

Terms of Reference 1. Review the substantive criminal law relating to sexual offences against children;

RCNI recommendations:

- Adopt a modern and appropriate statutory definition as to what is meant by ‘consent’ as it relates to sexual contact.
- Require any ‘mistaken belief in consent’ to be an objectively reasonable one.
- Preclude the defence of mistaken belief in consent in the case of pre-pubescent children (under 13).
- Overhaul the Punishment of Incest Act 1908 to reflect the modern nature of ‘looser’ family structures and to concentrate on the potential for abuse of position of power/authority within those structures.
- Distinguish between sexual exploitation of children/young people and the non-exploitative sexual exploration between peers.
- Establish a new offence of child sexual abuse which would criminalise ‘passive assault’; Meeting a child following sexual grooming; Engaging in sexual activity in the presence of a child; Causing a child to watch a sexual act; Arranging or facilitating the commission of a child sex offence.
- Abolish the right of the defendant to represent themselves in person in a case concerning sexual violation, and thus preclude the opportunity to cross examine the complainant in person.
- Strengthen the consequences of non-compliance under the Sex Offenders Act 2001 by increasing the current penalties to a potential 5 year penalty, thereby rendering non-compliance an “arrestable offence”.

Terms of Reference 2. Examine the issues surrounding the age of consent in relation to sexual offences;

RCNI Recommendations

- Retain the current age of consent, but implement a mechanism which ensures the non-prosecution of non-abusive, non-exploitative peer sexual exploration.

Terms of reference 3. Examine criminal justice procedures relating to the evidence of children in abuse cases;

RCNI recommendations

- Require all such complainants (whether children at the date of the trial, or adults who were allegedly offended against as children) as well as all complainants in cases of a type where such measures are appropriate (Sexual/Domestic Violence) to be considered eligible for ‘Special Measures’: Video taped Evidence in Chief, video-linked Cross Examination etc.,

- Ensure the gathering of such evidence is undertaken by a specialist investigative Gardaí permanently stationed in each policing district throughout the country specifically trained in the investigation of sexual violence, including sexual violence as it relates to children.
- Ensure that the prosecutions in such cases are undertaken by specialist prosecutors to be appointed to the conduct of cases of sexual violence, only when they have undertaken appropriate levels of specialist training in dealing with the particular dynamics of sexual violation.
- Require judicial education on sexual violence to be a compulsory pre-requisite to the hearing of such cases. Ensure that there is the adequate provision of such suitably qualified Judges to expedite cases before the courts.
- Ensure the adequate provision of services in court facilities to complainants in cases of sexual violence including separate waiting areas, restroom facilities etc., video link facilities, screening of witness box etc.

Terms of reference 4. Consider the implications arising from and the consequences of the Supreme Court decision of 23 May 2006 in the CC case;

RCNI Recommendations

- Resource and roll out a multi media public awareness campaign to address the loss of trust in the justice system and/or confusion around the law arising from the debate surrounding the CC case.
- Put in place a public awareness campaign to ensure general knowledge within the population of the new age of consent and obligations, protections and responsibilities concerning same.
- Make modules protecting children from child abuse and empowering them in knowing and asserting their bodily integrity, compulsory in our schools.

Terms of reference 5. Examine the desirability or otherwise of amending the Constitution to deal with the outcome of the CC case and-or to provide for a general right of protection for children;

RCNI Recommendation

- Enshrine the UN Constitution on the Rights of the child into our Domestic Legislation.

Terms of reference 6. Make such other recommendations on the protection of children as shall to the committee seem appropriate;

RCNI Recommendations

- Ending the DPP's current "no reasons for decisions" policy and replacing same with a mechanism that is both accountable and seen to be accountable.
- Appropriately resourced pre-release risk assessment of sex offenders serving custodial sentences to facilitate suitable post release supervision.
- National notification procedures to ensure that victims are advised in advance of the release from custody, (either on bail or following completion of a custodial sentence) and appraised of any conditions attached to such release.

- Seek a leading Constitutional lawyer's opinion as to the likelihood of constitutional challenge to proposals to not allow the defence of 'mistake in belief of age' in the case of children below 13, and the requirement of 'objective reasonableness' in the case of mistake in respect of children above 13.