defendants, or complainant/defendant pairs as appropriate and therefore the totals vary. There are 228 complainant/defendant pairs in the Study Group and 194 in the Control Group; 214 distinct defendants in the Study Group and 186 in the Control Group; 186 distinct complainants in the Study Group and 136 in the Control Group.

Time of the Alleged Offence

Table 3 below shows the times of alleged offences before and after the legislation.

Table 3 Time at which alleged offence occurred by Group
No. = Complainant/defendant pairs

	*Study		** Control	
	No.	%	No.	%
6 a.m. to 11.59 a.m.	18	8.1	7	3.7
Midday to 5.59 p.m.	29	13.1	35	18.1
6 p.m. to 11.59 p.m.	85	38.5	68	35.2
Midnight to 5.59 a.m.	89	40.3	83	43.0
TOTAL	221	100.0	193	100.0

* Time not established in 7 cases

** Time not established in 1 case

In both the Study and Control Groups, the alleged offence occurred at night in most cases. This is a finding consistent with research studies done in this, or any other country.

LOCATION OF THE ALLEGED OFFENCE

There are also only minor differences between the location of the alleged offences in either sample as detailed in Table 4 on the following page.

Complainants at home in their houses were more at risk of sexual assault than those walking ill-lit streets, where only three per cent of offences were alleged to have occurred.

The vehicles mentioned almost invariably belonged to the defendant or to friends of the defendant, who were sometimes implicated in the offences.

The category of 'park/bush/deserted area' should be interpreted cautiously, however, as in most cases these areas were reached with a vehicle. Incidents in which a sexual assault occurred in these locations were not usually initiated in a deserted area.

Table 4 Location of Alleged Offence by Group

No. = Distinct Complainants

	Study		Control	
	No.	%	No.	%
Complainant's house (defendant allowed entry)	26	14.0	18	13.2
Complainant's house (defendant broke in)	20	10.8	16	11.8
Mutual house (complainant/defend)	10	5.3	5	3.7
Defendant's house	22	11.9	23	17.0
Other house	10	5.3	10	7.3
Vehicle	33	17.8	20	14.8
Party/disco/hotel	4	2.2	3	2.2
Shelter/institution	2	1.0	1	0.7
Street/lane	5	2.7	3	2.3
Park/bush/deserted area	44	23.7	31	22.8
Work Place	2	1.0	-	-
Shopping complex	2	1.0	1	0.7
Public transport	2	1.0	1	0.7
Garden of house	1	0.6	-	-
More than one location	3	1.7	1	0.7
Motel room (defendant broke in)	-	-	1	0.7
Holding cells of court complex	-	-	1	0.7
School playground	-	-	1	0.7
TOTAL	186	100.0	136	100.0

CHARACTERISTICS OF THE DEFENDANT

AGE CHARACTERISTICS OF THE DEFENDANT

Table 5 shows the age distribution of defendants in two groups.

The abolition of the immunity of persons under the age of fourteen years to prosecution for sexual assaults did not result in any youth in this age group being charged.

The mean age of the Study Group was 25.3 years, and the Control Group 23.3 years. The age range in each group was Study, 14 to 65 years, and Control 14 to 54 years.

There were more younger defendants in the Control population, with defendants aged less than 18 years at the time of the offence representing 1:5 of the sample. Slightly more than 1:10 of the Study Group fell into this age category.

As with other, non sexual, offences, the bulk of defendants in both Study and Control Groups were aged between 18 years and 25 years. (Study: 48.3 per cent; Control: 43.0 per cent.)

A possible explanation of these age discrepancies is that some offences charged under the amended Crimes Act, with its expanded definitions of sexual intercourse, would previously have been prosecuted as indecent assaults. Such offenders tend to be older than rape defendants. One in three men convicted in New South Wales higher courts in 1981 of indecently assaulting a female was aged over 40 years.

Table 5 Age of Defendants by Group

No. = Distinct Defendants

	*Study		** Control	
	No.	%	No.	%
14 years less than 16 years	3	1.5	14	7.8
16 years less than 18 years	20	9.6	22	12.1
18 years less than 25 years	101	48.3	78	43.0
25 years less than 30 years	31	14.9	41	22.7
30 years less than 40 years	34	16.2	18	10.0
40 years less than 60 years	19	9.0	8	4.4
60 years and over	1	0.5	-	-
TOTAL	209	100.0	181	100.0

* Age not established in 5 cases

** Age not established in 5 cases

Table 6 Sex of Defendant by Group
No. = Distinct defendants

	Study		Control	
	No.	%	No.	%
Male	209	97.7	183	98.4
Female	5	2.3	3	1.6
TOTAL	214	100.0	186	100.0

SEXUAL CHARATERISTICS OF THE DEFENDANT

Despite the gender neutrality of the provisions of the Amended Crimes Act, men remain the overwhelmingly predominant class of sexual assault defendants.

As evidenced above in Table 6, the proportion of males in both Study and Control populations is almost identical, approximately 98.0 per cent in both groups.

There were five females charged with sexual assault in the Study Group, and three women were charged with being accessories to rape under the old Crimes Act.

DEFENDANT'S MARITAL STATUS

Table 7 shows the defendant's marital status in the two populations.

Table 7 Defendant's Marital Status by Group
No. = Distinct defendants

	*Study		** Control	
	No.	%	No.	%
Single	121	59.6	110	66.2
Married	40	19.8	26	15.7
Widowed	1	0.4	2	1.2
Divorced	11	5.4	5	3.0
Permanently Separated	-	-	8	4.9
De-facto union	30	14.8	15	9.0
TOTAL	203	100.0	166	100.0

* Marital status not established in 11 cases
** Marital status not established in 20 cases

A further reflection of the age discrepancies discussed previously is evident in Table 3. There are more single defendants in the Control Group than in the Study Group. This is consistent with the higher proportion of young defendants in the Control Group.

Equally consistent with the older age groupings in the Study population is the greater number of defendants who are either married or living in a de-facto relationship.

The marital status of the defendants in the Study Group will be further discussed in the section dealing with the relationship between the complainant and the defendant.

OCCUPATIONAL STATUS

Table 8 below shows the occupational status classifications of the Study and Control groups.

Table 8 Defendant's Occupation at time of arrest by Group
No. = Distinct Defendants

	*Study		** Control	
	No.	%	No.	%
Professional	1	0.4	1	0.6
Managerial	2	1.0	3	1.8
Semi-skilled	53	26.8	42	25.0
Unskilled	117	58.0	93	55.3
Unemployed and no usual occupation	18	9.0	12	7.1
Invalid/pensioner	9	4.5	8	4.8
Student	1	0.4	8	4.8
Policeperson	1	0.4	1	0.6
	202	100.0	168	100.0

* Occupation not established in 12 cases

** Occupation not established in 18 cases

Grouped on the Congleton Scale of Occupational Status (1969), the Study and Control Groups show considerable similarity.

The bulk of the defendants nominated as their occupation an unskilled, blue-collar job; or, agreed that they had no 'usual' occupation at all (Study: 67.0 per cent, Control: 62.4 per cent).

EMPLOYMENT

Table 9 Employment Status of Defendant at time of alleged offence by Group

No. = Distinct Defendants

	*Study		** Control	
	No.	%	No.	%
Employed	107	52.8	92	53.1
Not Employed	96	47.2	81	46.9
TOTAL	203	100.0	173	100.0

* Employment not established in 11 cases

** Employment not established in 13 cases

As may be seen in Table 9, compared to national unemployment levels of around the ten per cent mark, rape and sexual assault defendants were five times more likely to have been unemployed at the time of the alleged offence. However, their levels or unemployment are only marginally lower than those recorded generally for the defendants appearing before higher criminal courts in New South Wales in 1983, which was 50.1%.

ALCOHOL CONSUMPTION

Table 10 Alcohol Consumption by defendant in 6 hours preceding alleged offence
No. = Distinct Defendants

	*Study		** Control	
	No.	%	No.	%
Alcohol consumed	149	85.7	133	89.2
Alcohol not consumed	25	14.3	16	10.8
TOTAL	174	100.0	149	100.0

* Pattern of alcohol consumption not established in 40 cases
** Pattern of alcohol consumption not established in 37 cases

Table 10 shows the pattern of alcohol consumption in the two groups.

In 40 cases in the Study Group and 37 cases in the Control Group the pattern of alcohol consumption could not be established. Of the remainder of both samples, the majority of defendants had consumed alcohol in the 6 hours preceding the alleged offence (Study: 85.7 per cent, Control: 89.2 per cent).

CHARACTERISTICS OF THE COMPLAINANT

RELATIONSHIP BETWEEN THE COMPLAINANT AND THE DEFENDANT

Socially, there is a mutuality between the complainant and the defendant in a sexual assault which is also observed in both homicide and assault offences. Cases which come before courts generally, but not exclusively, involve both an accuser and an accused who are poor, semi or unskilled blue-collar workers, of whom many are unemployed.

Brownmiller's (1975) assertion that women of all classes are rape victims, whilst it might be true, disguises the highly uneven distribution of risk across social classes.

Amir (1967), notes that the complainant and the defendant in rape cases are more likely to be socially and ecologically bound than to be strangers. Amir's observations are supported by data from this study, and also by those of Loh (1980).

The relationship between the complainant and the defendant was classified as 'family', friends/acquaintances and neighbours' in approximately 45.6 per cent of both the Control Group and the Study Group. By comparison, only 1:4 defendants in each group were deemed to be totally unknown to the complainant at the time of the alleged offence.

In interpreting the category 'family' the reader should take into account that included here are more than straight blood or marital relations. This is to distinguish the family group from the looser trust ties of either friendship or acquaintance. In other words, an extended-family kinship classification has been adopted. Consequently, 'family' will include the complainant's de-facto step-father (that is her mother's de-facto husband) as well as legal step-fathers. Siblings will include brothers-in-law.

Approximately half of both samples involved defendants whom the complainant regarded as either 'friends' or 'acquaintances' (Study: 47.4 per cent, Control: 58.8 per cent).

The Oxford English Dictionary defines 'acquaintance' as a relationship "involving more than recognition and less than intimacy". In these terms we have included in the 'acquaintance' category men who were met for the first time in a social setting, the day or night of the alleged offence. However, this category is also shown separately for the sake of clarity.

Table 11 Relationship between complainant and defendant
No. = Complainant/defendant pairs

	Study		Control	
	No.	%	No.	%
Estranged spouse	2	0.9	-	-
Lover/estranged lover	3	1.3	3	1.5
De-facto spouse/estranged de-facto	3	1.3	3	1.5
Biological/adoptive father	5	2.2	-	-
Step-father (includes de-facto)	9	3.9	2	1.0
Siblings (includes brother-in-law)	4	1.7	4	2.1
Other family members	7	3.1	2	1.0
Other 'trust' relationships (includes baby-sitter/police in charge of police cells)	2	0.9	3	1.5
Friend/acquaintance	69	30.3	71	36.6
Neighbour	4	1.8	5	2.6
Work associate	2	0.9	1	0.5
Complainant offered a lift by a friend or acquaintance	-	-	4	2.1
Acquaintance - met for the first time day or night of alleged offence	39	17.1	43	22.2
Complainant hitch-hiker solicits lift from a stranger	5	2.2	4	2.1
Complainant hitch-hiker offered lift by stranger	4	1.8	-	-
Complainant a prostitute	6	2.6	-	-
Total stranger	64	28.0	49	25.3
TOTAL	228	100.0	194	100.0

NOTE: Analysis of relationship is based on complainant/defendant pairs rather than on distinct complainants because the relationship might vary between different defendants in group offences.

AGE OF COMPLAINANT

Table 12 Age of Complainant by Group
No. = Distinct Complainants

	*Study		** Control	
	No.	%	No.	%
Less than 10 years	13	7.4	3	2.3
10 years less than 14 years	14	8.0	10	7.9
14 years less than 16 years	16	9.1	15	11.9
16 years less than 18 years	34	19.5	23	18.1
18 years less than 25 years	49	28.0	44	34.7
25 years less than 30 years	22	12.6	13	10.2
30 years less than 40 years	11	6.2	15	11.9
40 years less than 60 years	10	5.8	2	1.5
More than 60 years	6	3.4	2	1.5
TOTAL	175	100.0	127	100.0

* Age not estalished in 11 cases

** Age not estalished in 9 cases

It is readily apparent from Table 12 that the age distribution of complainants in the Study Group differs from that of the Control Group principally in the higher proportion of both younger and older complainants. There were three times as many complainants aged less than ten years in the Study Group than in the Control Group and similarly with the complainants aged over 40 years.

The youngest complainant was 3 years old and the oldest was 77 years. Both complainants were in the Study Group. The mean age of the complainants in the Study Group was 22.3 year and 21.3 years in the Control Group.

SEX OF COMPLAINANT

Table 13 Sex of Complainant by Group
No. = Distinct Complainants

	Study		Control	
	No.	%	No.	%
Female	172	92.5	136	100.0
Male	14	7.5	-	-
TOTAL	186	100.0	136	100.0

By definition, all complainants in the Control Group were women, since the offence of rape was the penetration of a vagina by a penis.

Under the gender-neutral provisions of the Amended Crimes Act, both women and men can be both complainants and defendants. Table 13 shows that there were 14 prosecutions involving males as complainants under the new Act, or 7.5 per cent of the sample.

However, as the great majority of defendants continue to be male, so 92.5 per cent of the Study Group sample were women. It is not within the scope of this study to determine whether this difference reflects the actual victimisation of males relative to females, or whether there may be a differential willingness to report sexual assaults by male and females.

PHYSICAL INJURY TO COMPLAINANT

Serious physical injury is not typically a characteristic of sexual assault.* This hold true both over time, and in countries other than Australia.

Loh (1980) found that 25 per cent of the cases in his Washington sample involved no physical force (other than the act of penetration), and when extrinsic force was used it was 'moderate' (restraining: 42 per cent) rather than 'high' (choking, hitting: 32 per cent). The majority of complainants in his study suffered no physical injury (63 per cent); 28 per cent needed only minor first-aid attention, and, 8 per cent required medical or hospital treatment. Amir (1967), had similar findings in Philadelphia. The Bureau also found similar results in a 1974 study of rapes in New South Wales.

In the present study as may be judged from Table 14, levels of physical injury are much the same in both samples. About half of the complainants suffered negligible injuries or none at all. Of the remainder, approximately 1:3 recorded only bruises, scratches or abrasions not requiring medical attention. One in fifty complainants required hospitalisation because of injuries sustained.

However, a cautionary note is expressed here. In a number of court cases, the complainant, generally in cross-examination, noted that subsequent to the first forensic examination, she had consulted her own doctor in relation to injuries received. It is possible that the level of medical treatment either sought or obtained is understated in our figures.

* Unfortunately, no data on mental trauma were collected in this study. On this important aspect of sexual assault, the interested reader is referred to Holmstrom & Burgess (1983) Voigt (1972) McCahill Et. Al (1979).

Table 14 Nature of Physical Injury to Complainant

No. = Complainants/defendant pairs

	Study		Control	
	No.	%	No.	%
Attempted strangulation	1	0.5	1	0.5
Fractures requiring hospitalisation	-	-	3	1.5
Cuts, gashes, stabs requiring hospitalisation	5	2.1	1	0.5
Fractures	-	-	3	1.5
Cuts/gashes/stabs/burns tears	12	5.2	2	1.0
Other conditions requiring medical attention	23	10.0	12	6.1
Bruises/abrasions/ scratches only	77	33.8	73	37.7
Very minor or negligible	13	5.8	14	7.3
None at all	97	42.6	85	43.9
TOTAL	228	100.0	194	100.0

MEANS OF INJURY INFLICTION

Table 15 Complainant's Injury: Means of Infliction by Group
No. = Injured complainants

	Study		Control	
	No.	%	No.	%
Knife	4	3.0	3	2.8
Blunt Instrument	1	0.8	1	1.0
Other sharp instrument	2	1.5	4	3.7
Other	1	0.8	5	4.5
Direct (punching, kicking etc.)	89	68.0	58	53.2
Indirect, consequential (Gravel rash etc.)	22	16.8	34	31.1
Direct and indirect	12	9.1	4	3.7
TOTAL	131	100.0	109	100.0

Table 15 shows the means of infliction of injury for the subset of injured complainants in Table 14.

As might be expected from the injuries referred to in Table 14 the instrument most commonly used to inflict injury on the complainant was the defendant's body, usually hands or fists. This was followed by consequential or indirect infliction of injury caused by contact with rough surfaces; corners of furniture or other objects in the general melée of the sexual assault.

OFFENSIVE WEAPONS USED TO THREATEN THE COMPLAINANT

Table 16 Threats to complainant by means of offensive weapon
No. = Complainant/defendant pairs

	*Study		** Control	
	No.	%	No.	%
No threats with offensive weapon	176	77.6	173	90.1
Weapon used where threat made				
Gun	7	3.0	3	1.6
Knife	33	14.5	13	6.8
Blunt instrument	4	1.8	-	-
Other sharp instrument	5	3.3	2	1.0
Other blunt instrument	2	0.9	1	0.5
TOTAL	227	100.0	192	100.0

* Information unavailable in 1 case
** Information unavailable in 2 cases

Weapons were used to threaten the complainant in approximately 1:5 of the Study Cases and 1:10 of the Control Group. It should be noted that unlike the Amended Crimes Act, as a characteristic of a rape offence, the presence of a weapon would not be necessarily subject to a specific charge under the old Crimes Act. It is possible that offences involving a weapon, but not accompanied by a completed act of intercourse would have been charged as assault. Or, if accompanied by a completed act of intercourse, not charged separately at all.

Table 17 Type of threat made to complainant by group
No. = Complainants threatened with offensive weapon

	Study		Control	
	No.	%	No.	%
Threat explicitly stated (I'll kill, knife, shoot, hit, etc.)	36	70.5	13	68.4
Threat inferred from presence of weapon	15	29.5	6	31.6
TOTAL	51	100.0	19	100.0

Table 17 presents a sub-analysis of cases in Table 16 where the issue of a threat involving an offensive weapon was raised. The question addressed in Table 17 is whether the threat involving a weapon was stated explicitly or inferable only from the presence of a weapon. The results show that in the majority of cases it is alleged that an explicit threat is made. There is little difference in this finding between the two study groups.

INJURIES AND THREATS TO THIRD PARTIES

Table 18 Threats made to third parties
No = complainant/defendant pairs

	*Study		Control	
	No.	%	No.	%
No threat made to a third party	226	99.5	184	94.8
Threats made and third party relationship to complainant				
Complanant's child	1	0.5	6	3.1
Complainant's friend (excluding husband/boyfriend)	-	-	4	2.1
TOTAL	227	100.0	194	100.0

* Information unavailable in 1 case

The Amended Crimes Act recognises that injury, or threat of injury to a third party, might be factors which would induce a complainant to submit to sexual intercourse. Such offences are covered by s.61B(2) and s.61C(2)(a) and (b). The maximum sentences provided by the legislation for these offences are 20 and 12 years respectively.

Under the Amended Crimes Act no third party was injured, although one was threatened with injury. The person threatened was the complainant's child.

Seven third parties were injured in the Control Group and ten were threatened with injury.

RESISTANCE OFFERED BY THE COMPLAINANT

Table 19 Physical Resistance offered by complainant
No. = Complainant/defendant pairs

	Study		Control	
	No.	%	No.	%
Physical resistance offered	131	57.5	129	66.5
No physical resistance	97	42.5	65	33.5
TOTAL	228	100.0	194	100.0

Table 20 Verbal Resistance offered by complainant
No = Complainant/defendant pairs

	Study		Control	
	No.	%	No.	%
Verbal resistance offered	156	68.4	155	79.9
No verbal resistance	72	31.6	39	20.1
TOTAL	228	100.0	194	100.0

As can be seen from the above tables, physical and verbal resistance is a feature of the majority of sexual assault cases. The differences evident between Study and Control Groups in the above tables may reflect a lessening of the emphasis previously placed on physical resistance in rape cases. The figures displayed however are not based solely on evidence of resistance stated in court. It follows, therefore, that the precise effect of this shift in emphasis under the Amended Crimes Act (see S.61D(3)(d)) remains unknown.

DISCUSSION

This report presents the basic characteristics of the protagonists and the alleged offences which together form the cases which will be dissected in great detail in Interim Report No. 2 - Court Outcome, Convictions and Sentencing; and Interim Report No. 3 - Court Procedures.

The aim of this report has been to 'flesh-out' both the people who report that they have been the victim of a sexual assault and those against whom an accusation of a sexual assault offence is made.

Report Rate

The data reveal an increase of 15.4 per cent in total reports of sexual assaults to the police in the 18 months after the introduction of the Amended Crimes Act in 1981. A sharp decline is also clear in the number of cases which are now rejected by the police, which might reflect an increased willingness of complainants to proceed with prosecutions and/or changing police practices. Clear-up rates are slightly higher in the Control Group than in the Study Group.

Time and locational characteristics of these data are similar to those noted in other Australian studies (Bureau of Crime Statistics: 1974; Sutton: 1983).

Demographic characteristics of Defendant

Notwithstanding the fact that the present populations are drawn under different criteria, the age, sex, marital, occupational and employment profile of the defendant is comparable to those of Loh (1980), McCaldon (1967) and Hodgens (1972).

Gender-neutrality Provisions

Despite the gender-neutrality provisions of the Amended Crimes Act concerning the sex of the complainant, there were only 14 male complainants in the Study Group. By definition all of the complainants in the Control Group were female.

Defendant-Complainant Relationship

The frequency with which the defendant is known to the complainant prior to the alleged offence in both the Study and Control Groups suggests that some community and police campaigns, which stress the danger of strangers, are mis-directed or at least over-stated. Total strangers figured in 1 in 4 cases whilst the remainder involved defendants known to the complainant.

Injuries and Threats

Serious physical injury to the complainant is not a characteristic of most cases in either group. Where injury is inflicted the weapon most commonly used is the defendant's hands or fists. Unfortunately, no information about mental trauma was collected.

Weapons are used to threaten the complainant in 1 in 5 cases of the Study Group and 1 in 10 of the Control. It is possible that the presence of weapons would be more fully documented in the Study Group because of the specific weapon offences stated in the Amended Crimes Act.

Injuries or threats of injuries to third parties, as a separate element of sexual assault charges, is provided by s.61B(2) and s.61C(2)(a) and (b) of the Amended Crimes Act. In the Study Group there were no third parties injured although one was threatened: the third party threatened was the child of the complainant.

The Immunity of Husbands

Some of the questions which this research addresses overall can be answered in this report alone, and need not be raised in any subsequent report. For example, the abolition of the immunity from prosecution of husbands who are at the time of the alleged offence co-habiting with their wife, which is proclaimed in s.61A(4) of the Amended Act, did not result in the rush of prosecutions anticipated by some parliamentarians when the introduction of s.61A(4) was mooted. Indeed, the existence of s.61A(4) did not result in any prosecutions at all in the 18 month period following the passing of the legislation.

Even to the end of February 1985, according to police sources, only one sexual assault charge had been laid against a husband which could not also have been laid prior to the 1981 amendments. This charge was subsequently withdrawn by counsel representing the wife-complainant at the committal hearing. The charge was a s.61D allegation of sexual intercourse without consent.

The Immunity of Youths under 14 Years

Similarly, the removal of the immunity from prosection for sexual assault of youths under the age of 14 years did not result in any prosecutions in the 18 month period under consideration. No information, formal or informal, is available for such prosecutions of very young defendants subsequent to the expiry of the 18 month study period.

Gender-neutrality

The gender-neutrality of the Amended Crimes Act, which stated that both men and women could be either complainant or accused in a sexual assault case did not result in any significant alteration to the gender characteristics of the Study population. Men continue to predominate as defendants in sexual cases, as women do as complainants.

It would be interesting to conduct a further, more contemporary study of the sex-characteristics of the complainants in sexual assault cases in 1985. This is because informal evidence obtained by the Bureau from police in some districts, and particularly in the Darlinghurst area of Sydney, suggests that increasingly men are presenting as victims of sexual assault. Police training nonetheless continues to be geared to the idea that victims will be women.

It should be remembered that at the time this present study was done 'the abominable crime of buggery' was still on the statute books and some sexual assaults might have been prosecuted under s.79 of the Crimes Act, 1900. Certainly, as later reports will show, some cases which started life as sexual intercourse without consent (s.61D of the Amended Crimes Act) resulted in convictions under the unamended s.79.

Structure of Offences

The structure of offences will be discussed in much greater detail in Interim Report No. 2 - Court Procedures, but certain information has been generated by the data in the present report which is worthy of comment.

In Sexual Assault Law Reforms in New South Wales, Woods predicts that despite the structure of the new offences in the Crimes (Sexual Assault) Amendment Act, the bulk of offences would still involve the issue of consent. His prediction was

very accurate according to the police data in the present research. Seven in every ten reports to the police of sexual assault in the study period involved either completed or attempted acts of sexual intercourse without consent - s.61D or s.61F/61D offences.

In conclusion it seems unlikely that any re-structuring of sexual assault offences could ever get too far away from the question or issue of consent in most cases. This is for two reasons:

1. The objective facts of inflicted injury or threat of injury with an offensive weapon are too infrequently present in the offence. (This was true both before the legislation changed and also after it changed. Approximately 85 per cent of rape or sexual assault offences involved either very little injury, or no injury at all. Additionally more than three quarters of the cases which came before a court in the Study Group involved no threat with an offensive weapon.)

2. Following a key decision in the New South Wales Court of Criminal Appeal in 1982 (R.v. Patrick James Smith), it was ruled that where injury is either inflicted or threatened with the intent to have sexual intercourse, and is accompanied with a completed act of intercourse, the act of intercourse should be subject to a separate charge. That charge would be sexual intercourse without consent.

* * *

APPENDIX 1. DATA COLLECTION SCHEDULE

VICTIM INFORMATION

106. Name _____

108. Sex. 1. Male 2. Female

109. Age at date of offence _____

SUSPECT INFORMATION

113. Name _____

114. Address _____

_____

(Code only L.G.A.)

115. Sex. 1. Male 2. Female

116. Date of birth

117. Marital status

1. Single 2. Married
3. Widowed 4. Divorced
5. Permanently separated 6. Defacto
9. Not known

118. Occupation (record fully then use congleton codes)

_____

119. Employment status at time of offence

1. Employed 2. Not employed 9. D/K

120. Alcohol consumption by suspect in 6 hours prior to offence

1. Yes 2. No 9. D/K

121. Previous sexual offence convictions (record number)

122. Previous other offences against the person (record number)

123. Previous property offences (record number)

OFFENCE INFORMATION

124. Date of offence _____ 260.

125. Day of the week offence occurred 261

126. Time offence committed (use 24 hour clock plus minutes) 265

127. Location of offence (record fully and post-code)

_____

_____

_____ 268

129. Relationship between victim and suspect (e.g. husband, stranger, acquaintance)

_____

_____

_____ 273

130. Qualitative description of offence

_____

_____

_____

_____

_____

_____

_____

POSTCODE

131. Date of arrest

289

132. Was physical injury inflicted on victim?

No
G.B.H.
A.B.H.

Other (specify) _____

_____

_____

_____

_____

290

133. If physical injury sustained describe
(88 N/A)

_____

_____

_____

_____

291

134. Describe means of infliction
(88 N/A)

_____

294

135. Was injury inflicted on a third party

01. No 03. A.B.H.
02. G.B.H. 08. N/A - No third party

Other (Specify) _____

_____

_____

296

136. Who was third party injured? (i.e. relationship to victim) (8. N/A - No third party)

_____

297

137. If physical injury sustained describe (88 N/A)

_____

_____

_____

_____

138. Describe means of infliction (88. N/A)

_____

139. Was A.B.H. threatened on victim by means of offensive weapon or instrument? (61C [1] [b])

1. Yes 2. No 9. D/K

140. What was the weapon or instrument? (88 N/A)

_____

141. If victim threatened by weapon/instrument describe threat (88 N/A)

_____

_____

_____

142. Was A.B.H. threatened on a third party (61C [2] [b])

1. Yes 2. No 8. N/A - No third party
9. D/K

143. Who was third party threatened? (i.e. relationship to victim) (88 N/A)

_____

APPENDIX 2.

MAJOR PROVISIONS OF CRIMES (SEXUAL ASSAULT) AMENDMENT ACT, 1981

(4) Sections 61A–61G—

After the heading before section 62, insert:—

Sexual intercourse.

61A. (1) For the purposes of this section and sections 61B, 61C and 61D, "sexual intercourse" means—

(a) sexual connection occasioned by the penetration of the vagina of any person or anus of any person by—

(i) any part of the body of another person; or

(ii) an object manipulated by another person,

except where the penetration is carried out for proper medical purposes;

(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person;

(c) cunnilingus; or

(d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).

(2) For the purposes of sections 61B, 61C and 61D, a person shall not, by reason only of age, be presumed incapable of having sexual intercourse with another person or of having an intent to have sexual intercourse with another person.

(3) Subsection (2) shall not be construed so as to affect the operation of any law relating to the age at which a child can be convicted of an offence.

(4) The fact that a person is married to a person—

(a) upon whom an offence under section 61B, 61C or 61D is alleged to have been committed shall be no bar to the firstmentioned person being convicted of the offence; or

(b) upon whom an offence under any of those sections is alleged to have been attempted shall be no bar to the firstmentioned person being convicted of the attempt.

Sexual assault category 1—inflicting grievous bodily harm with intent to have sexual intercourse.

61B. (1) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with the other person shall be liable to penal servitude for 20 years.

(2) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 20 years.

Sexual assault category 2—inflicting actual bodily harm, &c., with intent to have sexual intercourse.

61C. (1) Any person who—

(a) maliciously inflicts actual bodily harm upon another person; or

(b) threatens to inflict actual bodily harm upon another person by means of an offensive weapon or instrument,

with intent to have sexual intercourse with the other person shall be liable to penal servitude for 12 years.

(2) Any person who—

(a) maliciously inflicts actual bodily harm upon another person; or

(b) threatens to inflict actual bodily harm upon another person,

with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 12 years.

Sexual assault category 3—sexual intercourse without consent.

61D. (1) Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 7 years or, if the other person is under the age of 16 years, to penal servitude for 10 years.

(2) For the purposes of subsection (1), a person who has sexual intercourse with another person without the consent of the other person and who is reckless as to whether the other person consents to the sexual intercourse shall be deemed to know that the other person does not consent to the sexual intercourse.

(3) For the purposes of subsection (1) and without limiting the grounds upon which it may be established that consent to sexual intercourse is vitiated—

(a) a person who consents to sexual intercourse with another person—

(i) under a mistaken belief as to the identity of the other person; or

(ii) under a mistaken belief that the other person is married to the person,

(5) In prescribed sexual offence proceedings, where the Court or Justice is satisfied that—

(a) it has been disclosed or implied in the case for the prosecution against the accused person that the complainant has or may have, during a specified period or without reference to any period—

(i) had sexual experience, or a lack of sexual experience, of a general or specified nature; or

(ii) taken part or not taken part in sexual activity of a general or specified nature; and

(b) the accused person might be unfairly prejudiced if the complainant could not be cross-examined by or on behalf of the accused person in relation to the disclosure or implication,

the complainant may be so cross-examined but only in relation to the experience or activity of the nature (if any) so specified during the period (if any) so specified.

(6) On the trial of a person, any question as to the admissibility of evidence under subsection (2) or (3) or the right to cross-examine under subsection (5) shall be decided by the Judge in the absence of the jury.

(7) Where a Court or Justice has decided that evidence is admissible under subsection (3), the Court or Justice shall, before the evidence is given, record or cause to be recorded in writing the nature and scope of the evidence that is so admissible and the reasons for that decision.

(8) Nothing in this section authorises the admission of evidence of a kind which was inadmissible immediately before the commencement of this section.

Limitation on dock statements in certain sexual offence proceedings.

409C. (1) In prescribed sexual offence proceedings referred to in section 409B, a person may not, in any statement made under section 405, make reference to a matter which would not, by virtue of section 409B, be admissible if given on oath.

(2) Where a person has made reference, in a statement made under section 405, to a matter which would not, by virtue of section 409B, be admissible if given on oath, the Judge shall tell the jury to disregard that matter.

(d) where it is evidence relevant to whether—

(i) at the time of the commission of the alleged prescribed sexual offence, there was present in the complainant a disease which, at any relevant time, was absent in the accused person; or

(ii) at any relevant time, there was absent in the complainant a disease which, at the time of the commission of the alleged prescribed sexual offence, was present in the accused person;

(e) where it is evidence relevant to whether the allegation that the prescribed sexual offence was committed by the accused person was first made following a realisation or discovery of the presence of pregnancy or disease in the complainant (being a realisation or discovery which took place after the commission of the alleged prescribed sexual offence); or

(f) where it is evidence given by the complainant in cross-examination by or on behalf of the accused person, being evidence given in answer to a question which may, pursuant to subsection (5), be asked,

and its probative value outweighs any distress, humiliation or embarrassment which the complainant might suffer as a result of its admission.

(4) In prescribed sexual offence proceedings, a witness shall not be asked—

(a) to give evidence which is inadmissible under subsection (2) or (3); or

(b) by or on behalf of the accused person, to give evidence which is or may be admissible under subsection (3) unless the Court or Justice has previously decided that the evidence would, if given, be admissible.

Admissibility of evidence relating to sexual experience, &c.

409B. (1) In this section—

"prescribed sexual offence" has the same meaning as it has in section 405B (1);

"prescribed sexual offence proceedings" means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence;

"the accused person", in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a prescribed sexual offence;

"the complainant", in relation to any proceedings, means the person, or any of the persons, upon whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed.

(2) In prescribed sexual offence proceedings, evidence relating to the sexual reputation of the complainant is inadmissible

(3) In prescribed sexual offence proceedings, evidence which discloses or implies that the complainant has or may have had sexual experience or a lack of sexual experience or has or may have taken part or not taken part in any sexual activity is inadmissible except—

(a) where it is evidence—

(i) of sexual experience or a lack of sexual experience of, or sexual activity or a lack of sexual activity taken part in by, the complainant at or about the time of the commission of the alleged prescribed sexual offence; and

(ii) of events which are alleged to form part of a connected set of circumstances in which the alleged prescribed sexual offence was committed;

(b) where it is evidence relating to a relationship which was existing or recent at the time of the commission of the alleged prescribed sexual offence, being a relationship between the accused person and the complainant;

(c) where—

(i) the accused person is alleged to have had sexual intercourse, as defined in section 61A (1), with the complainant and the accused person does not concede the sexual intercourse so alleged; and

(ii) it is evidence relevant to whether the presence of semen, pregnancy, disease or injury is attributable to the sexual intercourse alleged to have been had by the accused person;

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