



ROYAL PAPUA NEW GUINEA CONSTABULARY

SEXUAL OFFENCES HANDBOOK

OCTOBER 2009



Royal Papua New Guinea Constabulary

CODE OF ETHICS

To achieve our mission each member of the Constabulary must strive for excellence. The Code of Ethics outlines what is expected of each member of the Constabulary to achieve this goal.

1. **FAIRNESS**
Carry out their duties without favour, malice or ill-will.
2. **HONESTY**
Act honestly and with utmost integrity.
3. **RIGHTS**
Respect and uphold the rights of all people in the community regardless of race, social status or religion.
4. **EXCELLENCE**
Strive for excellence and endeavour to improve knowledge and professionalism.
5. **CONFIDENTIAL**
Keep confidential all matters which they learn in an official capacity, except as necessary in the course of their duties.
6. **DISCIPLINED**
Practise self-discipline in work and deed both on and off duty.
7. **MORAL**
Resist temptation to participate in any activity which is improper or which can be construed as being improper.
8. **INTEGRITY**
Not misuse office for personal gain.
9. **ACCOUNTABLE**
Accept accountability for their own actions and for acts which they may order.
10. **ACCEPTANCE**
Accept the desirability of these Ethics as an important part of professional life
Securing a Safer Community.

Any issues relating to the content of this handbook requiring attention or amendment, should be directed to the Assistant Commissioner, Policy and Planning, Royal Papua New Guinea Constabulary, Police Headquarters, Konedobu, NCD, PNG

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ROYAL PAPUA NEW GUINEA CONSTABULARY

SEXUAL OFFENCES HANDBOOK

FOREWORD

This handbook has been designed as an easy reference tool to assist police officers investigating complaints of a sexual nature. The handbook has been divided into two parts.

Part One contains **Commissioner's Circular 4/2009**, which outlines the Constabulary's policy in relation to the investigation of these offences. All police officers will comply with the contents of this Circular.

Part Two provides **guidelines for police officers investigating complaints of a sexual nature**.

The Constabulary recognises the significant impact offences of a sexual nature have on victims, their families and the community. All police officers involved in these investigations are required to handle all complaints with commitment and competence in accordance with the investigators guidelines.

It is important for all police officers to maintain a high level of integrity, both personally and professionally to pursue the Constabulary's vision of a Professional and Trusted Community Oriented Police Service.

I commend this handbook to you and encourage all officers to embrace the contents endeavouring to reduce the number of incidents of sexual violence and enhancing the overall management of the victim and the needs of the community.

Gari L Baki, OBE, DPS, C.St.J.
Commissioner of Police

PART ONE

COMMISSIONER'S CIRCULAR



Royal Papua New Guinea Constabulary Commissioner's Circular

Circular No	4/2009	File No	
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Subject	SEXUAL OFFENCES
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POLICY

The law of Papua New Guinea recognises a range of sexual offences which covers both consensual and non-consensual activities. This policy applies to all types of sexual offences but focuses on offences committed on an unwilling victim, and particularly on the offences of rape and sexual assault.

While sexual offences are committed against both males and females, the overwhelming majority of offences are committed against females. In many of those cases the offender is known to the victim, and offenders can include the husband or other family member of the victim. Sexual offences are one of the most traumatic and feared crimes in Papua New Guinea and one of the most serious survivable criminal offences. As such all complaints of a sexual offence will be investigated fully and thoroughly regardless of the social standing or status of the offender or victim and regardless of whether the victim and offender are known to each other.

The Constabulary strongly encourages the reporting of sexual offences. In the normal course of events, police officers enjoy a wide discretion when making decisions about undertaking or continuing an investigation or when making decisions about prosecuting an offender. It must be clearly understood that it is the intention of this policy to severely curtail the discretion of police officers in respect of sexual offences. All complaints will be documented, all offenders will be prosecuted where there is sufficient evidence, all victims will be treated with respect and dignity and all victims will be referred to any available support services, regardless of whether the victim makes or continues a complaint. It is also immaterial if the alleged offence is

not recent. To the greatest extent possible, officers will treat historical offences in the same manner as an offence which was recently committed.

When taking complaints or when otherwise involved in the investigation of sexual offences all officers will act in a professional, objective and unbiased manner. In particular, members of the Constabulary will:

- i. treat all victims with respect and courtesy;
- ii. ensure the dignity of the victim is protected;
- iii. not attempt in any way to discourage a victim from making a complaint;
- iv. not attempt in any way to resolve a complaint of a sexual offence as a family dispute, a civil matter or in any way other than as a complaint of a serious criminal offence.

Compensation paid to the victim has, in the past, been used as an excuse by police officers to cease an investigation or not take a complaint. Police officers have also sought to resolve complaints of a sexual offence by means which have been suggested were restorative justice initiatives. This constitutes a disciplinary offence and such practices will cease immediately. Whether compensation has been paid or not, or whether compensation has been promised, is not to be considered when making decisions about the investigation of the offence or about the prosecution of the offender. The matter of compensation, whether paid or promised, or the matter of whether any restorative justice initiative has been pursued, has no bearing whatsoever on any police response, on any investigation, or on the prosecution of an offender.

Failure to comply with any aspect of this policy represents a clear breach of discipline and will be viewed as disobeying a lawful direction of the Commissioner. Any departure from this policy, either specifically or generally, will render the officer subject to disciplinary action.

PURPOSE

The purpose of this circular is to clarify the position of the Constabulary in relation to the investigation of sexual offences. It is recognised that currently, a range of practices exists across the Constabulary when responding to complaints of this type, some of which are quite clearly unacceptable. The purpose of this circular is to clarify the expectations on any officer who receives a complaint of a sexual offence, or who is involved in the investigation or prosecution of a sexual offence.

All police officers and their supervisors must clearly understand that current practices which do not meet the standards of this policy are no longer acceptable and will not be tolerated.

This circular is also intended to provide procedural guidelines to assist officers who receive a complaint of a sexual offence or who are involved in any aspect of the subsequent investigation.

DEFINITIONS

In this circular the following terms have the meanings shown:

“complainant” means the victim of a sexual offence who has made a complaint about the offence.

“police station commander” means the person appointed to the position of police station commander and includes any person for the time being acting in that role.

“sexual offence” means a criminal offence in which sexual activity is an essential element of the offence.

“welfare service” is a generic term applied to any organisation, government or otherwise, which provides a service of any nature to victims of sexual offences.

REFERENCES

Arrest Act 1977

Criminal Code Act 1974.

Evidence Act 1975

CONTENTS

1. General Requirements

The law of Papua New Guinea creates numerous offences which are of a sexual nature. Some of those offences can be committed on an unwilling victim (such as rape and sexual assault) and some can be committed by consensual activity between two people (such as unnatural offences and indecent practices between males). All police officers, like other members of the community have their own beliefs and values relating to sexual activity. However when dealing with either the victims or offenders in sexual offence matters, police officers will put aside their own standards and act professionally, objectively and in an unbiased manner.

It is recognised that in a country as diverse as Papua New Guinea it is impossible to provide a set of procedures which will apply to all cases. It is also recognised that in remote locations where there is no police presence, sexual offences may be dealt with by local procedures involving traditional remedies. It is further recognised that the location at which an offence occurred might make it impossible for police officers to attend the crime scene. For these reasons the attachment to this circular sets out the procedures that should be followed in an ideal case. In any specific case the procedures set out in the attachment will be complied with to the extent it is possible to do so under the circumstances.

Police officers are placed in a difficult position when investigating sexual offences. Police are required to fully investigate the offence, and this includes gathering all available evidence which may assist with the identification of the offender or the prosecution of the matter. At the same time however police will ensure that the emotional and psychological needs of a victim are met. This means assuring the victim of the support of the police and making arrangements to ensure their safety and welfare.

2. Receiving a Complaint of a Sexual Offence

The impact of a sexual offence on a victim can be one of the most traumatic events a victim will ever suffer. Each victim will react in a different way and the behaviour of

the victim can not be used as an indicator of his or her truthfulness or otherwise. Police officers will not make assumptions about the truthfulness of a complainant based on their own perceptions of the victim's behaviour. When a police officer receives a complaint of a sexual offence the officer will:

- i. Immediately take all action necessary to secure the physical safety of the victim;
- ii. Attempt to put the victim at ease by assuring them they are safe, they are not to blame for the offence and that their complaint is being taken seriously;
- iii. Put in place the first response procedures set out in the attachment; and
- iv. Immediately advise the Police Station Commander by the most expedient means available.

The specifics of taking action to respond to a serious criminal offence will vary from case to case, but will normally entail obtaining personal particulars of the victim and details of the offence, the offender and the location. The intention at this point is not to obtain full particulars, but to obtain sufficient information to identify and secure the crime scene, identify and secure any relevant evidence and to assist in the identification and location of the offender.

3. Responsibilities of Police Station Commander

Police Station Commanders will maintain at the police station a contact list of local welfare agencies and the nature of the service each welfare agency is able to provide to a victim of a sexual offence. The contact list will also include the names of the relevant contact people, their telephone numbers and any other means of contacting the agency.

On being notified of a report of a sexual offence the Police Station Commander will:

- i. Ensure all appropriate first response procedures are put in place immediately. This includes following the procedures set out in the attachment to this circular to the extent that it is possible to do so under the circumstances;
- ii. Ensure the matter is entered in the Occurrence Book and that a crime report is completed and furnished;
- iii. Appoint a specific officer to act as the investigating officer for the matter;

- iv. Treat the victim with dignity and respect and arrange referral to local welfare agencies that can provide a service to the victim.

A victim who has received immediate crisis counselling and support will almost certainly be a better witness than one who is left without any support and counselling.

4. Interviewing Victims

When a statement is taken from the victim of a sexual offence or the victim is being interviewed a person who is of the same sex as the victim will be present at all times. The statement may be taken or the interview conducted by a police officer of the opposite sex, but a person of the same sex as the victim must also be present. That person does not necessarily have to be a police officer. Any departure from this aspect of this policy will be treated as a discipline offence.

In addition all victims should be advised they have the right to have a support person with them while being interviewed or providing a statement. When a victim nominates a support person to be with them, the investigating officer will arrange for that person to be present.

The interview is to take place in a private and comfortable location, where the victim feels comfortable to talk. Under no circumstances should any interview take place in the presence of the alleged offender.

It is vital that the victim describe the sexual offence in his or her own words. Police should use the language that the victim is familiar with. Where language is an issue, police should obtain the services of an interpreter.

If the victim is a child or juvenile, police officers should always focus on the welfare and interest of the child or young person. The child should never be further traumatised by the interview process. Investigators should pay particular attention to the body language of the child and respond appropriately. It is important to establish the child's level of understanding in relation to sexual matters. Investigators should be mindful of the fact that establishing the level of understanding of the child may be of assistance in confirming the child's story. Children will not usually have knowledge

and understanding of sexual matters unless they have been victims of sexual offences.

5. Medical Examinations

Investigating officers will make arrangements for a medical examination to be conducted on the victim to treat any possible injuries or wounds, carry out tests for any sexually transmitted diseases and/or pregnancy and provide treatment as appropriate.

Medical examinations should also be conducted to collect any physical or forensic evidence that may be directed to establishing whether a victim has been sexually penetrated to any extent or sexually assaulted. All possible evidence of the commission of the crime should be obtained from the examination of the complainant including signs of injury corroborating lack of consent (these signs may consist of bruises, lacerations, scratches etc, on any part of the body, including the thighs and genital area). Arrangements should be made as soon as practicable to ensure that any evidence is obtained.

Prior to medical examination police officers will:

- i. Fully inform the victim of the importance of retaining forensic evidence;
- ii. Ensure that the victim is fully aware of the procedures involved in the medical examination;
- iii. Ensure written and signed consent is obtained for any forensic examination; and for the taking of necessary evidentiary photographs;
- iv. Advise the victim that she may have a support person/worker present during the examination;
- v. Arrange transport for the victim to the nearest Medical Centre;
- vi. Contact Medical Staff in advance and advise that a victim of a sexual offences will be attending;
- vii. Advise Medical Staff that a purpose of the examination is to obtain evidence to support a prosecution and that an affidavit will be obtained from them at a later date.

If the victim is a child, police officers must inform the child, their parents or carers that the child will be treated and examined by a doctor.

If the suspect is detained soon after a complaint is made, a medical examination of the suspect will be conducted. When a suspect does not consent to a medical examination immediate action will be taken under section 22 of the Arrest Act to obtain a court order for a medical examination.

Responsibilities of Prosecutors

Sections 37D to 37I of the Evidence Act 1975 provide a range of measures intended to protect the interests of vulnerable and intimidated witnesses. Victims of sexual offences are always to be considered vulnerable and open to intimidation. As such prosecutors will, in every case, seek to obtain the protections of those sections for every victim of a sexual offence.

7. Withdrawal of complaints

Police are expected to support and encourage victims of sexual offences throughout the legal process. Under no circumstances should a member of the Constabulary encourage a victim of sexual violence to withdraw a complaint.

If a request to withdraw a complaint is made after the investigation has commenced the police investigator in charge of the case must obtain a written statement from the complainant setting out that the:

- i. complainant reported a particular incident to the police;
- ii. complainant wishes no further police action in the case and the reasons for the withdrawal of the complaint; and
- iii. request is made in the exercise of the complainant's free will, and not under duress or intimidation by any person.

Prior to ceasing an investigation the investigator will refer the victim to any relevant and available local welfare service and if necessary, assist the victim to access the service. The investigating officer will attempt to ensure the victim accesses counselling, before the withdrawal of the complaint is acted on.

If after counselling the victim still wishes to withdraw the complaint, or if the victim refuses to take part in counselling the investigating officer will report on the matter to his or her Police Station Commander. The Police Station Commander will authorise ceasing the investigation.

Prior to authorising the ceasing of an investigation the Police Station Commander will ensure that:

- i. All efforts have been made to provide the victim with counselling and other available welfare service;
- ii. The decision to withdraw the complaint has been made by the victim of their own free will and not under duress.

8. Compliance with this Policy

Divisional Commanders, Provincial Police Commanders, Metropolitan Superintendents and Police Station Commanders, are to ensure this circular and the accompanying attachment are brought to the attention of all police officers under their command.

Gari L Baki, OBE, DPS, C.St.J.
Commissioner of Police

PART TWO

INVESTIGATOR'S GUIDELINES

In 2003 a number of important changes were made to the Criminal Code (the Code) provisions relating to sexual offences. These changes are summarised below.

COMMENCEMENT OF AMENDMENTS

The amendments came into effect on 10 April 2003 and apply only to offences after that date. When an offence is alleged to have been committed before that date the old offence provisions apply.

KEY CONCEPTS

Sexual Penetration

The definition of “carnal knowledge” has been replaced with the term “sexual penetration”. Sexual penetration forms an essential element of a number of offences. Pursuant to s 6 of the Code “sexual penetration” means the insertion of a penis into a vagina, anus or mouth, or the insertion of any object or any body part into the vagina or anus. It does not matter what the extent of the penetration is. Where sexual penetration is an element of the offence even the slightest of penetration is sufficient to satisfy the definition.

Any medical procedure conducted by a registered medical practitioner would be exempt from sexual penetration for the purposes of legitimate medical treatment.

Relationship of Trust Authority or Dependency

The 2003 amendments introduced the term “relationship of trust, authority or dependency” in respect of offences against both adults and children.

The term was introduced to recognise that children and young people are particularly vulnerable to potential offenders who are able to exercise some control over them. The term is defined in s 6A of the Code and includes any relationship of trust between a child and an offender.

The definition provides a list of relationships which are deemed to be relationships of trust, authority or dependency. These include relationship as a parent or close relative, teacher, religious instructor, counselor, youth worker, health care professional, or police or prison officer. However the list is not an exclusive one and other relationships could be held by a court to fall within the definition.

The existence of a relationship of trust, authority or dependency between a child victim and an adult offender constitutes a circumstance of aggravation for sexual

offences against a child. The relationship also forms the element of a specific offence for the offence of “Abuse of Trust, Authority or Dependency” under section 229E.

Similarly, the existence of such a relationship will constitute a circumstance of aggravation in a sexual offence against an adult under division 7 of Part V.

Age of Criminal Responsibility

Section 30(3) of the Code, which provided that a male under the age of 14 years was incapable of having carnal knowledge, has been repealed. Note, however that it is still necessary to prove under s 30(2) that at the time of an offence an accused under the age of 14 had the capacity to know that he ought not to do the act or make the omission constituting the offence.

OFFENCE PROVISIONS

The Criminal Code now contains 4 divisions concerning sexual offences:

- Part IV, Division 2 Offences against Sexual Morality
- Part IV, Division 2A Sexual Offences against Children
- Part IV, Division 2B Commercial Sexual Exploitation of Children
- Part V, Division 7 Sexual Offences and Abduction

Division 2 Offences against Sexual Morality

Division 2 contains a range of offences and related evidentiary provisions. The division includes sexual offences which can be committed between consenting adults, such as sexual penetration against the order of nature. It also includes a range of other sexual offences such as procuring a woman or girl, abduction of a girl under 18 with intent to have carnal knowledge, incest and possession of obscene publications. The following points should be noted about offences in this division:

Procurement

For an offence involving procurement of a woman or girl for sexual purposes sections 218 or 219 provide potential charges. However, when the procurement was done by one person for another person, the first person should be charged as a principal offender for any offence committed on the victim. For example if a person procured a child who was later sexually penetrated by another person the first person should also be charged with the offence of sexual penetration of the child due to their role as a principal offender (see s 7 of the Code). Section 349B also provides for a specific offence of procuring for a sexual offence.

Abduction

For offences involving abduction with intent to have carnal knowledge the offender should be charged with an abduction offence under Part V Division 7 (see section 350 or 351) as the greater penalty allows courts a greater sentencing range.

Incest

Section 223 of the Code prohibits sexual penetration with a “close blood relative”. However this charge should only be used in cases involving two consenting adults. When it is alleged an adult engaged in sexual penetration with a child who is a close blood relative, the adult should be charged under section 229A and the relationship of trust, authority or dependency included as a circumstance of aggravation. When a close blood relative engages in sexual penetration with a child there will almost always be a relationship of trust, authority or dependency.

Division 2A – Sexual Offences against Children

Part IV, Division 2A is a new division inserted into the Code in recognition of growing concern over the number of children subjected to sexual abuse. The new division includes a range of sexual offences against children including sexual penetration, sexual touching and indecent acts directed at a child. It is very important to note that by virtue of section 229F, consent is not a defence against an offence under this division, except in a limited number of circumstances.

Division 7 – Sexual Offences and Abduction

Division 7 of Part V was previously titled “Assaults on Females: Abduction.” The offences set out in this division now apply to males as well as females. This means that a male can be the victim of a rape. It is also very important to understand that marriage is no longer a defence to rape.

Section 347A was inserted in this division to clarify the notion of consent. In simple terms, consent must be a free and voluntary agreement. Section 347A(2) sets out a range of circumstances in which a person does not consent. Section 347A(3) directs what issues a Judge or Magistrate must take into account when determining whether consent was present. That section provides that when a person does not say or do anything to indicate consent to a sexual act that is normally enough to show that there was no consent. The section also directs that a person should not be considered to have consented to a sexual act merely because they did not physically resist, or did not sustain injury or had agreed to a sexual act with the same person previously.

Division 2B Commercial Sexual Exploitation of Children

The division was inserted to protect against the commercial exploitation of children through prostitution or pornography.

The offence provisions are directed at those who engage in, facilitate, allow or benefit from child prostitution or pornography and not at the children involved. Pursuant to s 229Q children are not to be charged with an offence under the division.

EVIDENTIARY ISSUES

Uncorroborated Testimony

Sections 229H and 352A have been added to the Criminal Code and relate to the evidence of witnesses in sexual offence matters. These sections now allow that for offences under Part IV, Division 2A (Sexual Offences Against Children) and Part V, Division 7 (Sexual Offences and Abduction) an accused may now be convicted on the uncorroborated testimony of one witness. Obviously though, every effort should be made to obtain all evidence of corroboration so as to put the strongest possible prosecution case.

Removal of Spousal Immunity

Before the 2003 amendments the spouse of a person accused of a sexual offence was a competent, but not compellable witness. For any offence against Part IV Division 2A or Part V Division 7, the spouse of the accused is now both a competent and compellable witness.

VICTIM IMPACT STATEMENTS

Section 21A was inserted into the Code to allow victims a greater opportunity to participate in the sentencing process by providing a written statement setting out the harm done or the loss suffered by the victim as a result of the offence. Where such a statement, known as a Victim Impact Statement, is made by the victim it must be taken into account by the Court when determining sentence.

The investigating officer is to ensure that a victim is given the opportunity to provide a Victim Impact Statement prior to any sentence. This must be discussed with the State Prosecutor in National Court matters and with the police prosecutor in matters before the Juvenile Court.

Sex offences are always serious offences and demand a thorough investigation. In particular investigators should ensure great care during the search of the crime scene, the location and collection of physical evidence and interrogation of the suspect.

COLLECTION OF PHYSICAL EVIDENCE

Immediate Action

The following items should be collected as soon as possible from both the victim and suspect where appropriate and immediately placed in suitable storage containers such as plastic bags to prevent cross contamination and loss of materials. (Note all blood to be placed in paper bags only):

- Clothing victim was wearing at time of offence.
- Clothing suspect was wearing at time of offence.
- Fingernail scrapings of both suspect and victim.
- Pubic hair combings of both victim and suspect.
- Hair samples of victim and suspect.
- Blood samples from victim and suspect.

Action at Crime Scene

When the offence takes place in victim's home:

- If on bed, bed clothing, sheets, pillowcases, blankets etc (not to be washed).
- Floor rugs or sweepings from wall to wall carpets.
- If forced entry, samples of glass, paint from windows on door areas etc.
- Careful search of area for foreign objects such as buttons, pieces of torn clothing etc that may have been torn from offender's clothing.

When offence occurs out of doors:

- Soil samples taken from scene and surrounding area.
- Samples of plants, grass etc where appropriate.
- Search for foreign objects and footprints.

When offence occurs in motor vehicle:

- Sweep seats and floors.
- Collect seat covers, blankets, rugs etc, which may be in the car.
- Check door handles, etc, for hair from victims head, pieces of clothing, buckles, buttons, clasps, blood etc.

Continuity of Evidence

All evidentiary items collected must be properly bagged, labeled and handed to the investigating officer at the first available opportunity. A note of where the exhibit was located, who it was seized from and the contents of the exhibit should be made in the police officers notebook or investigators notes. Continuity of possession should be documented for any examinations, movements or changes to possession of any exhibits.

The issue of continuity should be explained to any medical practitioner who takes a sample from a victim or suspect. It will be necessary for the examining practitioner to depose that he or she took a sample, and what was done with the sample, including to whom it was handed. Any person who subsequently handles the evidence should also provide a statement to establish an unbroken chain of continuity.

Common errors when collecting evidence

- Failure to take charge and secure the crime scene.
- Failure to prevent contamination of crime scene.
- Failure to obtain hair samples from victim and suspect.
- Failure to obtain fingernail scrapings.
- Failure to obtain all relevant clothing.
- Faulty handling and packaging resulting in contamination.
- Failure to properly label each item for future identification.
- Failure to obtain adequate and sufficient photographs.
- Failure to document continuity of possession.

Medical Evidence

Offences of a sexual nature frequently rely on medical evidence to support a charge. Police Officers should explain to any attending practitioner that he or she may be required to give evidence in relation to their findings as a result of an examination of a victim or a suspect. The evidence of a medical practitioner should be taken as an affidavit rather than a statement. The medical report produced by the doctor is not sufficient to tender as evidence. The medical report can be tendered as an annexure to the doctor's affidavit and the affidavit should be prepared accordingly.

Evidence of Age

The age of a victim is an element or circumstance of aggravation of several sexual offences. Where it is necessary to prove the age of a victim this is usually given in evidence by the mother. The best evidence is documentary age of the child, for example the child's clinic book, however the recollection of the mother as to the child's date of birth may be sufficient. Proof of age is an important element of some offences but is particularly crucial for older children, when the suspect's belief about the child's age is at issue.

THE INTERVIEW

The interview of the victim should take place as soon as possible after the alleged occurrence. A statement should not be obtained until the matter has been fully discussed with the victim. A person of the same sex as the victim will be present during the interview and the recording of the statement. The Commissioner has instructed, and it remains the firm policy of the Constabulary, that all complaints of a sexual offence will be investigated fully and thoroughly, regardless of the social standing or status of the offender or victim and regardless of whether the offender and victim are known to each other.

When a complaint is received the victim should be thoroughly questioned regarding the occurrence, the circumstances surrounding it and their movements before and after the offence. Details of any existing relationship between the victim and the alleged offender should be obtained in order to properly prepare the prosecution case and, if relevant, identify a possible aggravating circumstance of trust, authority or dependency. Such information may also be important in anticipating a possible defence of consent.

In addition, the following information should, where relevant, be obtained:

- Marital status and family relationships.
- Any previous history of allegations, of a similar nature.
- Exact time, location and circumstances of offence.
- Places visited prior to occurrence.
- Persons seen prior to occurrence.
- Route followed in going to alleged crime scene.
- Physical force used by suspect.
- Detailed description of any weapon or vehicle used.
- Details of location and description of rooms, house, etc.
- Statements or words used by suspect.
- Nature, degree and duration of resistance, if any, used by complainant.
- Screams or outcries made by victim. Local inquiries/witnesses.
- Details of the victim's first report of the matter to any person.
- Details of the victim's report to police.
- Whether victim's report was made voluntarily or as the result of persuasion etc.
- Time of victim's complaint. Was it made as soon as possible? Reason for any delay.

- Results of medical examination – is there any evidence of use of violence, resistance, penetration. Was the victim pregnant at the time? If so how long had she been in this condition.
- Victim's relationship to accused –Were they previously acquainted? If so, how long? What was their relationship? Had he made advances previously? Victim's reaction to previous advances?
- If offender was unknown to the victim, who may have seen them together and knows, or can describe the suspect.
- Detailed descriptions of offender.
- Direction and means of travel of the offender when departing the offence location.

MEDICAL EXAMINATION OF THE VICTIM

The victims of sexual offences may or may not suffer physical injury, depending on the circumstances of the offence. When penetration is alleged or other violence is alleged and the offence is a recent one, arrangements should be made to have the victim medically examined and any injuries photographed as soon as possible. Consent of the victim, or in the case of a child, their guardian, is required prior to the examination.

Medical examinations of victims of sexual crimes are to be conducted by a medical practitioner or health worker. He or she should be advised of the nature of the offence so that they will know the nature of the evidence which might be found to corroborate the victim's story.

Physical signs of rape will vary in different cases and in many cases will be absent, even though an offence has been committed. An investigation will not be terminated simply because there is no medical evidence to corroborate the victim. It is important to remember that corroboration is no longer required to prove offences under Divisions 2A and 7.

From an investigative view point it is far more preferable that the victim does not wash or clean themselves before the medical examination. This is because the examination may reveal very good evidence of the offender's identity and of sexual activity between the offender and victim. However, victims may feel very strongly about the need to wash themselves in such circumstances, whether because of the humiliation suffered or the perceived risk of infectious diseases. Police officers involved in an investigation of a sexual offence are at liberty to sensitively explain this point to a victim; however a police officer should not attempt to persuade a victim not to wash when he or she has indicated an intent to do so.

MEDICAL EVIDENCE FROM THE VICTIM

Evidence which is obtained as a result of the medical examination of the victim often has great evidentiary value. That evidence should be recorded in the form of an affidavit by the person undertaking the examination and that affidavit should later form part of the court file. A medical report should not be attached to a court file. When preparing an affidavit for a medical practitioner the results of the following examinations should be included:

- General appearance and behaviour of victim.
- Location of marks of violence on body or absence of same. Marks or damage to clothing.
- Condition of affected parts with regard to bleeding, bruising and previous experience.
- Secretions obtained from examination.
- Examination of stains on garments for seminal stains.
- Examination of fingernail scrapings for traces such as blood, hair, human tissues etc.

Specimens to be collected from the victim should include:

- Blood and Saliva
- Pubic and head hair samples
- Anal, vulva, high and low vaginal swabs and smears

Any evidence taken from the victim should be properly bagged, labeled and handed to the investigating officer at the first available opportunity. A note of when the exhibits are handed over should be made in the police officers notebook or investigation notes. Police should also ensure that all persons involved in the handling of exhibits are aware of the need to prove an unbroken chain of custody. When an affidavit is obtained from a medical examiner it should identify that a sample was taken, how it was labeled and to whom it was handed. The person to whom it was handed, a laboratory assistant for example, will also need to provide a statement to establish continuity.

Where Forensic services are available, police officers should obtain timely feedback on forensic examinations. Collaboration and cooperation with those professionals in submitting reports within a reasonable time frame will assist the investigation process.

MEDICAL EXAMINATION OF THE SUSPECT

If a suspect is detained soon after complaint is made he/she should be requested to consent to a medical examination. The doctor should be asked to look for signs of bites, bruises, evidence of recent sexual activity, traces such as foreign hair, fibers on the body or traces of cosmetics which may have been acquired by contact with the victim.

Exhibits collected from the suspect should include:

- All clothing and footwear.
- Any weapons or instruments.
- Any bags, bilums, ropes etc.
- If a motor vehicle involved-seize it for examination.

Any evidence taken from the suspect should be properly bagged, labeled and handed to the investigating officer at the first available opportunity. A note of when the exhibits are handed over should be made in the police officers notebook or investigation notes.

Specimens to be collected from the suspect should include:

- Blood and Saliva.
- Pubic and head hair samples.
- Urethral, shaft and base of penis swabs and smears.

Be prepared to provide evidence in court, by way of statements or affidavits from all persons involved, of continuity of possession of any evidence taken from the suspect, or of any samples taken as evidence during a medical examination.

ARREST ACT - POWER TO OBTAIN MEDICAL SAMPLES

The *Arrest Act* provides police with the power to have suspects medically examined with their written consent or with a court order. These provisions should be used in all cases in which a suspect has been arrested for a recent sexual offence. Section 22 of the *Arrest Act* provides as follows:

22. Arrest Act Medical Examination

(1) Subject to Subsection (6) where:

- (a) a person is in custody in respect of an offence; and
- (b) a commissioned officer of the Police Force or the officer-in-charge of a police station believes on reasonable grounds that the nature and circumstances of the alleged offence in respect of which the person is in custody are such that a medical

- examination of the person in custody would provide evidence relating to the offence;
and
- (c) the person in custody has given his written consent or a court has ordered that the examination take place,

a medical practitioner, if requested by the commissioned officer or the officer-in-charge, as the case may be, may conduct a medical examination.

(2) An application for an order under Subsection (1) to a court by a commissioned officer of the Police Force or the officer-in-charge of the police station at which the person is being held may be made:

- (a) in person; or
- (b) where an application in person is not practicable by telephone.

(3) If the court is satisfied on application being made to it under Subsection (2) that the commissioned officer of the Police Force or the officer-in-charge of the police station has reasonable grounds for his belief that a medical examination of the person in custody will provide evidence relating to the offence for which the person is in custody, it may order

- (a) in writing that the medical examination take place; or
- (b) where the application has been made under Subsection (2)(b) and the circumstances of the case justifies its doing so orally, that the medical examination take place, but it shall confirm the order in writing within three days after the making of the order.

(4) Where the application for a medical examination is made under Subsection (2), the court granting the application shall cause its order to be forwarded to the applicant.

(5) A medical practitioner conducting a medical examination for which a court order has been issued under Subsection (3) may:

- (a) use such force as is necessary to carry out the medical examination; and
- (b) use assistants to help him with the examination.

(6) Subsection (5) does not justify the use of greater force than is reasonable in the circumstances."

The *Arrest Act* power to compel a medical examination of a suspect is practical and will cover most situations. Subsection (5) is important as it protects the medical practitioner who may have to resort to force to complete his examination. The medical practitioner is entitled to use assistants to help restrain the suspect. The most obvious assistants would be police.

Examples of the consent and order forms are on page 39 of this handbook.

EXAMINATION OF THE SUSPECT'S CLOTHING

Because of the intimate contact which takes place in sexual offences between the clothing of the victim and the suspect, an examination should be made for blood or seminal stains. In some cases the clothing of both may contact the ground and a careful examination of the clothing should be made for traces of grass, weeds, soil and seeds. If traces are found which correspond to similar materials found at the scene, the evidence may associate the suspect with the crime scene and corroborate the victim's story.

GENERAL PRINCIPLES

Elements of the Offence

As in every case, the charge must contain all the elements of the alleged offence. As yet draft charges under amended Divisions 2A and 7 are yet to be included in the Criminal Practice Rules. In the circumstances the best way to ensure that the charge contains every element of the offence is to follow the words of the applicable offence provision in each case.

Particulars

The charge should, where possible, particularise the nature of the sexual penetration alleged in a particular case, for example: *“by inserting his penis into her vagina”*. Similarly the nature of any sexual touching alleged should be particularised, for example: *“by touching with his hand her buttocks”*.

Circumstances of Aggravation under Division 2A

For any sexual offence against a child under Division 2A and in order to attract the appropriate penalty the charge should state whether the child was under the age of 12 or 16 at the time of the offence. Where known the actual age of the child should be included in the charge.

If applicable any relationship of trust, authority or dependence between the victim and offender should be included in the charge as a circumstance of aggravation, and the nature of that relationship particularised, for example: *“AND at that time there was an existing relationship of trust, authority or dependency in that (name of accused) was the stepfather of (name of victim)”*.

Circumstances of Aggravation under Division 7

Similarly, circumstances of aggravation in which the offence is alleged to have occurred should be included in the charge. Section 349A provides a list of circumstances of aggravation. It should be noted that the list set out in that section is not exhaustive and that other circumstances of aggravation may also exist for offences under Division 7.

Quick Checklist

Officers formulating charges should satisfy him or her self of the following:

- All elements of the offence are included.
- All particulars of the act giving rise to the offence are included. This includes particulars of penetration, details of what body part of the victim was touched by what body part of the offender; and
- All circumstances of aggravation are included in the charge.

SEXUAL PENETRATION OF A CHILD – SECTION 229A**Elements of the offence**

- Engages in an act of sexual penetration
- With a child under the age of 16 years

Possible circumstances of aggravation

- If the child is under the age of 12 years: s229A(2)
- If at the time of the offence there was an existing relationship of trust, authority or dependency between the defendant and the child: s229A(3)

Sexual penetration: S 6

Sexual penetration is defined in section 6. When the term is used it means:

- The introduction of the penis into the vagina, anus or mouth; or
- The introduction of an object or any body part into the vagina or anus.

It does not matter how much is inserted. An introduction to any extent, even the slightest insertion, is sufficient to meet the test of sexual penetration.

Possible defences

- Marriage where child was 14 years or older (see section 229G)
- **Consent is not a defence** unless the accused believed on reasonable grounds the child was 16 years or older: (See section 229F(a))
- **Consent is not a defence** unless the child was 12 years or older and the accused was no more than 2 years older than the child: (See section 299F(b))

S 229A Draft Charge

“engaged in an act of sexual penetration with or] sexually penetrated a child under the age of 16 years, namely [*victim*], then [*age*] years old, by inserting [*penis/part of body/object*] into her [*vagina/anus/mouth*]”

[and where applicable:]

AND AT THAT TIME there was an existing relationship of trust, authority or dependency in that [*outline relationship*]”

Sexual Touching of a child - section 229B

Elements of the Offence for section 229B(1)(a) touches the child

- For sexual purposes
- Touches with any part of his body
- The sexual parts of a child under the age of 16 years

Possible circumstances of aggravation

- If the child is under the age of 12 years: (see section 229B(4))
- If at the time of the offence there was an existing relationship of trust, authority or dependency between the accused and the child: (see section 229B(5))

Sexual Touching

- A person touches another if he touches the other person with any part of his body or with any object manipulated by him: (see section 229B(3))
- “sexual parts” includes the genital area, groin, buttocks or breasts: (see section 229B(2))

Defences

- Marriage where child was 14 years or older: (see section 229G)
- **Consent is not a defence** unless the accused believed on reasonable grounds the child was 16 years or older: (see section 229F(a))
- **Consent is not a defence** unless the child was 12 years or older and the accused was no more than 2 years older than the child: (see section 229F(b))

229B(1)(a) Draft Charge

“for sexual purposes, touched, with his *[part of body]*, the sexual parts of a child under the age of 16 years, namely the *[identify sexual parts]*, of *[victim]* then *[age]* years old

[and where applicable:]

AND AT THAT TIME there was an existing relationship of trust, authority or dependency in that *[outline relationship]*

Elements of the offence for section 229B(1)(b) - compels the child to touch the accused

- A person for sexual purposes
- Compels a child under the age of 16 years
- To touch, with any part of her body,
- The sexual parts of the accused's body

Possible circumstances of aggravation

- If the child was under the age of 12 years: (see section 229B(4))
- If at the time of the offence there was an existing relationship of trust, authority or dependency between the accused and the child: (see section 229B(5))

Sexual Touching

- A person touches another if he touches the other person with any part of his body or with any object manipulated by him: (see section 229B(3))
- "sexual parts" includes the genital area, groin, buttocks or breasts: (see section 229B(2))

Defences

- Marriage between the accused and the child is a defence when child was 14 years or older: (see section 229G)
- **Consent is not a defence** unless the accused believed on reasonable grounds the child was 16 years or older: (see section 229F(a))
- **Consent is not a defence** unless the child was 12 years or older and accused was no more than 2 years older than the child: (see section 229F(b))

229B(1)(b) Draft Charge

"for sexual purposes, compelled a child under the age of 16 years, namely *[victim]* then *[age]* years old, to touch with her *[identify part of child's body]* the sexual parts of the defendant's body, namely his *[identify sexual part]*

[and where applicable:]

AND AT THAT TIME there was an existing relationship of trust, authority or dependency in that *[outline relationship]*

Elements of the offence

- Commits an indecent act
- Directed at
- A child under the age of 16 years

Possible circumstances of aggravation

- If the child is under the age of 12 years: s229C(2)
- If at the time of the offence there was an existing relationship of trust, authority or dependency between the accused and the child: s229C(3)

Possible defences

- Marriage between the accused and the child is a defence if the child was 14 years or older: (see section 229G)
- **Consent is not a defence** unless the accused believed on reasonable grounds the child was 16 years or older: (see section 229F(a))
- **Consent is not a defence** unless the child was 12 years or older and the accused was no more than 2 years older than the child: (see section 299F(b))

S 229C Draft Charge

“committed an indecent under the age of 16 years, namely *[outline indecent act]* at *[victim]*, then *[age]* years old

[and as applicable:]

AND AT THE TIME there was an existing relationship of trust, authority or dependency in that *[outline relationship]*”

Elements of the offence

- A person on two or more occasions (occurring on separate days during the relevant period)
- Engages in conduct in relation to a particular child
- That constitutes an offence against Division 2A

Note

- It is not necessary to specify the exact dates of alleged conduct: (see section 229D(3))
- BUT the charge must specify with reasonable particularity the period during which the persistent sexual abuse occurred: (see section 229D(4)(a))
- The conduct does not have to be the same each time. For example the first occasion may be sexual penetration and the second occasion involves sexual touching. If these acts are committed by the same accused on the same victim it is sufficient to sustain a charge under this section: (see section 229D(2))
- BUT the charge must describe the nature of the separate offences which alleged to have been committed during the period (see section 229D(4)(b))

Possible defences

- Marriage between the accused and the child is a defence if the child was 14 years or older: (see section 229G)
- **Consent is not a defence** unless the accused believed on reasonable grounds the child was 16 years or older: (see section 229F(a))
- **Consent is not a defence** unless the child was 12 years or older and the accused was no more than 2 years older than the child: (see section 229F(b))

S 229D Draft Charge

“between [date] and [date] engaged in persistent sexual abuse of a particular child, namely [victim], then [age] years old

AND in the course of the persistent sexual abuse [defendant] [if possible on or about date] [identify offence under Division 2A]

AND [defendant] [if possible on or about date] [identify offence under Division 2A]

Elements of the offence

- Engages in an act of sexual penetration or sexual touching
- Of a child between the age of 16 and 18 years
- With whom the person has an existing relationship of trust, authority or dependency

Sexual penetration: S 6

Sexual penetration is defined in section 6. When the term is used it means:

- The introduction of the penis into the vagina, anus or mouth; or
- The introduction of an object or any body part into the vagina or anus.

It does not matter how much is inserted. An introduction to any extent, even the slightest insertion, is sufficient to meet the test of sexual penetration.

Sexual Touching

- A person touches another if he touches the other person with any part of his body or with any object manipulated by him: (see section 229B(3))
- “sexual parts” includes the genital area, groin, buttocks or breasts: (see section 229B(2))

Possible Defences

- Marriage between the accused and the child is a defence if the child was 14 years or older: (see section 229G)
- **Consent is not a defence** unless the accused believed on reasonable grounds that the child was 18 years or older. Note the difference to this age provision. The threshold age in this section is 18.

S 229E Draft Charge

“engaged in act of [*sexual penetration/sexual touching with/of*] a child between the age of 16 and 18 years with whom he had an existing relationship of trust, authority or dependency, namely [*victim*] then [*age*] years old who was [*outline relationship*] by [*outline nature of sexual penetration/touching*]”

Elements of the offence

- Sexually penetrates
- A person
- Without that person's consent

Sexual penetration: S 6

Sexual penetration is defined in section 6. When the term is used it means:

- The introduction of the penis into the vagina, anus or mouth; or
- The introduction of an object or any body part into the vagina or anus.

It does not matter how much is inserted. An introduction to any extent, even the slightest insertion, is sufficient to meet the test of sexual penetration.

Consent

In rape matters the element of consent is often the hardest to prove and is also often the easiest to defend. As such the presence or lack of consent is often an issue in rape matters. It is important to remember that it is an essential element of the offence and as such the onus of proof rests with the prosecution to prove beyond reasonable doubt that consent was absent.

The Code deals with this issue and describes consent as "free and voluntary agreement. (see section 347A). This section also sets out a list, which is not exhaustive, of circumstances which DO NOT constitute consent. Those circumstances are when:

- the person submits to the sexual penetration because of the use of violence or force on that person or someone else;
- the person submits because of the threats or intimidation against them or someone else;
- the person submits because of fear of harm to that person or to someone else;
- the person submits because they are unlawfully detained;
- the person is asleep, unconscious or so affected by alcohol or another drug so as to be incapable of freely consenting;
- the person is incapable of understanding the essential nature of the act or of communicating their unwillingness to participate in the act due to mental or physical disability;

- the person is mistaken about the sexual nature of the act or the identity of the person;
- the person mistakenly believes that the act is for medical or hygienic purposes;
- the accused induces the person to engage in an activity by abusing a position of trust, power or authority;
- the person, having consented to engage in the sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity; or
- the agreement is expressed by the words or conduct of a person other than the complainant.

Possible circumstances of aggravation

Section 349A provides a list of circumstances of aggravation for offences under Division 7. Note that the list is not exhaustive and other circumstances of aggravation may also apply. The circumstances include in the section are:

- The accused person is in the company of another person or persons;
- At the time of, or immediately before or after the commission of the offence, the accused person uses or threatens to use a weapon;
- At the time of, or immediately before or after the commission of the offence, the accused person tortures or causes grievous bodily harm to the complainant;
- The accused person confines or restrains the complainant before or after the commission of the offence;
- The accused person, in committing the offence, abuses a position of trust, authority or dependency;
- The accused is a member of the same family or clan as the complainant;
- The complainant has a serious physical or mental disability;
- The complainant was pregnant;
- The accused was knowingly infected with HIV/AIDS

S 347 Draft Charge

“sexually penetrated *[victim]* without her consent by *[inserting his penis/part of body or object]* into her *[vagina/anus/mouth]*

[and if applicable:]

AND AT THAT TIME *[outline circumstance(s) of aggravation]*”

Elements of the offence for section 349(1)(a) – touches another person

- Touches, with any part of his body
- The sexual parts of another person
- Without that other person's consent

Elements of the offence for section 349(1)(b) – compels another person

- Compelled, any person to touch
- The sexual parts of another person
- Without that other person's consent

Sexual Touching

- A person touches another if he touches the other person with any part of his body or with any object manipulated by him: s 349(3)
- "sexual parts" includes the genital area, groin, buttocks or breasts: s 349(2)

Consent

Consent is an essential element of several sexual offences and in such cases the onus of proof rests with the prosecution to prove beyond reasonable doubt that consent was absent.

The Code deals with this issue and describes consent as free and voluntary agreement. (see section 347A). This section also sets out a list, which is not exhaustive, of circumstances which DO NOT constitute consent. Those circumstances are when:

- the person submits to the sexual penetration because of the use of violence or force on that person or someone else;
- the person submits because of the threats or intimidation against them or someone else;
- the person submits because of fear of harm to that person or to someone else;
- the person submits because they are unlawfully detained;
- the person is asleep, unconscious or so affected by alcohol or another drug so as to be incapable of freely consenting;
- the person is incapable of understanding the essential nature of the act or of communicating their unwillingness to participate in the act due to mental or physical disability;

- the person is mistaken about the sexual nature of the act or the identity of the person;
- the person mistakenly believes that the act is for medical or hygienic purposes;
- the accused induces the person to engage in an activity by abusing a position of trust, power or authority;
- the person, having consented to engage in the sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity; or
- the agreement is expressed by the words or conduct of a person other than the complainant.

Possible circumstances of aggravation

Section 349A provides a list of circumstances of aggravation for offences under Division 7. Note that the list is not exhaustive and other circumstances of aggravation may also apply. The circumstances include in the section are:

- The accused person is in the company of another person or persons;
- At the time of, or immediately before or after the commission of the offence, the accused person uses or threatens to use a weapon;
- At the time of, or immediately before or after the commission of the offence, the accused person tortures or causes grievous bodily harm to the complainant;
- The accused person confines or restrains the complainant before or after the commission of the offence;
- The accused person, in committing the offence, abuses a position of trust, authority or dependency;
- The accused is a member of the same family or clan as the complainant;
- The complainant has a serious physical or mental disability;
- The complainant was pregnant;
- The accused was knowingly infected with HIV/AIDS.

S 349(1)(a) Draft Charge

“touched, with his [identify part of his body] the sexual parts, namely the [identify part] of [victim], without her consent

[and if applicable]

AND AT THAT TIME *[outline circumstance(s) of aggravation]*”

S 349(1)(b) Draft Charge

“compelled [victim] to touch, with her [identify part of victim’s body], the sexual parts of his body, namely his [identify sexual part of defendant], without her consent

[and if applicable]

AND AT THAT TIME *[outline circumstance(s) of aggravation]*’

INCEST - SECTION 223(1)

Elements of the offence

- Engages in an act of sexual penetration
- With a close blood relative

Sexual penetration: S 6

Sexual penetration is defined in section 6. When the term is used it means:

- The introduction of the penis into the vagina, anus or mouth; or
- The introduction of an object or any body part into the vagina or anus.

It does not matter how much is inserted. An introduction to any extent, even the slightest insertion, is sufficient to meet the test of sexual penetration.

Close blood relative - S 223(2)

A close blood relative means a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent, grandchild, aunt, uncle, niece, nephew or first cousin, being such a family member from birth and not from marriage or adoption.

S 223(1) Draft Charge

“engaged in an act of sexual penetration with a close blood relative namely [outline name and relationship]”.

PAPUA NEW GUINEA.
Arrest Act 1977.

Form 4 – Consent for Medical Examination.

Act, Sec. 22(1)(c). Form 4. Reg., Sec. 2(1).

To the Officer in Charge of.....(Police Station).

I,..... of.....

Give my consent to be medically examined in connection with the alleged offence of
for which I am in custody.

Dated this..... of..... 20

Signed:.....

Witness:.....

PAPUA NEW GUINEA.
Arrest Act 1977.

Form 5 – Order for Medical Examination.

Act, Sec. 22(3). Form 5. Reg., Sec. 2(2).

To a Commissioned Officer of the Police Force; or the Officer in Charge of Police

Station at.....

On having reasonable grounds for belief that a medical examination of.....

..... (name) being a person in custody in respect of an offence,

will provide evidence relating to the offence for which he is in custody

YOU ARE HEREBY ORDERED to arrange for a medical examination of.....

..... (name) by a medical practitioner.

Dated this..... of..... 20

Signed:.....

Magistrate Court:.....

NOTES