

The Offences of Child Sexual Assault and Incest in New South Wales

By Sonia Hickey and Ugur Nedim

The story of the Colt family made international headlines in 2012 when Police discovered about 40 relatives all living in an uninsulated shed, old caravans and tents on a NSW property near near Boorowa, New South Wales, with no electricity, running water or toilets.

At the time, twelve children were removed from the family and taken into care. Genetic testing was undertaken which showed that all but one of the children were the product of incest. It was documented at the time that the family comprised four incestuous generations.

Charges dropped

After a long investigation, police eventually charged several members of the Colt family in 2018.

However, in June this year, just as the men were about to face trial, prosecutors dropped a series of child sexual assault charges against three male members of the family, Frank, Charlie and Cliff Colt (all pseudonyms).

Frank has, however, been found guilty of sexually assaulting a 17-year-old relative in the back seat of his car during a visit to the family farm near Yass in 2010. He still faces two allegations of sexually assaulting a child under 10, one of sexually assaulting a child aged 10 to 14 and another of sexually assaulting a person older than 16. He's also accused of indecently assaulting a child.

Cliff no longer faces any charges related to sexually

assaulting a child under 10, but is still accused of sexually assaulting a person aged 10 to 14, two counts of indecently assaulting a child and one count of indecent assault.

Trial in Downing Centre District Court

Charlie Colt still faces six charges; [sexual intercourse with a child under the age of 10](#), sexual intercourse with a child aged between 10 and 14, three counts of indecent assault against a child and one count of indecent assault.

In court earlier this week, Charlie Colt appeared by video link and pleaded not guilty to sexual intercourse with a person under the age of 10 and indecently assaulting a person under 16 years of age, between 2010 and 2012.

The court heard a police interview from 2012 in which the complainant, who was six at the time, took a “small, skinny stick” from a gun bag kept inside his tent and sexually assaulted her with it.

“I screamed really loud because it hurt”, she said in the interview.

“He didn’t say anything ... just laughed.”

The penalties for child sex offences in New South Wales

The law regards the act of having sexual intercourse with a person at least 10 but less than 16 years of age as a criminal offence under [section 66C of the Crimes Act 1900](#) (NSW).

The law also regards that people under the age of 16 years are not able to give consent to sexual intercourse in NSW.

If the victim is aged under 10 years

[Section 66A of the Crimes Act 1900](#) (NSW) prohibits a person from having sexual intercourse with a person under the age of 10. Anyone guilty of this offence will face a maximum penalty

of life imprisonment.

If the victim is aged from 10 to 14 years

Section 66C(1) of the Crimes Act 1900 (NSW) prohibits a person from having sexual intercourse with another person aged 10 or more, but less than 14 years. Anyone guilty of this offence will face a maximum penalty of up to 16 years imprisonment. This offence also carries a 'standard non-parole period' of 7 years imprisonment.

If the offence is considered to be aggravated, the maximum penalty increases to 20 years imprisonment, with a 'standard non-parole period' of 9 years imprisonment.

Section 66C(5) outlines a list of aggravating factors, and includes any one or more of the following features at the time of the offence:

- Victim was deprived of his/her liberty;
- Victim's home was broken into with an intention to commit a serious offence carrying a penalty of up to 5 years imprisonment or more;
- Victim suffered a cognitive impairment, was intoxicated, or had a serious physical disability;
- Victim was under the offender's authority. i.e. parental or teacher and student relationship;
- There were others present at the time of the offence;
- The victim was threatened with injury;
- Victim sustained an assault resulting in some actual bodily harm.

Incest laws in NSW

[Section 78A](#) of the Crimes Act 1900 (NSW) prescribes a maximum penalty of eight years' imprisonment for anyone who 'has sexual intercourse with a close family member who is of or above the age of 16 years'.

A 'close family member' is defined as a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent or grandchild, being such a family member from birth.

'[Sexual intercourse](#)' is defined by section 61H of the Act as:

- sexual connection occasioned by the penetration to any extent of the genitalia of a female person or the anus of any person by any part of the body of another person, or any object manipulated by another person, except where the penetration is carried out for proper medical purposes, or
- sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or
- cunnilingus, or
- the continuation of any of the above.

[Section 78B](#) sets down a maximum penalty of two years in prison for attempting to commit incest.

[Section 78C](#)(1) contains a statutory defence to the charge where the defendant 'did not know that the person with whom the offence is alleged to have been committed was related to him or her, as alleged.'

In addition to this statutory defence, an accused person may be able to rely on other legal defences such as [duress](#) (being forced to commit the act) or even [automatism](#) (an involuntary act) to defeat the charge.

Section 78C(2) makes it clear that consent is not a defence to the charge.

Finally, section 78F provides that a prosecution for incest, or attempted incest, cannot be commenced without the approval of the NSW Attorney-General.