

TRENDS IN PROSECUTIONS FOR CHILD SEXUAL ABUSE IN SOUTH AUSTRALIA 1992–2012

ABSTRACT

This study, commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse, examined the prosecution of child sexual abuse offences in South Australia between 1992 and 2012. This included offences that were reported when the complainant was still a child, as well as reports that were delayed into adulthood. Overall, 84.5% of reports were made by complainants while they were still children, and most of these were made within three months of the offence. Male complainants were more likely than females to delay reporting into adulthood.

The highest reporting levels by both child and adult complainants of child sexual abuse offences occurred around the time when major public inquiries into child protection were occurring, and the issue was receiving considerable media attention. The rate of reporting by adult complainants was also affected by the removal of a three-year statutory limitation period for indictable sex offences in 2003. Despite a sharp increase in the level of reporting by children during the early 2000s, particularly around the time of the Layton Inquiry, there was only a very small increase in prosecutions. Rates of substantiation of child sexual abuse by Families SA, the child protection statutory authority, also fell at a time when reports to police were increasing substantially. In contrast, there has been an upward trend in arrest for adult reports.

Overall, just over 40% of reports to police of child sexual abuse resulted in arrest and charges being laid. This is slightly higher for child reports than for adult reports. South Australia has had a high rate of matters being discontinued quite late in the prosecution process — at or just before the hearing — particularly in the Magistrates Court. We therefore need to understand better how police and prosecutors exercise their discretion in determining whether a case will proceed.

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I INTRODUCTION

Few issues of political or social concern have been the subject of as many public inquiries as child abuse in recent years. The Royal Commission into Institutional Responses to Child Sexual Abuse ('the Royal Commission') has now completed its work after five years of intensive examination of a range of institutions working with children.¹ Other inquiries over several decades have examined the child protection and criminal justice response to the sexual, and also physical, abuse of children. In South Australia, the Layton Inquiry into child protection reported in 2003² and the Mullighan Inquiry into the abuse of children in state care delivered its Final Report in 2008.³

One of the major concerns raised by these inquiries has been the lack of reporting of complaints of child sexual abuse to police or child protection authorities, as well as the way that complaints are dealt with in the criminal justice system. The rate of attrition as matters drop out from the criminal justice process following a report to the police has also been the subject of considerable research, discussion, and concern. It was the subject of much discussion and comment in the Final Report of the Royal Commission.⁴

Data from South Australia are illustrative of the levels of attrition. Hood and Boltje reported in 1998 on the progress of 500 cases that had been referred to the

¹ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017).

² Robyn Layton 'Our Best Investment: A State Plan to Protect and Advance the Interests of Children' (Child Protection Review, Government of South Australia, 2003) ('Layton Inquiry'). This was a major review of child protection policy and practice to provide an overall framework for child protection in South Australia.

³ South Australia, Commission of Inquiry into Children in State Care, *Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct* (2008) ('Mullighan Inquiry'). The Mullighan Inquiry began in November 2004 to investigate allegations of sexual abuse of children in State care and of criminal conduct resulting in the death of children in State care; at page xi it is stated that 242 people were children in State care at the time of the alleged abuse, and they 'made a total of 826 allegations against 922 alleged perpetrators'. See also the further inquiry conducted by Mullighan QC: South Australia, Commission of Inquiry into Children on APY Lands, *Children on Anangu Pitjantjatjara Yankunytjatjara (APY) Lands Commission of Inquiry: A Report into Sexual Abuse* (2008).

⁴ The Royal Commission report stated, for example, that 'the criminal justice system is often seen as not being effective in responding to crimes of sexual violence, including adult sexual assault and child sexual abuse, both institutional and non-institutional': Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report* (2017) 620. The Royal Commission identified lower reporting rates, higher attrition rates, lower charging and prosecution rates, fewer guilty pleas and fewer convictions as features of the criminal justice system's treatment of these crimes.

hospital-based Child Protection Services in Adelaide.⁵ This unit provided a specialist medical and psychosocial evaluation service for the state child protection system.⁶ Two-thirds (66%) of the cases in the sample were sexual abuse cases.⁷ Of the referrals, 356 were assessed by the service and 230 (64.6% of those assessed) were substantiated by clinicians.⁸ Of the 230, the police investigated 144 and agreed with the assessment that there had been abuse in 135 cases.⁹ Prosecution occurred in 63 cases and there were 39 convictions.¹⁰ That is, less than half of the cases substantiated by both the hospital and the police proceeded to a prosecution. The conviction rate was only 17% of the cases substantiated by the clinicians.¹¹

Wundersitz analysed reports of sexual offences against persons under 18 years of age made to the South Australia Police between July 2000 and June 2001.¹² She found that of 952 reports examined, 346 (36%) led to the arrest of a suspect.¹³ In another 17% of cases, the complainant requested no further action.¹⁴ The 346 sexual offence incident reports did not lead to the arrest of an equivalent number of suspects because, in some situations, one person was arrested for several incidents, while in others the same incident led to the arrest of more than one suspect. Taking account of this, 356 'incident apprehensions' were tracked. Wundersitz reported some difficulty in tracking the cases thereafter, but of the cases in which an arrest was made, a quarter apparently did not proceed further; another 11% were dealt with in the Youth Court.¹⁵ Of the 200 cases that proceeded to courts other than the Youth Court, 43% resulted in at least one guilty finding (although not necessarily in relation to the reported incident), 35% resulted in not guilty outcomes, while the remaining 22% had some or all charges unfinalised.¹⁶

⁵ Mary Hood and Christopher Boltje, 'The Progress of 500 Referrals from the Child Protection Response System to the Criminal Court' (1998) 31 *Australian and New Zealand Journal of Criminology* 182.

⁶ *Ibid* 186.

⁷ *Ibid*.

⁸ *Ibid*.

⁹ *Ibid* 187.

¹⁰ *Ibid* 188, 193.

¹¹ *Ibid* 190.

¹² Joy Wundersitz, 'Child Sexual Assault: Tracking from Police Incident Report to Finalisation in Court' (Paper presented at the Conference on Evaluation in Crime and Justice: Trends and Methods, Australian Bureau of Statistics, Canberra, 24–25 March 2003).

¹³ *Ibid* 4.

¹⁴ *Ibid* 3.

¹⁵ *Ibid* 4–5.

¹⁶ *Ibid* 7.

The relatively small proportion of cases going to trial or resulting in convictions in South Australia has parallels in other jurisdictions.¹⁷ In a study reported in 2002, Parkinson et al examined the process of attrition in relation to 183 child sexual abuse cases that were referred to two child protection units in Sydney in the late 1980s.¹⁸ Of the 183 cases examined, the name of the offender was known in 117 cases, 45 cases reached trial, and 32 resulted in a conviction.¹⁹ Research conducted by the New South Wales Bureau of Crime Statistics and Research in the 2000s indicated that only 15% of reported child sexual ‘offence’ incidents result in the commencement of criminal proceedings, and only about 8% of those reported incidents result in a conviction.²⁰

A case may not proceed because the complainant is unwilling to cooperate in a criminal prosecution after initially reporting the abuse, or they may subsequently withdraw the complaint. In child sexual abuse cases, non-offending parents may make the decision for the child not to proceed, or to withdraw the complaint.²¹ Withdrawal of complaint or requests for no further action are also major reasons for attrition in relation to reported rapes.²² Wundersitz found that in South Australia, complainants ‘requesting no further action’ was the main reason child sexual abuse cases were cleared without the apprehension of a suspect.²³

There are many reasons for the attrition of cases even where the complainant is willing to testify.²⁴ Evidence suggests that prosecutorial decisions in a case are influenced by an array of factors. Prosecutors need to assess how well the witness

¹⁷ Kathy Daly and Brigitte Bouhours, ‘Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries’ (2010) 39 *Crime and Justice* 565; Lisa Bunting, ‘Sexual Offences against Children: An Exploration of Attrition in the Northern Ireland Criminal Justice System’ (2008) 32 *Child Abuse & Neglect* 1109.

¹⁸ Patrick N Parkinson et al, ‘The Process of Attrition in Child Sexual Assault Cases: A Case Flow Analysis of Criminal Investigations and Prosecutions’ (2002) 35 *Australian and New Zealand Journal of Criminology* 347.

¹⁹ *Ibid* 347.

²⁰ Jacqueline Fitzgerald, ‘The Attrition of Sexual Offences from the New South Wales Criminal Justice System’ (Crime and Justice Bulletin, NSW Bureau of Crime Statistics and Research, 2006) 4.

²¹ Larissa S Christensen, Stefanie J Sharman and Martine B Powell, ‘Identifying the Characteristics of Child Sexual Abuse Cases Associated with the Child or Child’s Parent Withdrawing the Complaint’ (2016) 57 *Child Abuse & Neglect* 53.

²² Liz Kelly, Jo Lovett and Linda Regan, ‘A Gap or a Chasm? Attrition in Reported Rape Cases’ (Home Office Research Study No 293, United Kingdom Home Office, February 2005).

²³ Wundersitz, above n 12, 3.

²⁴ Christine Eastwood, Sally Kift and Rachel Grace, ‘Attrition in Child Sexual Assault Cases: Why Lord Chief Justice Hale Got it Wrong’ (2006) 16 *Journal of Judicial Administration* 81.

will cope with cross-examination,²⁵ and consider factors such as the extent of any delay between the prosecution and the alleged abuse, which may impact upon the likelihood of a conviction.²⁶

Parkinson et al reported on a sub-cohort of 84 children and their families. Among this sub-cohort, the offender was identifiable in 67 cases.²⁷ In 13 cases the offender pleaded guilty, and in 12 the offender was found guilty at trial.²⁸ The children and their families were interviewed in detail to determine why many cases did not proceed to criminal investigation and prosecution, and why other cases dropped out of the criminal justice system.²⁹ Parkinson et al found that some of the reasons for not proceeding to trial included that: ‘the offence was not reported to police; parents wished to protect children, the perpetrator or other family members; evidence was not strong enough to warrant proceeding; the child was too young; the offender threatened the family; or the child was too distressed.’³⁰

Once a matter involving a sexual offence against a child proceeds to court, the guilty plea rate and the conviction rate are generally lower than for other offences. This can be observed in a number of jurisdictions. Most recently the Royal Commission reported that the conviction rate for child sexual assault matters in New South Wales for the period 2012–2016 (60%) was lower than for assault (70%) and robbery (73%), but higher than for adult sexual assault (50%). The Royal Commission’s explanation for the differences in conviction rates was that sexual offences are generally ‘word against word’ but that adult sexual offences also call into question the issue of consent which is not relevant for child sexual offences.³¹

There is little information available, however, on the outcomes of child sexual offence abuse matters in South Australia. Therefore, the purpose of this article is to focus on police and court statistics in relation to child sexual abuse complaints over a 20-year period in that State. It draws on a study commissioned and funded by the Royal Commission, which assisted in obtaining the data.

²⁵ Emelie Ernberg, Inga Tidefors and Sara Landström, ‘Prosecutors’ Reflections on Sexually Abused Preschoolers and their Ability to Stand Trial’ (2016) 57 *Child Abuse & Neglect* 21.

²⁶ Kathleen D Brewer, Daryl M Rowe and Devon D Brewer, ‘Factors Related to Prosecution of Child Sexual Abuse Cases’ (1997) 6 *Journal of Child Sexual Abuse* 91; Jeffrey W Spears and Cassia C Spohn, ‘The Genuine Victim and Prosecutors’ Charging Decisions in Sexual Assault Cases’ (1996) 20 *American Journal of Criminal Justice* 183; Andrea J Sedlak et al, ‘Child Maltreatment and the Justice System: Predictors of Court Involvement’ (2005) 15 *Research on Social Work Practice* 389.

²⁷ Parkinson et al, above n 18, 356.

²⁸ Ibid 355.

²⁹ Ibid.

³⁰ Ibid 347.

³¹ Royal Commission into Institutional Responses to Child Sexual Abuse, above n 4, 622.

II METHOD

The data were derived from police and court statistics from 1992–2012, obtained from the Office of Crime Statistics and Research ('OCSAR') in South Australia. The data comprise two police datasets and a court dataset. The research received ethics approval from the Human Research Ethics Committee at the University of Sydney.³²

The data extraction was designed to draw out all sexual offences against children in the relevant period, matching the two police datasets using a master Police Identification Number ('PIN').³³ The police record complainant and offence data on police incident reports; they record data on the arrest, and on the suspect or 'offender' on police apprehension reports. A given 'incident' always involves a single complainant, but a given complainant may be associated with multiple incidents.³⁴ The court dataset is based on cases that were heard and finalised in the courts in the relevant years.³⁵ It does not include cases that were still in the court process at the time the data were extracted (post-2012).

The data were checked through discussions with the data custodians in South Australia before, during, and after analysis of the police and court data. The main criteria

³² Approval to collect the South Australian data was obtained from the Attorney-General of South Australia. OCSAR provided the data in accordance with a Notice to Produce issued by the Royal Commission.

³³ Victims and offence data are recorded by Police on Police Incident Reports, while data in relation to the apprehension (via arrest or report) of accused offenders are recorded by Police on Police Apprehension Reports. The PIN for victims of sexual offences and pornography/censorship offences (JANCO '13' and '57') dating between 1/1/1991 and 31/12/2012 were extracted from the Police victim/offence dataset. These PINs were the 'master PINs' used to match back to the victim/offence dataset to extract the entire victimisation history from 1991 to 2012 for these particular victims. The same method was repeated for the Police Apprehension dataset to obtain the 'master PINs' for accused offenders. These PINs were used to match back to the apprehension dataset to extract the entire offending history from 1991 to 2012 for these particular offenders. The data for 1991 were excluded because of missing matching data.

³⁴ According to OCSAR:

When police identify a person suspected of having committed an offence and they have sufficient information to proceed against that individual by way of an apprehension, an apprehension report is filed, detailing the offences alleged against the suspect ... The same individual may be apprehended more than once during the year, and therefore be the subject of more than one apprehension report. Moreover, each apprehension report may contain more than one offence or multiple counts of the same offence.

Office of Crime Statistics and Research, 'Apprehensions Profile: South Australia' (Apprehensions Profile Report, Government of South Australia Attorney-General's Department, 2014) 1.

³⁵ Persons in the Magistrates Court who were committed for trial and for sentence are included in the counts for the higher courts in both New South Wales and South Australia, since these are non-finalised appearances in the Magistrates Court.

for inclusion were that the offence must be a *sexual offence* against a *child*. This meant excluding entries where the offences were other than sexual offences or the complainant was aged 18 or older at the time of the offence. No analysis was done on the Indigenous status of the complainant or suspect because 78% of records had missing data on Indigenous status.

‘Child sexual abuse’ was defined broadly to include all offences relating to child sexual abuse. The definition of ‘child’ refers to persons under the age of 18, though the age of consent for a number of offences is 16. There are a very large number of offences that may be charged, depending on the year in which the alleged offences occurred, as they are charged under the relevant provisions at that time. Offence type was coded to create four main categories:

- sexual assault defined as sexual intercourse/penetration;
- indecent assault;
- act of indecency/aggravated act of indecency; and
- child pornography/grooming for pornography and other sexual offences.

These categories align with the definitions and categories of sexual offences used by OCSAR. The use of these generic categories is a broad indicator of the seriousness of the offence.

A Data Limitations and Considerations

There are several limitations or complexities in comparing police and court data over time, and in comparing reports made in childhood and those delayed until adulthood.

First, there have been a number of legislative changes to the definitions of offences and the associated penalties.³⁶ These changes relate to the expansion of the definition of sexual intercourse or penetration, the decriminalisation of homosexual sexual acts, the specific inclusion of persons in a position of trust or authority in relation to a child, and the inclusion and expansion of child pornography offences. The focus of the analyses in this article is on sexual assault and indecent assault, because these were the most common offences (overall, 45.7% of reports to police concerned sexual assault and 41.1% involved indecent assault).³⁷ Pornography offences were excluded from the analyses in this article because there were few reports of such

³⁶ Hayley Boxall, Adam M Tomison and Shann Hulme, ‘Historical Review of Sexual Offence and Child Sexual Abuse Legislation in Australia: 1799–2013’ (Research Report, Australian Institute of Criminology, 2014) 56–57; Boxall, Tomison and Hulme provide detailed explanations of the changes since the 1950s and especially since the 1980s, in the relevant legislation in all States and Territories.

³⁷ See Table 1.

offences until the production, dissemination, and possession of child pornography was specifically criminalised in 2004.³⁸

Second, these changes have particular implications for historic offences that are charged in relation to the offences as defined at the time of the offence, not at the time that the offence is reported.

Third, an important change in South Australia concerns the mid-2003 abolition of the statutory limitation period for indictable sex offences.³⁹

Fourth, ideally it would be possible to track cases from reporting to police, through the investigation and prosecution process, to court, and then to finalisation at court via conviction and sentencing. While South Australia has the advantage of a unique PIN for every individual who comes into contact with the criminal justice system (as a complainant, as a person of interest, or as an accused), this is not sufficient to allow tracking across the police, court and corrections systems. As Wundersitz explained, ‘a single incident report may lead to the apprehension of multiple offenders, or conversely, multiple incident reports may be “resolved” by one apprehension’.⁴⁰ Furthermore, ‘a single apprehension report may contain charges arising from a number of incidents, some of which are extraneous to the ones targeted for the study’, and ‘charges arising from the one apprehension report may also be split among different court files, and take different paths through the court system’.⁴¹ For this reason, the police and court data have been analysed separately, exploring within the police data the factors associated with greater or lesser likelihood of the matter proceeding to court, and within the court data the likelihood of a plea, conviction, and the type of sentence.

III ANALYSES

The analyses reported in this article were based on all available information from 1992 to 2012. The large-scale OCSAR databases of police and court data are treated as a population rather than as a sample for several reasons: first, we are examining and describing the full set of observations in these databases and are not generalising beyond them so there is no need for inferential statistics; secondly, when dealing with large datasets such as these, inferential statistics can yield statistically significant results even with very small effects — associations or differences which are trivial from

³⁸ *Criminal Law Consolidation (Child Pornography) Amendment Act 2004* (SA).

³⁹ *Criminal Law Consolidation Act 1953* (SA) s 72A, as inserted by *Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Act 2003* (SA).

⁴⁰ Joy Wundersitz, ‘Child Victimisations: Tracking from Incident Report to Finalisation in Court: Some Methodological Issues’ (Paper presented at the Conference on Child Sexual Abuse: Justice Response or Alternative Resolution, Adelaide, 1–2 May 2003) 2.

⁴¹ *Ibid* 2.

a practical or policy-making point of view. Effect sizes based on odds ratios ('OR') that are two or greater (or .5 or less) are provided as a guide when considering whether two percentages could be regarded as different from each other. As an example, the OR for the comparison of 60% and 40% is 2.25 $((60/40)/(40/60) = 2.25)$.

The police data explore: the trends in the number of reports; the likelihood of a reported incident leading to the arrest of a suspect, in association with whether the complainant was a child or an adult at the time of the report; the type of offence (particularly sexual assault and indecent assault); and the relationship between the complainant and the suspect. The focus of the court data was on the trends over years, the conviction rate, and sentencing by courts. In both sets of analyses, the overall focus is on attrition and the factors affecting it.

IV RESULTS

The characteristics of reports to police of sexual offences against children are presented in Table 1. This includes reports that were made while the complainant was a child under 18 years of age, or that were delayed into adulthood (18 years or older). Most sexual offences against children were reported while the complainant was a child (84.3% overall), and within three months of the offence (11,726, 54.0%). Overall, the majority of complainants were female (84.5%). Male complainants were more likely to delay their report until adulthood than female complainants, and in particular for more than 20 years.⁴² One in five male complainants of sexual assault (345, 19.7%) and indecent assault (425, 19.0%) took more than 20 years to report; for female complainants, the figures were 8.3% ($n = 673$) for sexual assault and 6.5% ($n = 437$) for indecent assault.

Adolescents aged 14–17 years at the time of the incident were the most prevalent complainant age group overall (36.8%) and more likely to report the alleged offence before they were 18 than as adults.⁴³ Nearly half (47.7%) of the complainants in reported incidents of child sexual assault were in this age group. More than one-third (7,742, 35.5%) of the complainants were under 10; boys were more likely than girls to be in the two age groups under 10 (47.9% compared with 32.1%).⁴⁴

Extra-familial persons known to the child were the most common suspects (40.8%), with little difference between incidents reported in childhood and those reported in adulthood. Incidents involving parents and guardians, and particularly persons in authority, were much more likely to be reported in adulthood than childhood.⁴⁵ Conversely, those incidents involving someone unknown to the child were more

⁴² OR = 2.59.

⁴³ OR for adolescents aged 14–17 years versus the other age groups in order = 2.19, 2.36, 2.19 and 8.86.

⁴⁴ OR = 1.9.

⁴⁵ OR = 9.7.

likely to be reported in childhood.⁴⁶ Siblings and boyfriends/girlfriends were involved in a small number of incidents — 3.4% and 4.9% respectively. Overall, 19.7% of persons of interest were under 18 and a further 9.5% were under 20; they were mostly persons known to the child.

Table 1: Characteristics of sexual offence incidents against children in South Australia 1992–2012

	Reported in childhood	Reported in adulthood	Total N = 21 125	
	%	%	<i>n</i>	%
Gender of complainant ¹				
Female	82.2	64.1	17 845	84.5
Male	17.8	35.9	3280	15.5
Age of complainant				
5 years and under	15.3	18.8	3339	15.8
6-9 years	18.8	25.0	4168	19.7
10-13 years	26.1	32.3	5717	27.1
14-17 years	39.5	22.2	7784	36.8
Combination of ages	0.3	1.7	117	0.6
Offence type				
Sexual assault ^a	43.4	58.3	9655	45.7
Indecent assault	41.7	37.9	8683	41.1
Acts of indecency	14.9	3.8	2787	13.2
Complainant–suspect relationship ²				
Parent/guardian ^b	13.1	23.9	2619	15.0
Sibling	3.1	4.8	596	3.4
Other family member	9.4	13.8	1777	10.2
Member of household	1.2	0.8	152	0.9
Boyfriend/girlfriend	5.6	1.8	857	4.9
Other known person	41.8	36.0	7122	40.8
Person in authority ^b	1.8	15.2	720	4.1
Not known to complainant ^b	17.1	2.5	2535	14.5
Not recorded/not stated	7.2	1.2	1077	6.2
¹ In 1.7% of incidents, there were both male and female complainants.				
² The relationship data includes incidents from 1995–2012 only and sexual assault and indecent assault because of the amount of missing data prior to 1995.				
^a and ^b indicate significant differences within (a) offence type and (b) relationship.				

⁴⁶ OR = 8.04.

Figure 1: Number of child sexual offence incidents reported in childhood and adulthood and overall total by year of report

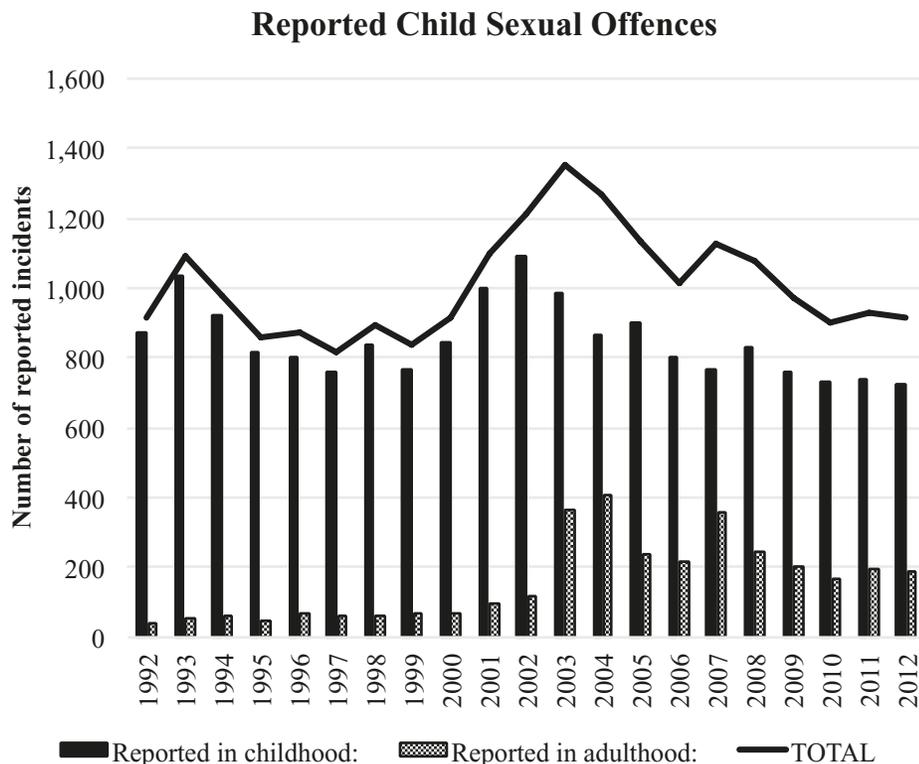


Figure 1 shows the numbers of incidents reported in childhood and adulthood for the period 1992–2012, together with the total number of reports each year. There is significant variation in the number of reports, with a marked increase in both the number and proportion of reports made in adulthood from 2003. The peaks in adult reports coincide with the Mullighan Inquiry, during which 792 complainants reported their sexual abuse as children.⁴⁷ The vast majority of those complainants (84%) were adults when they reported abuse that occurred decades earlier, in some cases dating back to the 1940s.⁴⁸ The peak in 2004 and the higher numbers beyond are also likely to be associated with the abolition of the statutory limitation period in June 2003. The abolition of the time limit resulted in a backlog of cases that could then be prosecuted, and this is evident in the figures below (see figures 4a and 4b).

⁴⁷ Mullighan Inquiry, above n 3, 24.

⁴⁸ Ibid.

B Cases Proceeding to Prosecution

Just over 40% of incident reports resulted in the arrest/report of a suspect. About one in five incident reports (19.1%) were ‘cleared with no further action or no offence being revealed’ (including reports in which there was insufficient evidence to proceed). A further one in three (37.6%) were ‘not cleared, with no legal action possible or little or no prospect of proceeding’; this included 108 cases where the suspect had died and four where the complainant had died.⁴⁹

Figures 2a and 2b, concerning reports made in childhood, show that the number of incidents in which legal action commenced for childhood reports of sexual or indecent assault fairly closely followed the pattern of the number of reported incidents per year for much of this period. There was, however, an elevated level of reporting in the early 2000s, coinciding with the Layton Inquiry into child protection. There is much more variation in the numbers reported (ranging from 263 in 1997 to 442 in 2003) than in the numbers involving an arrest (ranging from a high of 213 in 1994 to a low of 142 in 2004). It seems, then, that despite a sharp increase in the level of reporting by children during the early 2000s, there was only a very small increase in arrests.

C Investigations by the Child Protection Department

At much the same time as reports to the police of child sexual abuse were rising, particularly in the early 2000s, rates of substantiation by the child protection department were falling (see figure 3). The declining number of substantiated reports of child sexual abuse until 2007–08⁵⁰ is in stark contrast to the peak numbers of child reports of sexual assaults and indecent assaults reported to South Australia Police between 2001 and 2004–05. The number of substantiated reports involving boys fell to a low of 13 in 2009–10⁵¹ and to 63 for girls in 2007–08.⁵² The number of substantiated reports involving boys increased substantially from 13 in 2009–10⁵³ to 85 in 2014–15.⁵⁴

⁴⁹ The ‘not cleared’ rate is consistent with Wundersitz’s finding for similar earlier data in 2003 (34.4%): see Wundersitz, above n 40, 6.

⁵⁰ Australian Institute of Health and Welfare, ‘Child Protection Australia 2007–08’ (Child Welfare Series No 45, Australian Institute of Health and Welfare, 21 January 2009) 70.

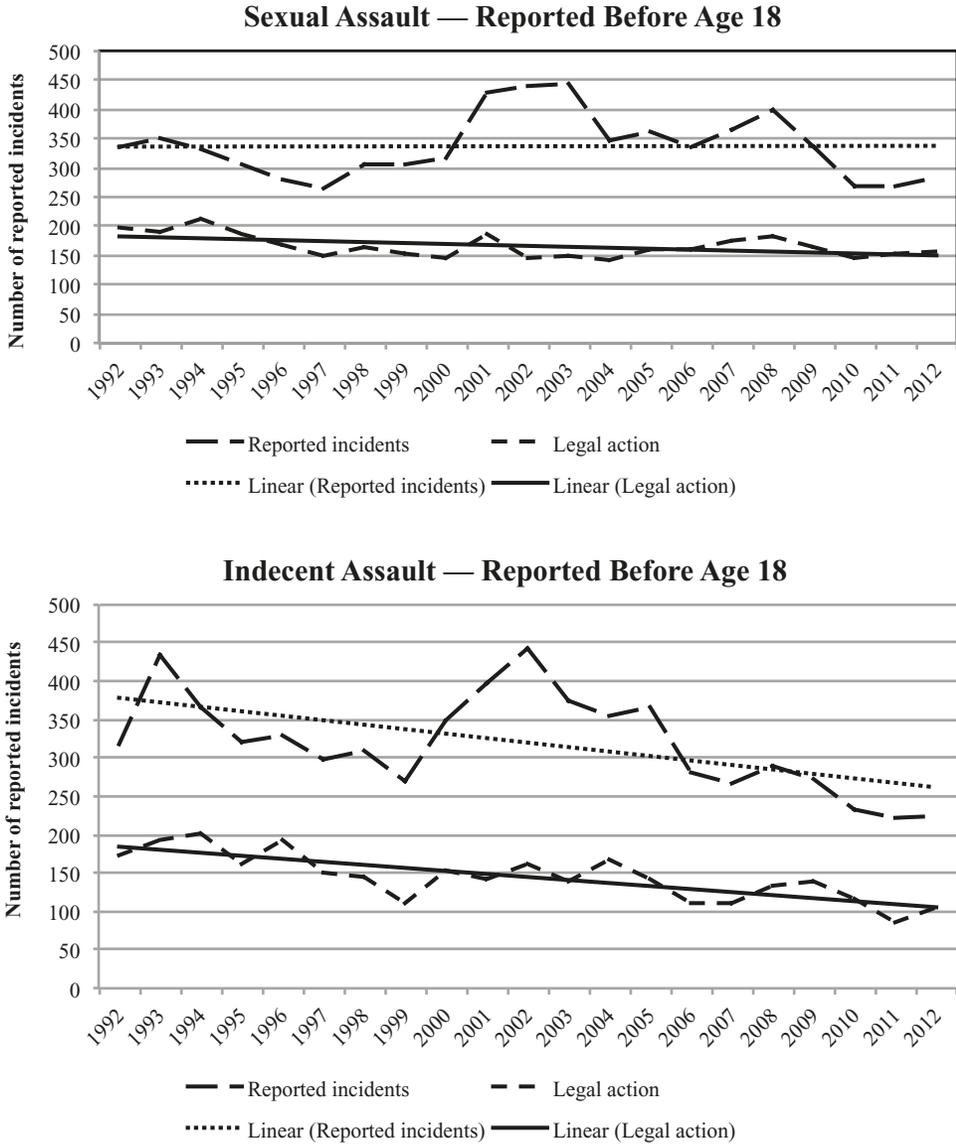
⁵¹ Australian Institute of Health and Welfare, ‘Child Protection Australia 2009–10’ (Child Welfare Series No 51, January 2011) 69.

⁵² Australian Institute of Health and Welfare, ‘Child Protection Australia 2007–08’ (Child Welfare Series No 45 Australian Institute of Health and Welfare, 21 January 2009) 70.

⁵³ Australian Institute of Health and Welfare, above n 51, 69.

⁵⁴ Australian Institute of Health and Welfare, ‘Child Protection Australia 2014–15’ (Child Welfare Series No 63, 21 April 2016) 75.

Figures 2a and 2b: Number of incidents of (a) child sexual assault and (b) indecent assault reported as a child and number in which the person of interest was proceeded against

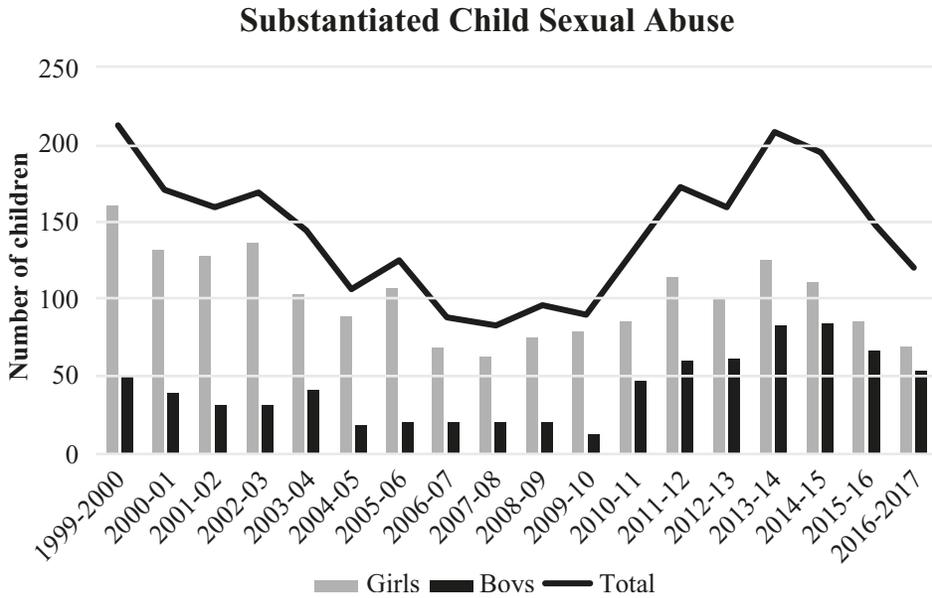


* Linear refers to the linear trend line of best fit.

D Child Sexual Offences Reported in Adulthood

Figures 4a and 4b show, respectively, the number of adult reports of child sexual assault and indecent assault, together with the number of cases in which proceedings were taken against the suspect or alleged offender by arrest or report. Again, the

Figure 3: Number of children in substantiated sexual abuse reports made to the South Australian statutory child protection authority



spikes in the number ‘proceeded against’ in 2004 and 2007 are likely to reflect the abolition of the statutory limitation period in 2003 and the Mullighan Inquiry dealing with historical matters up to and including 2007.⁵⁵

The trend lines and the pattern of the two lines are generally quite similar for both types of offence, with the number of cases involving arrest following the pattern of the overall number of reported incidents. However, in the periods where the numbers of reported incidents were highest (between 2003 and 2008), the gap increased substantially between the number of reported incidents and the number of suspects apprehended at the time of these spikes.

*E The Probability of Arrest for Sexual Offences Reported in
Childhood and Adulthood*

Figures 5a and 5b show the percentage of child and adult reports in which the suspect was arrested (arrest rate) for sexual assault and indecent assault. As figure 5a shows, sexual assault incidents reported during childhood were more likely to result in an arrest than those reported in adulthood until 2000; in the period 2000–09, there was little difference between adult and child reports. There was a similar pattern for

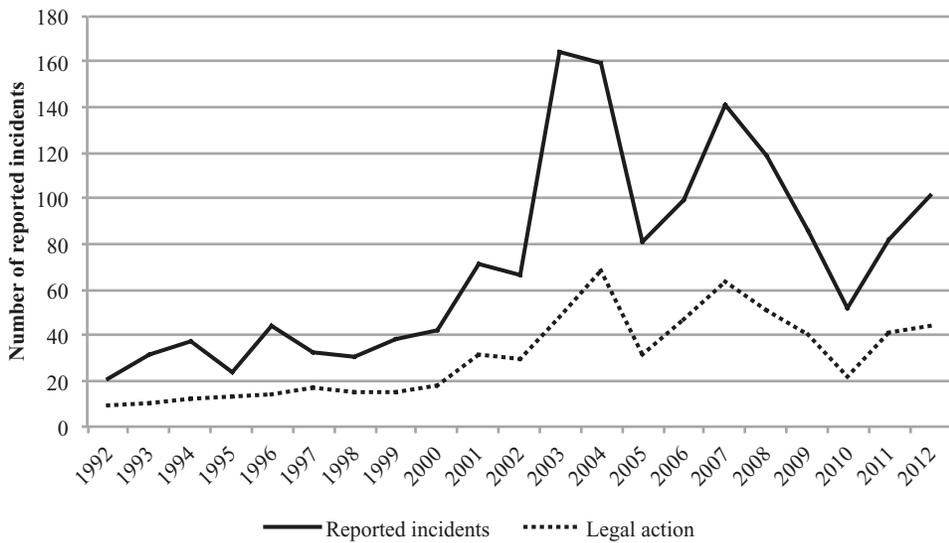
⁵⁵ See *Criminal Law Consolidation Act 1953 (SA)* s 72A, as inserted by *Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Act 2003 (SA)*; Mullighan Inquiry, above n 3.

indecent assaults except that there were several years where the arrest rate for adult reports was higher than for child reports and there was greater fluctuation in the adult reports of indecent assault (see figure 5b).

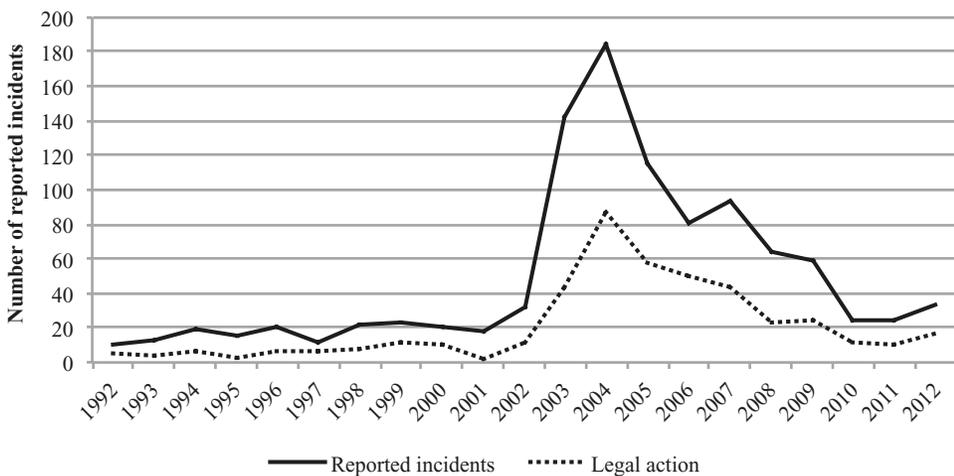
Sexual assault incidents reported in childhood and which involved a person in authority, a parent or guardian, or another family member (but not a sibling) were

Figures 4a and 4b: Number of incidents of (a) sexual assault and (b) indecent assault reported as an adult and number in which the person of interest was proceeded against

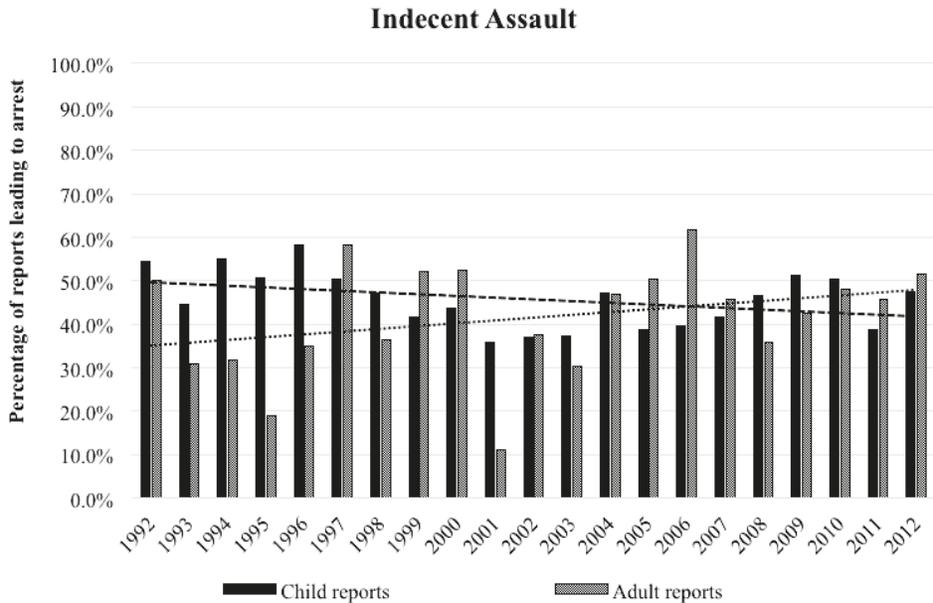
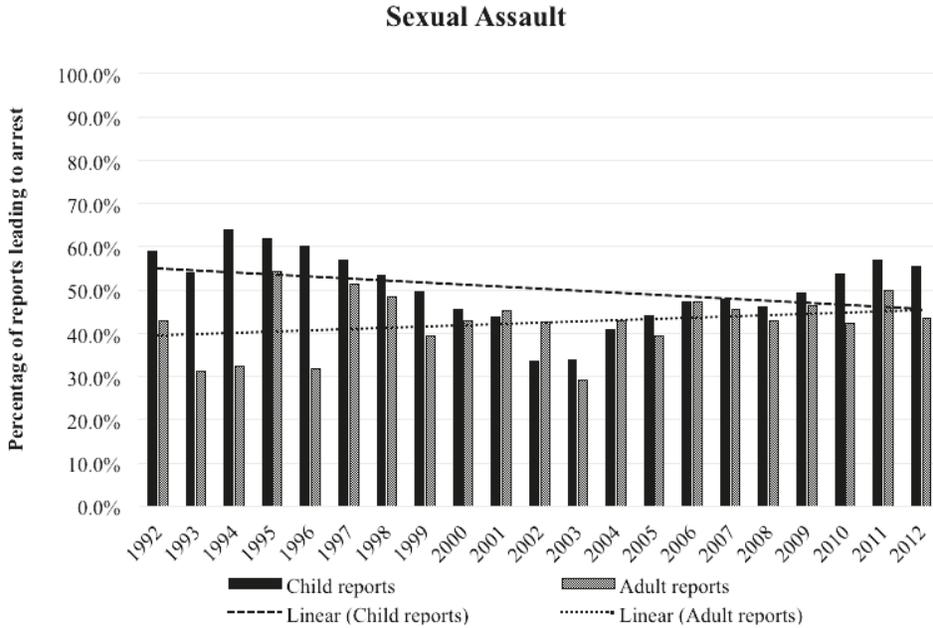
Sexual Assault — Reported in Adulthood



Indecent Assault — Reported in Adulthood



Figures 5a and 5b: Percentage of incidents of (a) sexual assault and (b) indecent assault reported as a child and as an adult in which the suspect was arrested (arrest rate)



the most likely to lead to arrest (between 57% and 63% of incidents). The highest percentages for adult reports occurred for indecent assault involving a person in authority (52%) and sexual assault involving a parent or guardian or another family member (48%).

F Court Data

Arrest or apprehension is the first part of the prosecution process; however, this does not mean that all the matters in which a person was apprehended or arrested proceeded to court. Sexual offences against a child in South Australia may be prosecuted in the higher courts (Supreme Court and District Court), the Magistrates Court or the Youth Court, depending on the age of the defendant, the seriousness of the charges, and the severity of the possible penalties.

A total of 7,488 persons⁵⁶ were prosecuted on at least one sexual charge against a child in finalised matters in the four courts over the period 1992–2012. The mean number of sexual charges per finalised appearance was 3.4 (Standard Deviation = 4.4) with a median of 2. Most persons had a finalised appearance in the Magistrates Court (45.4%) excluding committals, or the District Court (38%). A relatively small number of cases were dealt with in the Youth Court (12.5%) or the Supreme Court (4.1%).

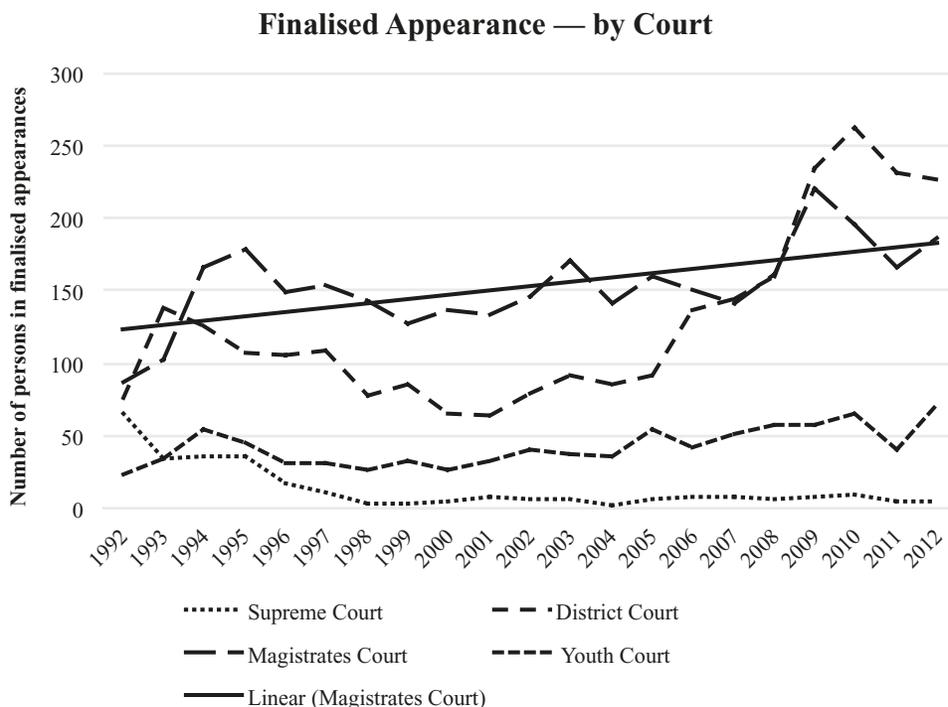
Figure 6 shows the number of persons with finalised appearances in each court by year. The most marked trend was the sharp increase in the numbers of persons appearing before the District Courts, with a low of 64 in 2001 and a tripling of numbers over five years from 91 in 2005 to 263 in 2010. In contrast, the numbers in Magistrates Courts fluctuated but show a relatively flat trend prior to a spike in 2009. The upward trend in the District Court probably reflects an increase in the numbers of adult complainants after 2004, with some lag time before matters reached the courts following the Mullighan Inquiry and the abolition of the statute of limitations.

G Court Outcomes

Just over 2,000 persons ($n = 2,073$) with finalised charges over the period 1992–2012 proceeded to trial in the higher courts and 367 persons proceeded to sentence after pleading guilty. Just over half (57.4%) were convicted of at least one offence by being found guilty at trial (73.3% of persons who went to trial) or pleading guilty and proceeding to sentence; 15.4% were acquitted or had all charges dismissed at trial. A substantial number of persons (895, 26.7%) in the higher courts had all

⁵⁶ Persons are defined here as ‘persons in finalised appearances’. In 4.1% of finalisation dates, there was more than one case ID indicating that cases were heard together, with more than one defendant. Since South Australia has a unique PIN for each person in contact with the criminal justice system, the number of distinct persons was 5,394; 72.7% had only one finalisation date, 19.7% had two and the remaining 7.6% had three or more. This excludes 428 young persons whose matters were dealt with by way of a family conference.

Figure 6: Number of persons in finalised appearances charged with at least one sexual offence against a child, by year



charges dismissed prior to or without a hearing. The ‘conviction rate’⁵⁷ for sexual assault was relatively steady over the period 1992–2012, ranging between 45% and 62%, with a mean of 52%. Indecent assault followed a similar pattern, with a mean of 48%.⁵⁸

Table 2 shows the outcomes for persons with finalised charges in the Magistrates Court and Youth Court. In the Magistrates Court, 889 persons (31.3%) were found or pleaded guilty to at least one charge; 148 persons had proven offences but no conviction recorded.⁵⁹ A small proportion of persons were acquitted (3.6%). A very high proportion of persons (65.1%) had all charges withdrawn prior to a hearing, most commonly when there was no evidence tendered by the prosecution.

⁵⁷ The conviction rate includes those with a proven offence with no conviction recorded; a number of persons in this category received a penalty, mostly a supervision order or conditional release.

⁵⁸ Since 2008, the conviction rate for child pornography has been high, ranging between 82% and 97%.

⁵⁹ Committals in the Magistrates Court for trial or for sentence are not included in this count.

Table 2: Outcome for persons with finalised charges of sexual offence against a child in the Magistrates Court and Youth Court in South Australia

	Magistrates Court		Youth Court	
	Number of persons	%	Number of persons	%
Convicted of at least one charge	741	26.1	86	9.7
Proven offence but with no conviction recorded	148	5.2	263	29.6
Not guilty/all other charges dismissed at court	101	3.6	29	3.3
All charges dismissed prior to hearing*	1850	65.1	512	57.5
Total	2840	100.0	890	100.0
Guilty/proven/convicted**	889	31.1	349	39.2

* Most commonly, the Crown made applications for no further proceedings, and with no evidence tendered and no hearing. Includes 10 persons who died.

** Persons may plead guilty or be found guilty at a hearing or trial; proven refers to young persons with a proven offence; convicted is an umbrella term including those convicted but with no conviction recorded.

In the Youth Court, 349 (39.2%) young defendants had a proven offence; for 263 of those young persons (75.4%), no conviction was recorded. Likewise, a high proportion of young persons (57.5%) had all charges dismissed without a hearing. Nine young people were committed for trial to a higher court.

Comparison of the major offence on which a person was convicted with that with which they were charged indicates that about 60% of defendants in the higher courts were convicted on the same major charge (or one with the same maximum penalty — 63% in the Supreme Court, 58% in the District Court). The corresponding figures in the lower courts were 76% for the Magistrates Court and 68% for the Youth Court.

To explore the possibility that withdrawn cases might ‘appear’ in subsequent years or in another court (excluding committals), further analysis was conducted in relation to cases in which all charges were withdrawn or dismissed across the four courts. Few persons with the same PIN had further charges laid in relation to sexual offences against a child within three years of their charges being withdrawn or dismissed. Most of these cases were heard in the Magistrates Court for both the earlier and later finalised appearances (56%), and the conviction rate for the subsequent appearance was also 25% for any sexual offence against a child. The subsequent conviction rate was higher for the District Court (55.1%) for the lesser number of cases in which the earlier appearance in any court had resulted in all charges being withdrawn or dismissed.

H Sentences

Table 3 shows the principal or most severe penalty for the 2,761 persons whose matters were finalised in the higher courts, Magistrates Court and Youth Court in South Australia over the period 1992–2012. Imprisonment was the most common

Table 3: The principal penalty (number of persons) by court 1992–2012

	Higher courts		Magistrates Court		Youth Court		Total
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	
Imprisonment	883	56.1	135	15.4	11	3.6	1029
Supervision order/detention	2	0.1	–	–	–	–	2
Suspended sentence	571	36.3	369	42.0	62	20.1	1002
Community service order	7	0.4	24	2.7	6	1.9	37
Supervision order/conditional release	82	5.2	183	20.8	205	66.6	470
Bond with/without supervision	15	1.0	17	1.9	2	0.6	34
Fine	11	0.7	147	16.7	17	5.5	175
Other	4	0.3	3	0.3	5	1.6	12
Number of persons (offenders)	1575	100	878	100	308	100	2761

principal penalty in the higher courts (56.1%), but much less common in the Magistrates Court. In the Magistrates Court, a suspended sentence (42.0%) was much more common than a supervision order or conditional release (20.8%) or a custodial sentence (15.4%).⁶⁰ In the Youth Court, by far the most common penalty was a supervision order (66.6%). One in five young offenders (20.1%) received a suspended sentence, and a very small proportion, 3.6%, received the most serious or punitive penalty, a detention order.

V DISCUSSION

The three main findings of this study concern the response to major inquiries and media attention in relation to the number of reported child sexual offences, the difference between child reports and adult reports and their respective prosecutions, and the high withdrawal rate of charges for child sexual offences.

The peaks in reporting numbers coincided with or closely followed the Layton and Mullighan Inquiries into aspects of child protection, which reported in 2003 and 2008 respectively. This was the case also in New South Wales in relation to the Wood Royal Commission Paedophile Inquiry.⁶¹ Such inquiries attract considerable

⁶⁰ OR = 3.97 and 2.76 respectively.

⁶¹ Commonwealth, Royal Commission into the New South Wales Police Service, *Final Report Volume IV* (1997) ('Wood Royal Commission Paedophile Inquiry'). See Judith Cashmore et al, 'The Impact of Delayed Reporting on the Prosecution and Outcomes of Child Sexual Abuse Cases' (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, August 2016) 201–3.

media attention and increasing public awareness. One of the consequences of this attention is that they tend to generate a greater number of complaints than the 'average' year.⁶² Media attention may give complainants 'permission' to report, born out of a cognisance that they are not alone. While some people report matters only to an organisation in which the abuse occurred (such as a Church), and make it clear that they do not want to go to the police, others either go to the police themselves or give permission for their details to be passed on to the police.

Typically, it is not the function of these inquiries to investigate individual criminal culpability or even to generate reports to the police. Nonetheless, this may well be a by-product of such inquiries. In the wake of the Parliamentary Inquiry in Victoria, Victoria Police set up a specialist group to deal with historic child sexual abuse complaints, known as the SANO Task Force.⁶³ The recent Royal Commission has generated a large amount of work for other bodies. As at 20 December 2017, at the completion of its work, the Royal Commission made 2,575 referrals to authorities, including the police.⁶⁴ An increase in the figures is to be expected in the years following the Royal Commission's work.

The second main finding concerns the difference between child reports and adult reports and prosecutions. Nearly 85% of reports to South Australia Police were made while the complainant was still a child but the upsurge in the overall numbers was due to the increase in reports made by adults who were then able to report with some expectation of action following the abolition of the statute of limitations for indictable offences in mid-2003. There was also an upward trend in arrests following adult reports for both sexual assault and indecent assault, reflecting both the abolition of the limitation period and the activity of the Mullighan Inquiry. There was no such increase in prosecutions for child reports.

While a spike in child reports in South Australia did not lead to an increase in prosecutions, the pattern was different in relation to adult reports. There was quite a substantial increase in prosecutions from 2003–08 where the complainant was an adult at the time of reporting, probably reflecting the work of the Paedophile Task Force which was established by South Australia Police to investigate historic

⁶² See Margaret Leland Smith, Andres F Rengifo and Brenda K Vollman, 'Trajectories of Abuse and Disclosure: Child Sexual Abuse by Catholic Priests' (2008) 35 *Criminal Justice and Behavior* 570, 590–1; Patrick Parkinson, Kim Oates, and Amanda Jayakody, 'Breaking the Long Silence: Reports of Child Sexual Abuse in the Anglican Church of Australia' (2010) 6 *Ecclesiology* 183.

⁶³ See Victoria Police, *Royal Commission into Institutional Response to Child Abuse* (5 July 2016) <http://www.police.vic.gov.au/content.asp?Document_ID=39881>.

⁶⁴ See *Royal Commission into Institutional Responses to Child Sexual Abuse*, <<https://www.childabuseroyalcommission.gov.au>>; see also Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report Volume 17* (2017), 98.

complaints.⁶⁵ Even so, there remains a proportionately large gap between reports and prosecutions in those years in comparison with the years in which there were far fewer reports. By 2012, the level of adult reporting had returned to its levels in the early 2000s, and the gap between reported incidents and legal action when the complainant was an adult, had narrowed substantially. In contrast, the spike in child reports in the early 2000s did not lead to an increase in the number of arrests — in fact, the arrest rate dropped during this period. A possible explanation for the flat line of prosecutions despite the spike in reports is that there was a change in the nature and quality of the reports, or a proportionately smaller number of children or parents prepared to go through the prosecution process. However, it is difficult to see why a substantial change in patterns would occur from one year to the next.

Another possible explanation concerns resource constraints which may also explain the decline in substantiations by the child protection department. Not every report to a statutory child protection department is investigated, and in some cases the investigation may be quite limited. Resourcing issues may therefore affect substantiation rates. This is one possible explanation for the difference in substantiation rates between jurisdictions. For example, the rate of substantiated sexual abuse for the period 2008–13 was 0.4 per 1,000 children in South Australia, and the rate in New South Wales was four times that at 1.6 per 1,000.⁶⁶

The third main finding concerns the high withdrawal rate of charges in South Australia at or just before court hearings. Analysis of the process of attrition in child sexual abuse cases has generally focused upon evidential reasons why child sexual abuse cases have not proceeded to court. That is, the complainant (or a parent on the child's behalf) has declined to give evidence, or their testimony is deemed not to be sufficiently probative, or there are concerns about the child's capacity to withstand cross-examination. Another important factor to consider in analysing the process of attrition in sexual assault cases is when and why prosecutorial discretion is exercised to withdraw charges, and by whom it is exercised. The South Australian findings indicate marked differences between South Australia and New South Wales, the only two states with specific state agencies to analyse police and court data. In New South Wales, discretion is exercised by the police not to lay charges in the

⁶⁵ Malcolm Hyde, 'South Australia Police Annual Report 2002–2003' (South Australia Police 2003) 33.

⁶⁶ Rates per 1,000 children for the period 2008–14 are based on: Australian Institute of Health and Welfare, *Child Protection Australia 2008–09*, (Child Welfare Series No 47, 21 January 2010); Australian Institute of Health and Welfare, 'Child Protection Australia 2009–10' (Child Welfare Series No 51, 21 January 2011); Australian Institute of Health and Welfare, 'Child Protection Australia 2010–11' (Child Welfare Series No 53, 20 January 2012); Australian Institute of Health and Welfare, 'Child Protection Australia 2011–12' (Child Welfare Series No 55, 8 March 2013); Australian Institute of Health and Welfare, 'Child Protection Australia 2012–13' (Child Welfare Series No 58, 25 July 2014); Australian Institute of Health and Welfare, 'Child Protection Australia 2013–14' (Child Welfare Series No 61, 8 May 2015); Australian Institute of Health and Welfare, 'Child Protection Australia 2014–15' (Child Welfare Series No 63, 21 April 2016).

great majority of cases involving reports by child complainants, and in the majority of cases involving reports by adult complainants.⁶⁷ Police in South Australia have been much more likely than their counterparts in New South Wales to lay charges, especially in relation to child complainants, but those charges are much more likely to be withdrawn once the case goes to the prosecution team. One reason for this may be the late assessment of the quality of the evidence and the willingness and capacity of the complainant to proceed, as well as possible overcharging.

The higher proportion of such matters withdrawn by the prosecution in South Australia compared with other states was the subject of a special report by OCSAR in 2004, made in response to information published by the Australian Bureau of Statistics ('ABS') based on 2001–02 higher court matters.⁶⁸ The OCSAR report analysed 80 cases where the South Australian Office of Director of Public Prosecutions ('ODPP') queried the classification or method of finalisation in the ABS 2001–02 report; in half the cases withdrawn by the prosecution, fresh information was laid. The OCSAR report, like the ABS report, dealt with all offences, not just child sexual offences. The OCSAR report concluded that, apart from counting rule errors, the higher rate in South Australia could reflect differences in the application of the 'reasonable prospect of conviction' test in deciding whether to prosecute a criminal offence and whether the ODPP or police prosecutors handle matters prior to committal.⁶⁹

The finding that fresh charges were laid in 40 of the 80 cases initially withdrawn by the prosecution suggests that, in South Australia, the ODPP may withdraw charges and lay new ones to start a new prosecution rather than change the charges, as is the case in New South Wales. If this were the case, it would inflate the number of finalised appearances and substantially increase the cases that are withdrawn or that have all charges dismissed, reducing the calculated conviction rate. However, our analysis of the cases in which all charges were withdrawn or dismissed in South Australia over the period 1992–2012 does not support this hypothesis. While 37% of cases before courts in that period were withdrawn or dismissed, relatively few persons with the same PIN had further charges laid in relation to sexual offences against a child within three years of their charges being withdrawn or dismissed.

An OCSAR follow-up review of the withdrawal rates for all offences in the higher courts of South Australia in January 2013 confirmed that the rate is higher than for Australia as a whole, and has been 'steadily increasing' since 2004–05.⁷⁰ For example, in 2010–11, 29.1% of defendants in South Australian higher courts had their matters withdrawn compared with 13.5% for Australia as a whole. The

⁶⁷ Cashmore et al, above n 61.

⁶⁸ Nichole Hunter and Carol Castle, 'Explanations for the High Proportion of South Australian Matters Classified by the ABS as Withdrawn in 2001/02' (Technical Paper, Office of Crime Statistics and Research, January 2004).

⁶⁹ *Ibid* 17.

⁷⁰ 'Higher Court Withdrawal Rates' (Briefing Paper, South Australian Office of Crime Statistics and Research, 2013) 1.

withdrawal rate for sexual assault and related offences was higher than for other offences (32.2% in South Australia and 20.0% for Australia).

The review examined the reasons for cases being withdrawn via a white certificate⁷¹ or nolle prosequi in ODPP briefs and reported that the main reasons were the complainant not proceeding (not being willing or able to do so), poor or insufficient evidence, and the complainant being assessed as incapable of providing adequate testimony. The OCSAR review indicated that acceptance of a plea to a lesser charge was apparent in a very small percentage of cases. The percentage of white certificates was substantially higher in the circuit courts (though the number of circuit court matters was much smaller) than in the Adelaide courts, probably reflecting differences when the prosecution is initially run by South Australia Police prosecutors rather than ODPP solicitors. In South Australia, the Committal Unit within the ODPP assesses all major indictable offences in the metropolitan area prior to committal, while South Australia Police performs this role in regional areas. The ODPP annual reports indicate that matters where the ODPP is not involved prior to committal are more likely to be withdrawn by way of a white paper, which is rarely used, if at all, in other states. In the 2016–17 annual report, the Director of Public Prosecutions has indicated significant changes in practice, with the establishment of a specialist team for child and vulnerable witnesses, ‘to reduce the number of matters that necessitate a major indictable prosecution and to improve the briefs in those that do’.⁷² This is partly in response to the ‘high proportion of the matters withdrawn after matters have been committed for trial that involve complainants changing their mind about wanting to participate in the criminal process’⁷³ as well as the point at which the ODPP take responsibility for a major indictable matter.⁷⁴

⁷¹ Hunter and Castle, above n 68, 6 explain white certificates as follows: ‘The ODPP defines a “white paper” or “white certificate” as “where the director declines to prosecute any charge and files prior to arraignment, a notice pursuant to the *Criminal Law Consolidation Act* section 276”. According to the ODPP, this commonly occurs where the committal process is conducted in the country and there is no ODPP involvement prior to committal. In such instances, once assessed by the ODPP following committal, the ODPP may decide that the complaint or information should be more appropriately heard in the Magistrates Court (as a summary or minor indictable offence) or should not proceed at all. A “white paper” is then lodged with the court.’

⁷² Adam Kimber, ‘2016–17 Annual Report’ (Office of the Director of Public Prosecutions, 3 October 2017, 14.

⁷³ Ibid 15.

⁷⁴ Ibid 14: ‘The most significant change is that my Office will no longer take responsibility for a major indictable matter until the police investigation is more advanced than is the case today. This change creates the opportunity for better identification of matters that should be the subject of a major indictable prosecution, and those that should not. To do this, a specialist team will be created.’

VI CONCLUSION

One of the (perhaps unintended) consequences of major public inquiries concerning child protection issues is that more reports than usual are made to the police, to statutory child protection authorities, and to the institutions where the abuse occurred. While there may be a legitimate community expectation that all reports of child sexual abuse will be properly investigated, and that where the complainant is willing to testify and can give a credible account of the abuse, the prosecution will proceed, in reality, resource constraints may limit the response of the authorities.

The different patterns in the exercise of the discretion to lay charges or to withdraw them across Australian states require further research to understand better how the discretion to prosecute is exercised in different categories of case. Research on prosecutorial discretion by police and courts, funded by the Australian Research Council, is now underway.

