

National Inquiry into Current and Proposed Sexual Consent Laws.

Introduction

Full Stop Australia (FSA) is an accredited, nationally focused, not-for-profit organisation which has been working in the field of sexual, domestic and family violence since 1971. We offer expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic or family violence, and specialist help for their supporters and those experiencing vicarious trauma. We also provide best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector. Finally, FSA advocates with governments, the media and the community to prevent and put a full stop to sexual, domestic and family violence.

FSA, as a national service, aims through its advocacy work to support our colleagues in each State and Territory who are working tirelessly on the ground to improve the lives of victim-survivors of sexual, domestic and family violence. We aim to use our experience of law reform in different jurisdictions to advocate for consistent approaches to family, domestic and sexual violence nationally.

We thank the Senate for the opportunity to make a submission. This submission was prepared by Taran Buckby, Legal Policy Officer at Full Stop Australia with the assistance of Jacqueline Stark, Emmy Phung, Ebbani Sahdeva, Smera Singh, and Liwei Hai, Research Assistants.

We would be very happy to provide any further feedback on any aspect of this submission. You can contact us at any time if you have any further questions at info@fullstop.org.au

Terminology

Throughout this submission, Full Stop Australia uses the term *sexual violence* as a broad descriptor for any unwanted acts of a sexual nature perpetrated by one or more persons against another. This term is used to emphasise the violent nature of all sexual offences and is not limited to those offences that involve physical force and/or injury.

Those who are or have experienced sexual violence are referenced as *victim-survivors*, *people with lived experience* or in the case of their involvement with Full Stop Australia's National Survivor Advocate program, *survivor-advocates*.

Consultation

In preparing for this submission, we consulted with Full Stop Australia’s clinical and client services team, and survivor advocates. In December 2022, Full Stop Australia conducted two online surveys regarding sexual consent laws, one for victim-survivors who expressed interest in engaging in advocacy work through Full Stop Australia’s National Survivor Advocate Program, and the other for Full Stop Australia’s trauma-specialist clinical and client services team. The survey for victim-survivors sought insight gained through lived experience of the current consent laws and how they affect those impacted by sexual violence across Australia. Full Stop Australia surveyed 57 victim-survivors who represent a diverse demographic across Australia:

- The majority (51%, n=29/57) of survey respondents are aged between 30-39 years old and 50-59 years old, followed by 19% (n=11/57) aged between 21-29 years old.
- 96% (n=55/57) of victim-survivors surveyed identify as ‘woman’
- 72% (n=41/57) identify as heterosexual, and 14% (n=8/57) identify as bisexual
- 18% (n=10/57) identify as Culturally and linguistically diverse (CALD)
- 47% (n=27/57) identify as living with a disability and/or chronic health condition
- 60% (n=34/57) live in a metropolitan area, and 37% (n=21/57) live in a regional, rural or remote area.

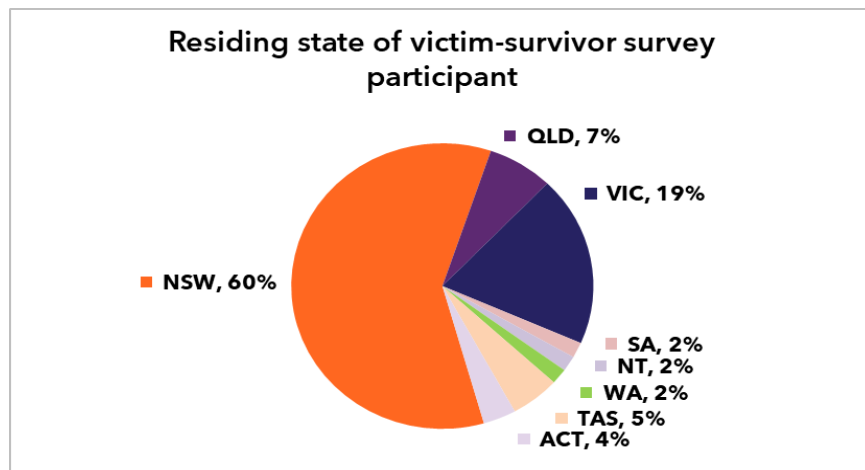


Figure 1: Responses to the survey question: "Which state do you live in?" 57 total responses.

The aim of this submission is to offer the perspectives of both Full Stop Australia, a trauma-specialist service operating in the field of sexual, domestic and family violence for over fifty years, and the 57 survivor-advocates who generously contributed to the survey and have been impacted by sexual violence in Australia. The time has come for real and meaningful change.

Full Stop Australia sincerely thanks the survivor-advocates who generously shared their insight and experiences. We have heard your voices and have attempted to shine a light on your own individual experiences and expertise to drive the change needed for those impacted by sexual violence.

Summary and Recommendations

Across Australia the criminal justice system is failing people impacted by sexual violence. Despite decades of legislative reform, sexual offences remain under-reported, under-prosecuted and under-convicted.¹ For complainants, the criminal justice process continues to result in re-traumatisation more commonly than it results in justice,² leaving Australia's national response to sexual violence at crisis point. Recent data from the Australian Bureau of Statistics (ABS) reported that there was a 13% national increase of victims of sexual assault from 2020 to 2021, the highest number of victims since the beginning of collating victims' data twenty-nine years ago.³ However, despite the rise in reports of sexual assault, there has been a lack of leadership, investment or consideration of sexual violence, victim-survivors, and the services providing support.

As such, Full Stop Australia is advocating for urgent and significant reform which improves the criminal justice system for victims of sexual violence. Addressing the terms of reference, Full Stop Australia recommends:

1. The harmonisation of consent laws across all States and Territories to ensure there is a nationally consistent definition and understanding of affirmative consent.
2. A commitment to improving victim-survivors' understanding of, and access to, legal assistance and resources, including specialised legal services. Further consider the merits of independent victim-survivor advocates and other existing models of support operating domestically and internationally.
3. Developing a national approach to education and training to foster a trauma-informed, shared understanding among judicial officers, legal and justice sector professionals of the common rape myths and misconceptions about sexual assault.
4. Implementing reforms which enable greater admissibility of tendency and coincidence evidence in child sexual abuse matters and apply these changes to sexual offence proceedings involving adult victim-survivors.
5. Expanding forensic units across each state and territory to ensure universal availability of trauma-informed and culturally appropriate forensic examinations nation-wide. This would also involve the employment of culturally appropriate forensic examination staff so that Aboriginal and Torres Strait Islander victim-survivors have greater access to culturally appropriate forensic examinations. High-quality forensic medical services must be available to all victims of sexual violence across the country. These services must all be trauma-informed and culturally competent.
6. Developing and implementing ongoing professional development and vicarious trauma support for experts who may be required to prepare reports and give evidence in criminal proceedings for sexual offences.

¹ W. Larcombe, 'Falling Rape Convictions Rates: (Some) Feminist Aims and Measures for Rape Law' (2011) 12 *Feminist Legal Studies* 27.

² Ibid.

³ Australian Bureau of Statistics, *Recorded Crimes - Victims 2021* (28 July 2022).

7. Enacting legislative protections for vulnerable witnesses giving evidence in criminal proceedings as well as victim-survivors of sexual offences.
8. Reviewing opportunities to provide tailored and accessible support to victim-survivor witnesses who require communication assistance or other non-legal services, including witness intermediary schemes, interpretation and translation services, or assistance animals.
9. Committing to improving access to, and the operation of, audio visual link technologies, court support resources, specialist court facilities, and other available capabilities.
10. Coordinating and collecting annual reporting on relevant actions to provide MAG and the public with greater visibility of efforts across Australia.
11. Strengthening national datasets, sharing research and learnings (including via the National Working Group on Criminal Justice Responses to Sexual Assault), and commissioning academic research to build a shared evidence base. that informs best practice policy development, implementation, and evaluation.

As this submission details, many victim-survivors still face extensive challenges when reporting incidents of sexual violence, resulting in many people deciding to not report. Full Stop strongly believes that victim-survivors should be able to report sexual violence without fears of being misidentified as the perpetrator, being refused support, or being charged for separate offences. Police need to start believing victim-survivors as a basic proposition. Moreover, access to essential services such as forensics is particularly dire in rural areas where victim-survivors have to travel up to 8 hours for an examination. However, even when these services are accessed, survivor advocates spoke to how often these services are not necessarily culturally sensitive, with very few Aboriginal or Torres Strait Islander forensic officers working in hospital settings.

Given the experiences shared by survivor-advocates who have chosen to navigate the barriers and processes when reporting sexual violence, Full Stop Australia urges the Senate to consider the following for all actors in the justice system:⁴

- Train and support all actors in the justice system to identify and respond appropriately and consistently to sexual violence and specialised training for police officers investigating sexual offences to ensure they respond in a trauma-informed and culturally appropriate way. This would involve a commitment from all actors in the justice system to adopt a trauma-informed model of supporting victims through the process of reporting and giving evidence in criminal procedures. It would also require adequate supervision and support for all actors in the justice system, including managing burnout, compassion fatigue, and secondary or vicarious trauma.
- Establish Sexual Violence Liaison Officers in every police local area command to meet the needs of individual communities. Liaison officers across each police force must be trained

⁴ Actors in the justice system refers to employees of the government service systems who interact with or otherwise support victim-survivors including police, defence lawyers, prosecutors, witness assistance officers, court staff and judicial officers.

in culturally sensitive practice. As an initial step, existing Domestic or Family Violence Liaison Officers could be trained to work specifically with survivors of sexual violence.

- Establish state and territory-wide automatic referral processes for police incidents of sexual assault, including those which occur in non-domestic settings. These should be triaged through 24/7 state or territory-wide sexual assault services to local sexual assault services.
- Undertake a review of the translation and interpreting services to ensure they provide appropriate assistance to enable police officers and civilian staff working in its communications centre, and on front counters in police stations to communicate meaningfully with all First Nations peoples, including in relation to sexual violence cases. This review of the translation and interpreting services should also be extended to include CALD communities and ensure appropriate and culturally specific assistance is being provided.
- Partner with community leaders, cultural and faith-based leaders in culturally and linguistically diverse communities and Elders in First Nations communities to co-design and implement local plans to enable people who have experienced sexual violence to come forward and make a complaint without fear of, or actual retaliation or retribution to them or their families, friends, or supporters.
- Implement ongoing competency-based sexual violence and trauma-informed training across each police service, including for frontline police, investigators, communications centre staff and staff working on front counters in police stations. This training must be evidence-based and trauma-informed and supported by professional supervision to ensure learnings are applied by individual officers and staff in practice.
- In consultation with people with lived experience including people from culturally and linguistically diverse backgrounds, LGBTIQ+ people and people with disability, First Nations peoples and legal and service system stakeholders, police services should review and update their operational policies and procedures about the investigation of sexual violence cases.
- In consultation with police services and Directors of Public Prosecution, state and territory governments must establish a clear, robust, transparent and easily accessible internal 'right to review' process of police and prosecutorial decisions for victim-survivors of sexual violence.
- We recommend each Australian government implement a state and territory-wide triage approaches through state and territory-wide 24/7 sexual violence crisis lines which can provide immediate trauma specialist support and connect survivors to localised trauma specialist services operating during business hours. In this way, sexual violence victim-survivors could be assured of a trauma informed response to their disclosure, not having to re-tell their story, and being supported whilst they're linked in with ongoing wraparound services at the local level.
- Survivors of sexual violence to be afforded access to wraparound specialist support, which includes court support and care coordination. Notably, care coordination and referral pathways need to include Primary Health Networks as a significant pathway for people accessing support following experiences of sexual violence.

We will now turn to the discussion of consent laws in Australia and the experiences of victim-survivors and Full Stop Australia's clinical team.

Current Sexual Consent Laws

Inconsistencies

Sexual assault offences present a complex problem for the justice system, with low conviction and high attrition rates,⁵ despite one in six women in Australia experiencing sexual assault at least once since they were 15 years old.⁶ The issue of consent, or lack thereof, is at the heart of many of these trials. While the criminal law provisions relating to sexual intercourse and sexual assault in each State and Territory are based on the same foundational principles of free and voluntary consent, the plurality of jurisdictions in Australia and the differences in consent laws impacts the operation of laws relating to sexual assault.⁷ Affecting the way complainants experience the criminal justice system, which in turn impacts reporting and conviction rates.⁸ Additionally, as the law plays a fundamental role in defining the boundaries of socially and culturally acceptable conduct, these provisions have an impact on the way communities view and understand consent during sexual intercourse.⁹

Reform is necessary in order to simplify the law, clarify its objectives, and set clear standards which define consensual sexual activity. Crucially, consent reform must be based on the understanding of the communicative model, including that consent should be an ongoing and mutual decision-making process that everyone has the right to choose to participate in, and it should never be presumed. These principles need to be developed more explicitly in consent laws throughout Australia, in a manner that sets consistent standards that can guide community understandings and improve outcomes for victims navigating the justice system.

The tables below detail the provisions relating to sexual assault in each Australian State and Territory, taken from the *Crimes Act 1900* (ACT), *Crimes Act 1900* (NSW), *Criminal Code Act 1983* (NT), *Criminal Code Act 1899* (Qld), *Criminal Law Consolidation Act 1935* (SA), *Criminal Code Act 1924* (Tas), *Crimes Act 1958* (Vic), *Criminal Code Act Compilation Act 1913* (WA). Full Stop Australia notes that there is currently reform occurring in both Queensland, following the findings from the Women's Safety and Justice Taskforce, and in Western Australia by the Law Reform Commission. Full Stop Australia has submitted work to both enquires urging for legislative reform

⁵ New South Wales Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020) [1.36], [2.7]-[2.43].

⁶ Anthony North, 'Legislating Consent in Sexual Relations: How Significant is the Move to Affirmative Consent?' (2022) 0(0) *Alternative Law Journal* 1, 1.

⁷ Peter D Rush, 'Criminal Law and the Reformation of Rape in Australia' in Clare McGlynn and Vanessa E Munro, *Rethinking Rape Law* (Routledge, 2010) 237, 237.

⁸ New South Wales Law Reform Commission (n 5) [1.23].

⁹ Jonathan Crowe, 'Consent, Power and Mistake of Fact in Queensland Rape Law' (2011) 23(1) *Bond Law Review* 21, 40.

to better support victim-survivors and looks forward to seeing the effect of these crucial amendments for those impacted by sexual violence.

The tables below compare various aspects of sexual assault law, including definitions of consent, the presence of consent, fault standards, and the particular issue of stealthing at the time of writing.

| The Definition of Consent | |
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| <p>Consent as freely and voluntarily given</p> <p>ACT 50A: An object of this part is to recognise...(c) a consensual sexual act involves ongoing and mutual communication and decision-making by the people participating in the sexual act.</p> <p>50B: Consent, to a sexual act, means informed agreement to the sexual act that is (a) freely and voluntarily given.</p> <p>NSW 61HF: An objective of this Subdivision is to recognise the following—(c) consensual sexual activity involves ongoing and mutual communication, decision-making and free and voluntary agreement between the persons participating in the sexual activity.</p> <p>61HI(1): A person consents to a sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity.</p> <p>NT 192(1): For this section, consent means free and voluntary agreement.</p> <p>Qld 348(1): In this chapter, consent means consent freely and voluntarily given by a</p> | <p>Consent as freely given</p> <p>Tas - Schedule 1 s 2A(1) In this Code, unless the contrary intention appears, 'consent' means free agreement.</p> |

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| <p>person with the cognitive capacity to give the consent.</p> <p>SA 46(2): For the purposes of this Division, a person consents to sexual activity if the person freely and voluntarily agrees to the sexual activity.</p> <p>Vic 36(1): Consent means free and voluntary agreement.</p> <p>WA 319(2)(a): Consent means a consent freely and voluntarily given.</p> | |
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The definition of consent is a fundamental element of sexual assault law.¹⁰ Provisions detailing its meaning are largely consistent across all Australian jurisdictions, requiring consent to be freely and voluntarily given. The exception is the Tasmanian Criminal Code which does not expressly refer to voluntariness, although it does impliedly through the operation of Schedule 1 s 2A(2) which provides that consent is not given freely when a person agrees to sexual activity because of threats, coercion, fraud, mistaken identity or they are asleep, unconscious or significantly impaired.

These provisions are based on underpinning principles of consent as *free and voluntary*. They reflect a communicative model of consent based on autonomy and mutuality, including the fact that everyone has a right to choose whether or not to participate in sexual activity and that consensual sexual activity involves ongoing agreement between participants.¹¹

| The Presence or Absence of Consent | |
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| Affirmative consent model | Other consent models |
| ACT | NT |

¹⁰ New South Wales Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020) [3.1], [3.19].

¹¹ Gail Mason and James Monaghan, 'Autonomy and Responsibility in Sexual Assault Law in NSW: The Lazarus Cases' (2019) 31 *Current Issues in Criminal Justice* 24, 28.

50B: Consent, to a sexual act, means informed agreement to the sexual act that is ... (b) communicated by saying or doing something.

67(1): For a sexual offence consent provision, and without limiting the grounds on which it may be established that a person does not consent to an act mentioned in the provision, a person does not consent to an act mentioned in the provision if the person—(a) says or does something to communicate withdrawing agreement to the act either before or during the act...

67(2): A person also does not consent to an act with another person (the accused person) only because the person—(a) does not say or do something to resist the act...

NSW

61HJ(1): A person does not consent to a sexual activity if—(a) the person does not say or do anything to communicate consent...

Tas

Schedule 1 2A(2): Without limiting the meaning of "free agreement" , and without limiting what may constitute "free agreement" or "not free agreement" , a person does not freely agree to an act if the person —(a) does not say or do anything to communicate consent...

Vic

36AA(1): Circumstances in which a person does not consent to an act include, but are not limited to, the following—(a) the person does not say or do anything to indicate consent to the act...

WA

319(2)(b): where an act would be an offence

192(1): For this section, consent means free and voluntary agreement.

192(2): includes a non-exhaustive list of instances where consent is not present.

Qld

348(3): A person is not to be taken to give consent to an act only because the person does not, before or at the time the act is done, say or do anything to communicate that the person does not consent to the act.

348(4): If an act is done or continues after consent to the act is withdrawn by words or conduct, then the act is done or continues without consent.

SA

46(2): For the purposes of this Division, a person consents to sexual activity if the person freely and voluntarily agrees to the sexual activity.

46(3): includes a non-exhaustive list of instances where consent is not present.

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| <p>if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act...</p> | |
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There are two dominant models of consent present in criminal laws across Australia. The first is a communicative model of consent, which has been adopted in the ACT, NSW, Victoria and Tasmania through recent reforms. The second is the traditional model of consent which continues to operate in the Northern Territory, Queensland, SA and WA.

The core principle articulated in communicative consent models is that consent cannot be presumed. This communicative model of consent, which views consent as a 'continuous process of mutual decision-making',¹² has been influential in reform to sexual assault laws across Australia.¹³ Its adoption shifts the fault element of sexual offences towards an 'objective' standard of reasonableness, focused on the actions of the accused and the steps they took to ensure a complainant was consenting.¹⁴ It provides explicit legislative acknowledgement that a person is not consenting unless they say or do something to communicate consent.¹⁵ Consent can be communicated through both words and reciprocating body language, and as long as there is consent that is continued to be reciprocated by all parties involved, there is no requirement for a person to ask for verbal consent.¹⁶ These recent reforms, which are designed to increase successful prosecutions for sexual assault,¹⁷ are reflective of national momentum in support of the adoption of affirmative consent provisions, and broad social, legal and political support for communicative consent models.¹⁸

While the core principles of consent are similar across jurisdictions, namely that consent must be freely and voluntarily given through an ongoing process of mutual decision-making, the key objectives of sexual assault laws, including reducing the number of offences occurring, improving reporting rates, increasing successful prosecutions of sexual assault through clear standards that jurors can apply, and developing public confidence in the legal process, are not being met in laws

¹² Lois Pineau, 'Date Rape: A Feminist Analysis' (1989) 8(2) *Law and Philosophy* 217, 236-7.

¹³ Gail Mason and James Monaghan (n11), 26.

¹⁴ Ibid.

¹⁵ James Duffy and Kelley Burton, 'A Review of the New Legislative Definition of Consent in Queensland: An Opportunity for Western Australia' (2022) 41(2) *The University of Queensland Law Journal* 189, 201.

¹⁶ New South Wales, *Parliamentary Debates*, Legislative Council, 12 November 2021, 6633 (Natalie Ward).

¹⁷ See, eg, Revised Explanatory Statement, Crimes (Consent) Amendment Bill 2022 (ACT) 5.

¹⁸ Elaine Craig, 'Ten Years After Ewanchuk the Art of Seduction is Alive and Well: An Examination of the Mistaken Belief in Consent Defence' (2009) 13(3) *Canadian Criminal Law Review* 247.; Asher Flynn and Nicola Henry, 'Disputing Consent: The Role of Jury Directions in Victoria' (2021) *Current Issues in Criminal Justice* 167; Anthony North, 'Legislating Consent in Sexual Relations: How Significant is the Move to Affirmative Consent?' (2022) 0(0) *Alternative Law Journal* 1, 2.

that do not expressly include affirmative consent standards.¹⁹ This is evident in the low conviction and high attrition rates for sexual assault offences, with data suggesting that while one in six women in Australia has been sexually assaulted at least once since they were 15, less than 15% of incidents are reported to the police,²⁰ and there was an average conviction rate of 11.5% between 1990 and 2005, which is significantly less than other offences.²¹

Adopting affirmative consent models are designed to increase successful prosecutions for sexual assault. This model responds to misconceptions held by jurors and the broader community relating to women’s sexual behaviour and sexual relations, including views that women may say ‘no’ when they really mean ‘yes’, that women who are raped are ‘asking for it’, and that rape can be the result of men not being able to control their need for sex so their responsibility is removed.²² In addition to improving the criminal justice system, including it in law aids in the general community’s understanding of consent.²³ It encourages a person initiating a sexual act to ensure that consent is present before proceeding, making it an important policy measure to promote ongoing and mutual communication between parties, rather than relying on stereotypical presumptions about the presence of consent unless it is expressly negated.²⁴ It also is designed to combat public perceptions that the legal system is biased against victims, promoting increased complaints to the police and increased convictions as a result.²⁵

This affirmative model needs to be explicitly recognised in law across all Australian jurisdictions, in order to properly protect victims and encourage broader attitude change in the community.²⁶

| Circumstances Where Consent Cannot be Assumed | |
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| Affirmative consent models | NT, SA, Tas |

¹⁹ New South Wales Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020) [3.38].

²⁰ Anthony North, ‘Legislating Consent in Sexual Relations: How Significant is the Move to Affirmative Consent?’ (2022) 0(0) *Alternative Law Journal* 1, 1.

²¹ Sarah Bright et al, *Attrition of Sexual Offence Through the Victorian Criminal Justice System: 2021 Updates* (Crime Statistics Agency Report, 2021) 7, 17.

²² New South Wales Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020) [1.23] citing New South Wales, *Parliamentary Debates*, Legislative Council, Legislative Council, 7 November 2007, 3584-5 (John Hatzistergos); Gail Mason and James Monaghan, ‘Autonomy and Responsibility in Sexual Assault Law in NSW: The Lazarus Cases’ (2019) 31 *Current Issues in Criminal Justice* 24, 25.

²³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 October 2021, 7508 (Mark Speakman).

²⁴ Wendy Larcombe et al, ‘I Think It’s Rape and I Think He Would be Found Not Guilty’: Focus Group Perceptions of (Un)reasonable Belief in Consent in Rape Law’ (2016) 25(5) *Social and Legal Studies* 611, 612.

²⁵ *Ibid* 614.

²⁶ New South Wales Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020) [4.10]-[4.11].

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| <p>ACT 67(2): A person also does not consent to an act with another person (the accused person) only because the person—(a) does not say or do something to resist the act...</p> <p>NSW 61HF: An objective of this Subdivision is to recognise the following—(b) consent to a sexual activity is not to be presumed...</p> <p>61HI(4): A person who does not offer physical or verbal resistance to a sexual activity is not, by reason only of that fact, to be taken to consent to the sexual activity.</p> <p>Qld 348(3): A person is not to be taken to give consent to an act only because the person does not, before or at the time the act is done, say or do anything to communicate that the person does not consent to the act.</p> <p>Vic 36(2): A person does not consent to an act just because they do not resist the act verbally or physically.</p> <p>WA 319(2): For the purposes of this Chapter—(b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act...</p> | <p>Do not include a reference to the freeze response.</p> |
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In affirmative consent models, consent cannot be assumed where a person does not say or do anything to communicate consent, requiring consent to be given through positive communication, rather than on it being denied to negate consent. Consent can be communicated in subtle and nuanced ways, such as based on patterns of previous behaviour.²⁷

²⁷ *R v Makary* [2019] 2 Qd R 528, 543 [50] (Sofronoff P).

Importantly, these provisions work to address the common ‘freeze’ response, where a person becomes unable to communicate their lack of consent during a sexual offence due to their fear.²⁸ This response, alongside surrendering, is the most reported response by victims of sexual assault.²⁹ They are also designed to promote the rights of vulnerable groups, such as Indigenous peoples, persons with a disability and the LGBTI+ community, who are often more susceptible to sexual assault, by articulating clear boundaries of consent which are designed to assist these groups.³⁰

Further, expressly including aspects relating to the freeze response helps combat community misconceptions about women consenting unless they say no and physically resist. This is likely to help combat community and social perceptions that an accused had a reasonable belief in consent where a victim offered no physical resistance.³¹

| The Fault Element - The Knowledge of the Accused | |
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| <p>Affirmative consent model</p> <p>ACT 67(3): If it is established that an accused person who knows, or is reckless about whether, the consent of another person to an act mentioned in a sexual offence consent provision has been caused by any of the circumstances set out in subsection (1) (a) to (o), the accused person is taken to know that the other person does not consent to the act,</p> <p>67(4): An accused person is taken to know that another person does not consent to an act mentioned in a sexual offence consent provision if any belief that the accused person has, or may have, that the other person consents to the act is not reasonable in the circumstances.</p> | <p>Other consent models</p> <p>NT 192(3): A person is guilty of an offence if the person has sexual intercourse with another person: (a) without the other person's consent; and (b) knowing about or being reckless as to the lack of consent.</p> <p>192(4A): For subsections (3) and (4), being reckless as to a lack of consent to sexual intercourse or an act of gross indecency includes not giving any thought to whether or not the other person is consenting to the sexual intercourse or act of gross indecency.</p> <p>Qld 348A(1): This section applies for deciding whether, for section 24, a person charged with an offence under this chapter did an act under</p> |

²⁸ See, eg, New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 October 2021, 7507 (Mark Speakman).

²⁹ Revised Explanatory Statement, Crimes (Consent) Amendment Bill 2022 (ACT) 11.

³⁰ Revised Explanatory Statement, Crimes (Consent) Amendment Bill 2022 (ACT) 5.

³¹ Rachel Burgin and Asher Flynn, ‘Women’s Behavior as Implied Consent: Male ‘Reasonableness’ in Australian Rape Law’ (2021) 21(3) *Criminology and Criminal Justice* 334, 339.

67(5): For subsection (4), without limiting the grounds on which it may be established that an accused person's belief is not reasonable in the circumstances, the accused person's belief is taken not to be reasonable in the circumstances if the accused person did not say or do anything to ascertain whether the other person consented.

NSW

61HK(1): A person (the accused person) is taken to know that another person does not consent to a sexual activity if—(a) the accused person actually knows the other person does not consent to the sexual activity, or (b) the accused person is reckless as to whether the other person consents to the sexual activity, or (c) any belief that the accused person has, or may have, that the other person consents to the sexual activity is not reasonable in the circumstances.

61HK(2): Without limiting subsection (1)(c), a belief that the other person consents to sexual activity is not reasonable if the accused person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consents to the sexual activity.

Tas

Schedule 1 14A(1): ... a mistaken belief by the accused as to the existence of consent is not honest or reasonable if the accused—(a) was in a state of self-induced intoxication and the mistake was not one which the accused would have made if not intoxicated; or (b) was reckless as to whether or not the complainant consented; or (c) did not take reasonable steps, in the circumstances known to him or her at the time of the offence, to ascertain that the complainant was consenting to the act.

an honest and reasonable, but mistaken, belief that another person gave consent to the act.

348(2): In deciding whether a belief of the person was honest and reasonable, regard may be had to anything the person said or did to ascertain whether the other person was giving consent to the act.

348(3): In deciding whether a belief of the person was reasonable, regard may not be had to the voluntary intoxication of the person caused by alcohol, a drug or another substance.

SA

48: (1) A person (the offender) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who—(a) does not consent to engaging in the sexual intercourse; or (b) has withdrawn consent to the sexual intercourse, and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or has so withdrawn consent (as the case may be).

47: For the purposes of this Division, a person is recklessly indifferent to the fact that another person does not consent to an act, or has withdrawn consent to an act, if he or she—(a) is aware of the possibility that the other person might not be consenting to the act, or has withdrawn consent to the act, but decides to proceed regardless of that possibility; or (b) is aware of the possibility that the other person might not be consenting to the act, or has withdrawn consent to the act, but fails to take reasonable steps to ascertain whether the other person does in fact consent, or has in fact withdrawn consent, to the act before deciding to proceed; or (c) does not give any

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| <p>Vic 36A(1): Whether or not a person (A) reasonably believes that another person (B) is consenting to an act depends on the circumstances. Note See section 36B for the effect of intoxication on the standard to be applied in determining whether a person has a reasonable belief.</p> <p>36A(2): A's belief that B consents to an act is not reasonable if, within a reasonable time before or at the time the act takes place, A does not say or do anything to find out whether B consents to the act.</p> | <p>thought as to whether or not the other person is consenting to the act, or has withdrawn consent to the act before deciding to proceed.</p> <p>WA The fault element for sexual assault is merely an intention to have intercourse (s 325(1)).</p> |
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A core aspect of the law of consent is the fault element relating to the necessary knowledge and intention of the accused person during the sexual act. Most states, with the exception of WA, provide that a person knows or is reckless to whether the other person is consenting where they do not have a reasonable belief as to the presence of the other person’s consent to the specific activity they are engaging in. Although there are slight differences in the wording of knowledge provisions across the states and territories, there are two dominant models relating to reasonable belief.

The first model operates in conjunction with affirmative consent provisions, which provide that an accused’s belief in consent will not be reasonable in the circumstances unless they said or did something to ascertain consent. The other states and territories do not require positive steps to be taken, although this may be considered in determining whether a person had a reasonable belief as to the other person’s consent. The difference in wording as to the exact formulation of knowledge standards do not appear to have a significant difference in conviction rates both between states and territories within Australia, and amongst other common law jurisdictions with roughly comparable tests, such as New Zealand, England and Wales.³²

A reasonable belief standard that does not require an accused person to take positive steps to ascertain consent will not lead to widespread changes to the legal system, as it relies on patriarchal benchmarks to define appropriate behaviours.³³ Even after the adoption of reasonable belief standards, victims are still being questioned on what they did to demonstrate non-

³² Wendy Larcombe et al (n24) 614-15.

³³ Ibid; Rachel Burgin and Asher Flynn, ‘Women’s Behavior as Implied Consent: Male ‘Reasonableness’ in Australian Rape Law’ (2021) 21(3) *Criminology and Criminal Justice* 334, 336.

consent.³⁴

Without express legislation requiring an accused’s knowledge to be based on positive steps they took to ascertain whether a person is consenting to sexual intercourse, an accused is likely to be able to continue to rely on problematic narratives of implied consent founded on misconceptions about women’s behaviours.³⁵ The cumulative effect of reasonable belief provisions without complete affirmative consent requirements is that an individual does not necessarily have to take steps to ascertain consent, which undermines the goal of implementing a communicative model and the principles underpinning free and voluntary consent, as it does not place the appropriate responsibility on perpetrators to ensure that consent is mutual and ongoing.³⁶

For example, the NSW case of *R v Lazarus*, decided prior to the implementation of affirmative consent laws in the state, highlighted the significant issues with the application of the reasonable belief knowledge standard, as a significant amount of focus was placed on the behaviour of the victim and her freeze response not being enough to negate consent, as opposed to placing emphasis on the steps taken by the accused to ascertain consent in that situation.³⁷ This is reflective of broader trends, where the scrutiny in sexual assault trials is placed on the complainant’s actions, with little to no attention being placed on the obligations of an accused person to take positive steps to determine whether the other party is consenting, helping to entrench myths relating to sex and a women’s role in it.³⁸ Although these provisions are designed to direct attention to an accused’s behaviours, the reasonableness standard continues to be informed by men’s understandings of women as passive sexual actors who have no innate sexuality of their own, but are constantly oversexualised.³⁹ This has been consistently relied on in sexual assault trials, where men are successful in demonstrating their reasonable belief based on the victim’s flirting, the fact that they accompanied the defendant to their bedroom or evidence of attraction between the parties, leading to the continued victimisation of women, where their ordinary behaviour is deemed to be implying consent to sex.⁴⁰ Absent any strict legislative guidance or education for jury members or the broader community the determination of whether the accused in fact held a reasonable belief is likely to be influenced by victim-blaming attitudes or misguided understandings about seduction or miscommunication that remain as dominant narratives even today.⁴¹

³⁴ Julia Quilter and Luke McNamara, *Qualitative Analysis of County Court of Victoria Rape Trial Transcripts* (Report to the Victorian Law Reform Commission, 2021); Anthony North, ‘Legislating Consent in Sexual Relations: How Significant is the Move to Affirmative Consent?’ (2022) 0(0) *Alternative Law Journal* 1, 3-4.

³⁵ Rachel Burgin and Asher Flynn, ‘Women’s Behavior as Implied Consent: Male ‘Reasonableness’ in Australian Rape Law’ (2021) 21(3) *Criminology and Criminal Justice* 334, 336.

³⁶ *Ibid*, 337.

³⁷ Gail Mason and James Monaghan, ‘Autonomy and Responsibility in Sexual Assault Law in NSW: The *Lazarus* Cases’ (2019) 31 *Current Issues in Criminal Justice* 24, 32-4.

³⁸ *Ibid* 26.

³⁹ Rachel Burgin and Asher Flynn (n35) 335.

⁴⁰ *Ibid* 338; Wendy Larcombe et al (n24), 614.

⁴¹ *Ibid*.

The affirmative consent model has been adopted as a way to combat these misconceptions about consent and alter the direction of trials to be focused on a central question of whether the accused said or did anything to ascertain consent, as opposed to putting the victim's actions on trial.⁴² For example, ss 67(4) and (5) in the *Crimes Act 1900* (NSW) operate as a hybrid objective/subjective test relating to an accused's knowledge of non-consent. The 'reasonable belief' requirement was introduced in s 67(4), in addition to the fault elements of knowledge and recklessness in the previous legislation, in order to require a trier of fact to consider whether an accused, based on reasonable community standards, believed that consent had been received, given all the circumstances of the case.⁴³ This operates with s 67(5), which provides that, for a person's belief to be deemed reasonable, they must have taken steps to ascertain consent, which places responsibility on the person seeking consent to obtain it, rather than on the victim to negate consent.⁴⁴ This has sought to shift the focus from the victim and the attribution of blame to their clothing or actions, to what actions the accused took to ensure that they had ongoing consent.⁴⁵

The legislative view that a person is deemed to not be consenting unless they say or do something to communicate consent limits an accused's ability to rely on a mistake of fact or reasonable belief defence where an accused has not taken steps to establish consent. For example, the mistake of fact defence in Queensland has been relied on by defendant's to avoid conviction for sexual assault, despite evidence that the defendants in these cases forced themselves on the victims and the victims had resisted.⁴⁶ The adoption of an affirmative consent model should redirect cross-examination in sexual assault trials to focusing on whether the accused said or did anything to ascertain whether the other person was consenting, so that where a complainant gives evidence that they did not say or do anything to indicate consent, it is the accused who must produce evidence that they did, as opposed to scrutinising the victim's behaviour.⁴⁷

Although the implementation of affirmative consent models is a positive development, counsel and jurors continue to refer to pre-reform conceptions of consent to inform their approaches, which are often based on a range of non-legal and problematic misconceptions about a victim's role and how it is defined in other jurisdictions, as opposed to being properly guided by judicial directions and definitions.⁴⁸ Accordingly, it is important that developments are continued to be made and consistency is brought into the law to properly start to shift community attitudes regarding sex and consent. In order to properly implement a communicative model of consent, as is intended through the principles underpinning definitions of consent in every state and territory and shift the attention to the steps an accused took to ascertain consent, there must be

⁴² Anthony North, 'Legislating Consent in Sexual Relations: How Significant is the Move to Affirmative Consent?' (2022) 0(0) *Alternative Law Journal* 1, 5.

⁴³ Revised Explanatory Statement, Crimes (Consent) Amendment Bill 2022 (ACT) 15-17.

⁴⁴ Revised Explanatory Statement, Crimes (Consent) Amendment Bill 2022 (ACT) 15-17.

⁴⁵ Rachel Burgin and Asher Flynn, 'Women's Behavior as Implied Consent: Male 'Reasonableness' in Australian Rape Law' (2021) 21(3) *Criminology and Criminal Justice* 334, 335.

⁴⁶ *R v Kovacs* [2007] QCA 143; *R v Dunrobin* [2008] QCA 116; *Phillips v R* [2009] QCA 57.

⁴⁷ Anthony North (n42)5.

⁴⁸ Wendy Larcombe et al (n24)615.

clear legislative provisions codifying this. It is important that legislatures continue to simplify and modernise the law with respect to knowledge in order to improve outcomes for victims navigating the criminal justice system.⁴⁹

Stealthing refers to the non-consensual tampering with or removal of a condom during sexual intercourse. It is an increasing practice that leads to a number of adverse consequences for victims, including the risk of STI transmission and unwanted pregnancy.⁵⁰ Stealthing has been introduced as a standalone factor negating consent in the ACT, Tasmania and Victoria. It is also referenced in s 61HI(5) of the Crimes Act 1900 (NSW) as a specific example of when consent is not present where a person has consented to a different sexual act.

| Stealthing | |
|--|---|
| <p>The express inclusion of stealthing as an offence</p> <p>ACT 67(1): For a sexual offence consent provision, and without limiting the grounds on which it may be established that a person does not consent to an act mentioned in the provision, a person does not consent to an act mentioned in the provision if the person—(j) participates in the act because of an intentional misrepresentation made by another person about the use of a condom...</p> <p>NSW 61HI(5): A person who consents to a particular sexual activity is not, by reason only of that fact, to be taken to consent to any other sexual activity. Example—a person who consents to a sexual activity using a condom is not, by reason only of that fact, to be taken to consent to a sexual activity without using a condom.</p> | <p>No stealthing offence</p> <p>NT Does not expressly include the removal of a condom during intercourse as an offence.</p> <p>Qld Does not expressly include the removal of a condom during intercourse as an offence, although the Queensland government may move to adopt a similar model as NSW in response to the Queensland Women’s Safety and Justice Taskforce’s 2022 report which recommended explicitly recognising stealthing as a crime.⁵¹</p> <p>SA Does not expressly include the removal of a condom during intercourse as an offence, although the Criminal Law Consolidation (Stealthing) Amendment Bill 2021 has been introduced in the Legislative Council.</p> |

⁴⁹ New South Wales Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020) [1.34].

⁵⁰ Women’s Safety and Justice Taskforce, *Hear Her Voice: Women and Girls’ Experiences Across the Criminal Justice System* (Report Two Volume One, 2022) 218; Sienna Parrott and Brianna Chesser, *Stealthing: Legislating for Change* (Report, October 2022) 2.

⁵¹ *Ibid* 218-19.

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| <p>Tas</p> <p>Schedule 1 2A(2A): Without limiting the application of subsection (2) to an act of sexual intercourse, a person does not freely agree to an act of sexual intercourse with another person if the person says or does anything to communicate to the other person that a condom must be used for that sexual intercourse and the other person intentionally– (a) does not use a condom; or (b) tampers with the condom; or (c) removes the condom – before or during the sexual intercourse.</p> <p>Vic</p> <p>36AA(1): Circumstances in which a person does not consent to an act include, but are not limited to, the following–(o) the person engages in the act on the basis that a condom is used and either–(i) before or during the act, any other person involved in the act intentionally removes the condom or tampers with the condom; or (ii) the person who was to use the condom intentionally does not use it...</p> | <p>WA</p> <p>Does not expressly include the removal of a condom during intercourse as an offence.</p> |
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In jurisdictions where stealthing is not expressly criminalised, ambiguity in the law may lead to negative outcomes for victims navigating the legal system. While there is some consensus amongst academics that stealthing arguably vitiates consent,⁵² whether this practice constitutes sexual assault depends on the court’s interpretation of current consent provisions which leads to inconsistencies in decision-making.⁵³ For example, in Queensland, the District Court at Southport rejected an argument by the defence that the practice of stealthing could not reasonably support a prosecution for rape,⁵⁴ however the Queensland ODPP has also refused to proceed with an indictment for rape in a similar matter involving stealthing due to the difficulties in establishing the defendant’s intention.⁵⁵ It is integral for stealing to be considered in consent laws, as highlighted by two victim-survivor:

⁵² Ibid 218.

⁵³ Women’s Safety and Justice Taskforce (n50) 218.

⁵⁴ See Anne Hayden, ‘Restorative Justice and Gender Differences in Intimate Partner Violence’ in Theo Gavrielides (ed), *Routledge International Handbook of Restorative Justice* (Routledge, 2018) 193, 207-208.

⁵⁵ Women’s Safety and Justice Taskforce (n50) 137.

"The current laws in Queensland do not cover stealthing. The man who raped me removed the condom while we were having sex which I had no idea had occurred until afterwards."

"[He argued] That I had agreed to have sex, so therefore he had not raped me. However, I agreed to sex with a condom & the man removed it without my consent."

Having clear legislation in this area is important, as this is an ambiguous area, and only approximately 15% of Australians are familiar with the term, and 56% being unclear as to the legal status of this practice.⁵⁶

Benefits of National Harmonisation

National Harmonisation is the process whereby governmental policies of different jurisdictions are similar, if not equal. Today, the definitions of consent in each Australian state are somewhat consistent yet not entirely exact. This means that there are eight definitions for sexual intercourse, the legal age of consent and grooming between the state and territory jurisdictions. For instance, states such as New South Wales, Queensland and Victoria exemplify the legal age of consent as 16 or more whereas South Australia and Tasmania state it is 17 or more.

Ultimately, there are many benefits of harmonising laws around consent. Firstly, it will create a consistent and solid understanding of consent, protecting these survivors and deterring perpetrators. In terms of the sex industry, many clients believe they have power over sex workers. Thus, having a strong definition of consent and how to give consent will allow those providing sexual services to know their entitlements such as refusing to have sex at any time, even if the client has already paid or if they are having sex with someone.⁵⁷

Currently, affirmative consent laws are becoming more favoured as a means for national harmonisation. States such as New South Wales have adopted affirmative consent laws in which:

- You can't assume someone is consenting because they don't say no. Silence is not consent.
- Consent is an ongoing process. A person can change their mind and withdraw their consent at any time.
- A person can't consent if they're so intoxicated that they can't choose or refuse to participate.
- Consent can only be given freely and voluntarily. If you force or coerce your partner into sex, it's not consensual.
- Consent must be present for every sexual act. If someone consents to one sexual act, it doesn't mean they've consented to others.

⁵⁶ Sienna Parrott and Brianna Chesser, *Stealthing: Legislating for Change* (Report, October 2022) 1.

⁵⁷ Victorian Law Reform, *Improving Justice System Responses to Sex Offences* (Report, April 2022) 293, 317.

- A person can't consent if they're asleep or unconscious.⁵⁸

All states and territories should adopt this affirmative consent law model in order for unity.

Experiences of victim-survivors and navigating the justice system

Intersectionality

An important fundamental consideration when speaking to matters relating to sexual violence is that each victim-survivor is unique, has differing experiences, needs and wants and many are subject to compounding forms of disadvantage and structural inequality. When reviewing current and proposed reforms to consent laws across all jurisdictions, it is crucial that the systemic barriers which impact communities are prioritised and recognised. Full Stop Australia urges the Senate Committee to commit to an intersectional framework which acknowledges the complex, intersecting needs and experiences of victim-survivors and prioritises the needs of victim-survivors who are:

- Under 18 years of age;
- Identify as Aboriginal and/or Torres Strait Islander;
- Identify as culturally or linguistically diverse;
- Identify as living with a disability or chronic illness;
- Identify within the LGBTIQ+ community;
- Are elderly or living in aged care;
- Are living on a student, migrant or refugee visa; and/or
- Are currently experiencing homelessness.

All these factors significantly influence the experience and needs of victim-survivors navigating both the criminal justice system and recovery pathways.

⁵⁸ Department of Communities and Justice, *Affirmative Consent becomes law in NSW* (Media Release, 2022) <<https://www.dcj.nsw.gov.au/news-and-media/media-releases/2022/affirmative-consent-becomes-law-in-nsw.html>>.

Experiences of victim-survivors

Victim-survivors spoke to their experiences of sexual violence with the majority of respondents (88%, n=50/57) reporting having experienced sexual assault (e.g. non-consensual touching of a sexual manner, forced touching or kissing).

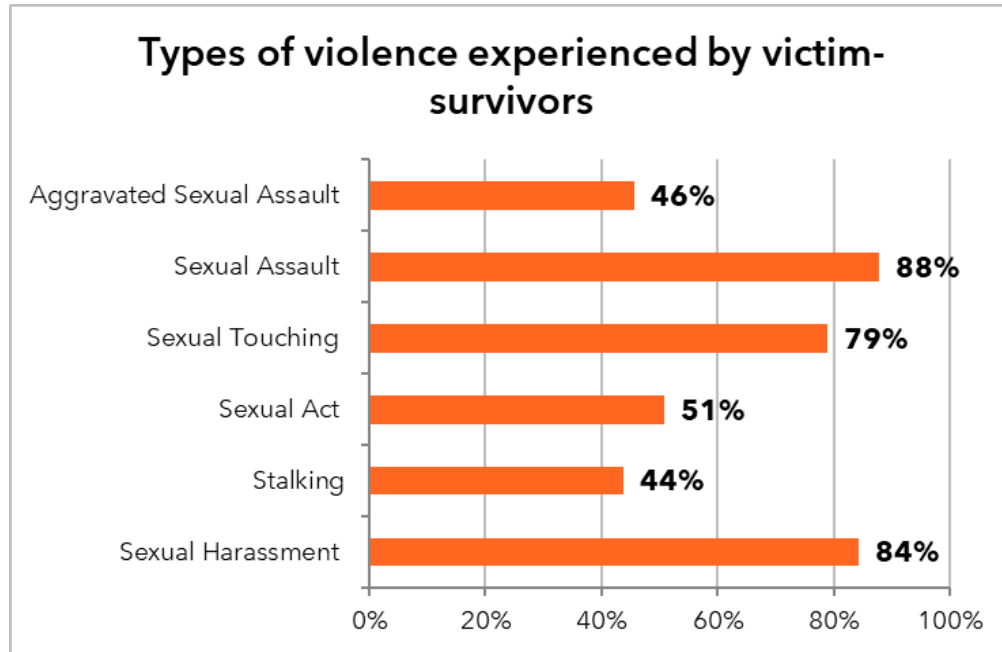


Figure 2: Responses to the survey question: "What types of violence did you experience? Please select all that apply" 57 total responses.

When survey participants were asked about the relationship between themselves and the perpetrator, many victim-survivors reported multiple incidents with several perpetrators:

"Two intimate partners and a family friend"

"Multiple people: Stranger, friend, intimate partner, work colleague"

"Several different perpetrators were involved over an 11-year period..."

Despite the prevalence of sexual violence across Australia, and its effects as a major social, health and welfare issues, many victim-survivors do not disclose or report the incident for fears of not being believed or taken seriously.⁵⁹ When victim-survivors were asked about who they disclosed the incident to, the majority (70%, n=38/54) sought professional support from a counsellor or psychologist.

⁵⁹ ANROWS 2021, 'Chuck her on a lie detector': Investigating Australians' mistrust in women's reports of sexual assault, 9.

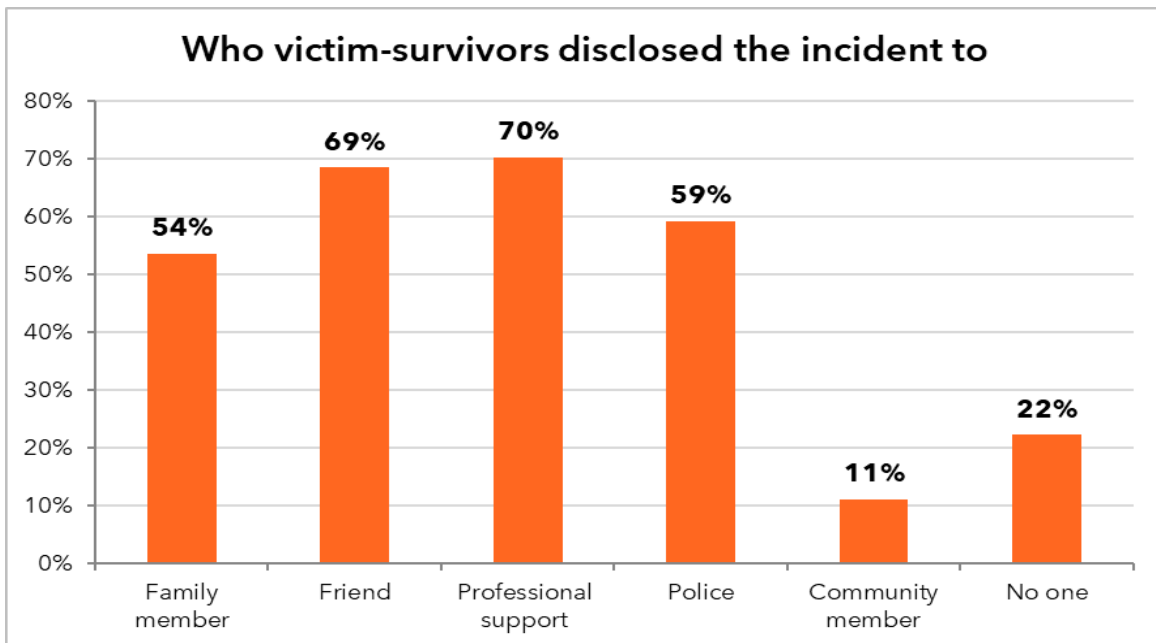


Figure 3: Responses to the survey question: "Who did you disclose the incident to? Please select all that apply" 54 total responses.

When asked for reasons why the decision was made to not disclose the incident, many survey respondents reported concerns of the incident being viewed as their fault, followed by fears of not being believed:

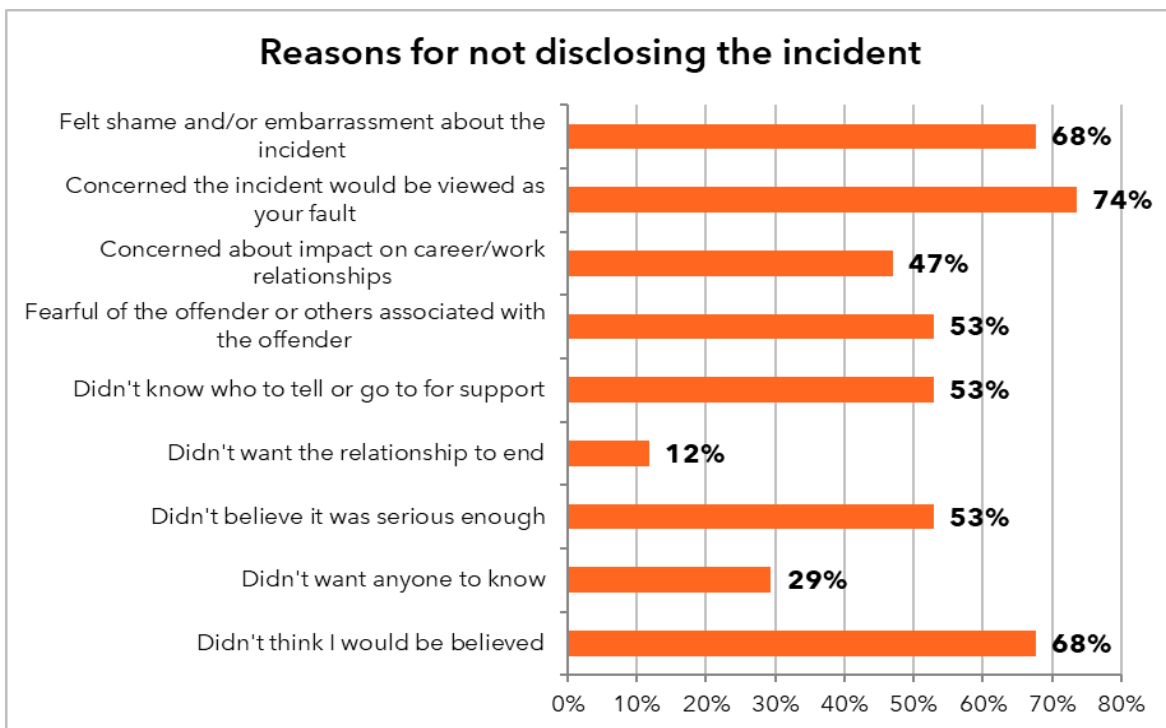


Figure 4: Responses to the survey question: "If you chose not to disclose the incident, what was your reason? Please select all that apply" 54 total responses.

One victim-survivor detailed their specific reasons for not disclosing, stating:

"I was physiologically in shock. As I was considering disclosing my experience, the same person assaulted me again, compounding [my] shock.... I literally felt voiceless at the time. Poor responses and disbelief from those around me then led me to self silence - I did not feel adequately supported. If I took action, the person who enacted the incident would escalate into self harm, harm of others, [and] aggression towards me."

These survey results highlight and support existing research which confirms that victim-survivors often fear that they will not be taken seriously, believed, or will be blamed for their victimisation.⁶⁰ Further, as many people choose to disclose to 'professional support' after an incident of sexual violence, the need for trauma-specialist support services nationally to enable long-term recovery is paramount.

Additionally, victim-survivors were asked whether they reported the incident to the police, **68% (n=38/56) of participants responded they did report the incident**, however their experiences of reporting vary. Victim-survivors spoke to their experiences of reporting to police, stating:

"The police dismissed me, minimised my concerns and did nothing to protect me or keep me safe."

"When reporting I was made to feel as if I was lying and in the wrong. The detective originally told me that my situation wasn't sexual assault as the perpetrator was my boyfriend..."

"Police were very helpful and supportive, and much more kind than I expected them to be. It was still a horrible process that was quite retraumatising/amplified my trauma, but the inspectors themselves were good to me."

"The experience was extremely positive. I attended the police station with a friend and met with two female police officers. The detective constable respectfully and professionally took details... I felt comfortable enough to return the following day to provide details of the aggravated sexual assault."

"I was told by the police that I was not a good witness and they wouldn't be pressing charges... they make me feel more ashamed, powerless and worthless."

⁶⁰ Ibid.

"The police became aware of the image based abuse as I was at school and the school found out. They made me feel like I had done something wrong and needed to apologise for it. I never knew what was done to be was wrong."

"Terrible. It drew the incident out and made it much worse by having to wait in the same clothes and travel a fair distance for a sexual assault kit. Then they randomly called me one day and said they didn't have enough evidence and would be dropping the case and AVO. I was about to walk into work when they called me and it destroyed me."

"The police were somewhat understanding but couldn't really understand why I wanted to report the incident if I didn't want to press charges."

"It differed per police person. One policeman was incredibly supportive and trusting however the policeman that wrote my official statement was kind but said comments such as 'boys will be boys' and that its hard to tell when it's sexual assault or just a boy wanting to have sex."

"The police, although friendly, were not trauma informed. Also, I feel they should have suggested to take notes of what I would like my statement to include, as it is difficult to recall every little detail in one or two sittings. It is also retraumatizing, so naturally that would also affect your recall at the time. The police also concentrated on the sexual acts and not the grooming, as the grooming were not sexual acts. I felt it was important to add this to the statement - this would have been particularly helpful when relying on that statement in the civil proceedings as well."

Full Stop Australia asked the victim-survivors who didn't report the incident to police for their reasons, with the majority (79%, n=26/33) stating they were 'concerned the incident would be viewed as their fault' and 70% (n=23/33) didn't think they 'would be believed'.

"Structural racism has been a significant barrier in feeling comfortable formalising a complaint".

"I thought that it was my own fault. Due to previous negative experiences with police trying to report domestic violence and not being believed and being falsely arrested because of false allegations made by my ex-husband - I don't trust Police and I didn't think they would take me seriously as they never have. It is also well known what the legal system is like and [there was] no way I was going to stand in a court in front of total strangers and talk about what happened just for him to get told not to do it again.... it wasn't worth it."

The lack of reporting and reasons behind victim-survivors' decision to not report, highlights the significant barriers people face when navigating the justice system, and speaks to the importance

of reform in order to ensure when people do come forward following an incident of sexual violence, they feel safe and supported to do so.

Navigating the justice system

The justice system is not working for survivors of sexual violence. Despite decades of legislative reform, sexual offences remain under-reported, under-prosecuted and under-convicted.⁶¹ Many victim-survivors find the criminal justice process to be extremely challenging and re-traumatising. Whilst the recent evidence and procedural reforms undertaken by New South Wales will go some way to ensuring the court process is safer and more inclusive for victim-survivors of sexual violence, more needs to be done across all states and territories.

The legislative inconsistencies across different states within Australia offers a unique perspective from which to compare the direct experience of the justice system dependent on the consent laws in place. Recent progress in New South Wales and Victoria through the implementation of affirmative consent introduces a novel pathway through which a survivor's experience will be shaped. This is in stark contrast to the laws in QLD which retain consent laws allowing defences and a focus on the accused's state of mind. These laws are often at the expense of the survivor's experience. The QLRCs rejection of two reforms in 2020 was explicitly supported by their stance that the influence of rape-myths may be 'overstated'.⁶² This displays the reception survivors often expect to encounter when they engage with the judicial system.

New South Wales implementing an affirmative consent approach is notably progressive and may indicate a positive learning experience for survivors when coming in contact with the justice system. In spite of this change, it remains a paramount recommendation that survivor-centric approaches to education and the judicial system are needed to supplement this approach. Improving the experience of survivors within the justice system is dependent on a holistic evaluation of the judicial system and the different points of contact the general public has with consent law.

As mentioned throughout this paper, the presence of rape myths and regressive presumptions surrounding consent continue to shape the experience of survivors regardless of current consent laws. The lack of direct acknowledgement of this continues to impact the way survivors will perceive the criminal justice system. As reflected in 32% (n=18/56) of survey respondents choosing not to report the incident to the police. The reasoning for why reflects the same as above; survivors consistently felt like they would not be believed and that the incident would be viewed as their fault.

⁶¹ NSW Law Reform Commission, 2020.

⁶² Sarah Ailwood, Rachel Loney-Howes, Nan Seuffert and Cassandra Sharp, 'Beyond Women's Voices: Towards a Victim-Survivor-Centred Theory of Listening in Law Reform on Violence Against Women' (2022) *Feminist Legal Studies*; QLRC 2020, 209

Further, when victim-survivors did report and their matter was heard in court, their experiences reflect the challenges and misconceptions they faced.

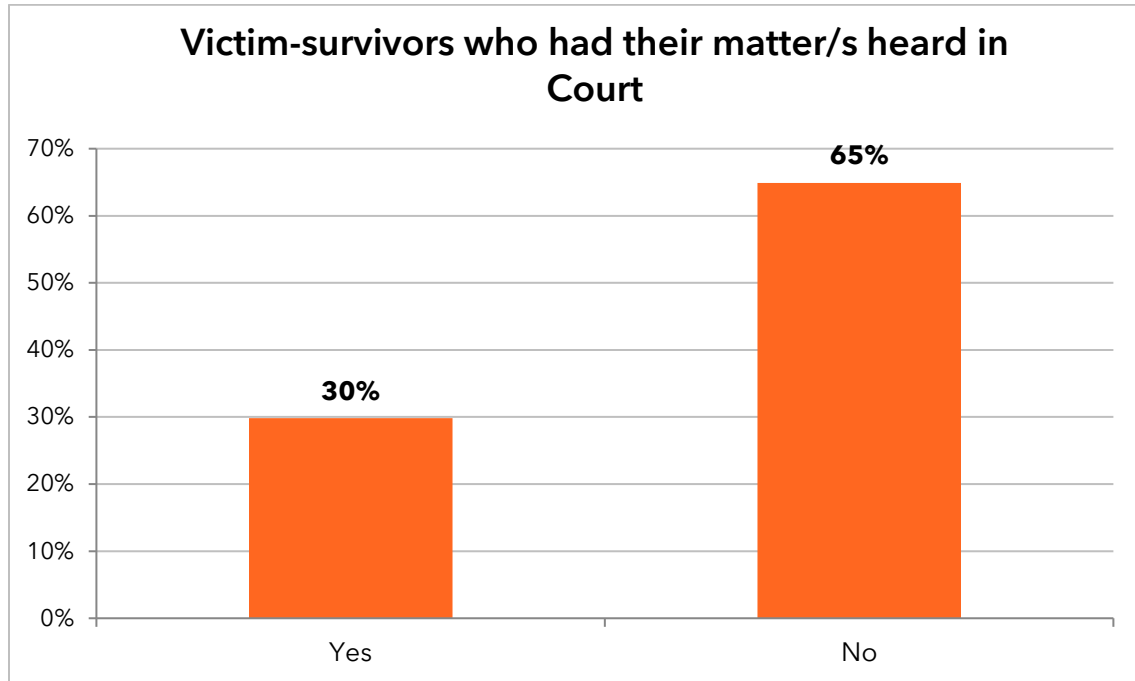


Figure 5: Responses to the survey question: "Have you ever had a matter/s heard before Court relating to your experience of sexual violence, abuse and/or harassment?" 57 total responses.

"He simply lied and said that it was romantic and very consensual. I had very limited ability to challenge as I believe I completely disassociated during the experience so couldn't explain much of what occurred beyond knowing I was being raped and both of us being covered in my blood on the nature strip".

"The ODPP dropped the charges at the very last minute citing an inability to win given it was 'he said, she said', which it wasn't [as] I had forensic evidence and extensive injuries."

"I felt unprepared, there didn't feel like there was anyone there to provide me advice, only emotional support. Whilst I am not on trial technically, I am on trial for my reputation, and no one is there to help you with how to convey answers when you don't get to explain yourself. I found the questions incredibly confronting and angering, "Can you describe how you knew you were being raped" and found the perpetrator was just able to tell outrageous lies, which I never got to hear or challenge. I took the option of doing it via videolink, however it meant I never got to see the Jury, which has been quite significant following a not-guilty verdict. The not guilty verdict was also quite shocking to I think everyone given I had witnesses, however apparently there was insufficient evidence that I didn't consent prior to

the witnesses showing up and then fake the rape to save myself the embarrassment of having sex on the nature strip. So outrageous and unbelievable."

"I went through a Workcover tribunal to pursue damages for psychological harm caused by sexual harassment. I had to take some kind of action to try to stop an employer from treating other women in the way I was. I eventually won this claim, but it was a highly adversarial and traumatising process that followed a sham investigation where I was discredited. I wasn't treated like I was believed through any of the process other than by my treating practitioners."

"The court process was awful. The perpetrator of my rape was in the room while I gave evidence. Every member of the court was male (all lawyers and judge). The barrister for the man who raped me alleged that my conduct, the way I dressed & my past sexual history all indicated that I was not raped."

"Legal representation MUST be assigned to the complainant, at the stage of the rape kit or after... but especially when making the statement to police. I was not advised of my legal rights as a sexual assault victim, and the police recorded my sexual history, which was used against me in court."

"[The Court experience was] Pretty shit and unbalanced. The complainant is seen as a witness, and the defendant has access to all my data, phone everything... At no stage, were any of the other witnesses' phones, or accounts screened and / or subpoenaed like my files had been."

"[They argued] That when I tried to get away from the perpetrator, I was in fact leading him (indicating consent) ... [and] that because we'd texted briefly afterwards, that it was an indication of a consensual encounter."

"[My trial was vacated twice, 7 days in on the first occasion, 2 days in on the second occasion because the defence had not issued their subpoenas on time and required more time. There was no consideration of how 3 trials would impact on derailing my life trajectory, no punishment for the defence who had 16 months to prepare on the first occasion and 21 months on the second occasion. When my case finally proceeded to trial, the police's failure to investigate (my sexual assault investigation was not actioned for the first 2 years of reporting), ultimately the case fell apart due to police not taking statements properly and at times years delayed so people couldn't remember the exact details. Also, police had failed to obtain all cctv and then lied on the stand. Ultimately the police failures overshadowed my sexual assault, which raised enough doubt that he was acquitted of all charges."

"I was nonverbal/ frozen with fear however the counterargument to this was that we were dating so it was fine."

"I was too intoxicated to consent. The Senior Advisor admitted he drove me home because he did not believe I was capable, nor was it safe, for me to get my own way home. I could barely stand or see, and I had passed out in his car and in my bedroom, waking up to digital and penile penetration respectfully. The defence played down my level of intoxication and denied that any sexual assault had occurred in the car. The perpetrator admitted to the sexual intercourse in my bedroom. He told the court that "he felt a connection" and that I had led him to the bedroom and participated in the sexual intercourse. This was not true. "

Furthering this, Full Stop Australia's Counsellors spoke to the effect of the justice system on their clients stating, **"the system re-traumatises clients terribly"** and **"every client I have worked with has been re-traumatised by the court process"**.

As a collection of these responses highlight the pitfalls of lacking appropriate consent education and how this directly impacts the desire and knowledge to report these offences. When consent laws are disseminated and embedded in law as a singular yes or no this will fail to encapsulate the power dynamics and coercion often present in these relationships.⁶³ Furthermore, the differing layers and levels of sexual offences in relation to consent being unknown to potential victims leads to further misconceptions of the justice system. The gap presented to victims between their perception of consent and the justice system serves to heighten their chances of re-traumatisation at the hands of what they perceive to be a justice system that does not believe them.

Jury Directions

Across States and Territories, the role of clarifying the laws of consent and establishing appropriate standards for sexual relations to the jury falls to the judge through jury directions. Therefore, jury directions play essential roles in guiding juries through complex legal concepts and ensuring that they make informed and fair decisions in criminal trials. In the case of rape trials, these directions are particularly critical due to the widespread misconceptions about sexual offences and existing negative societal attitudes towards victims. Notably, and perhaps unsurprisingly, misconceptions and rape myths have been well documented in their effect on jury and juror decision-making.⁶⁴ As one victim-survivor explains:

"[It was] Awful. Retraumatizing. Full of victim blaming. We had a biased judge. The defence barrister was smiling as he asked his questions in cross examination for days. The judge re-worded the directions from the handbook to spell out to the jury

⁶³ Kate Lockwood Harris, 'Yes means yes and no means no, but both these mantras need to go: communication myths in consent education and anti-rape activism' (2018) 46(2) *Journal of Applied Communication Research* 155-178.

⁶⁴ Emma Henderson & Kirsty Duncanson, 'A little judicial direction: Can the use of jury directions challenge traditional consent narratives in rape trials?' (2016), *UNSW Law Journal*.

that they needed to find the perpetrator not guilty. The perpetrator had made several admissions of guilt and was found not guilty. The jury was crying (obviously feeling like they had been forced by the judge into the decision)."

Given the persistently low conviction rates and the high under-reporting rate over the years, it would be unrealistic to assume that the current jury directions model effectively counters prevailing "rape myths" and encourages more victims to speak up. Further, as evidenced by the above quote, jury directions are still delivered by and at the discretion of the prevailing judge in the matter.

"The jury were given directions that lasted the entire day before they retired the following day to deliberate. I listened to the directions and felt that it would be extraordinarily difficult to find anyone guilty after the directions..."

"The judge used the handbook but reworded the directions in a bias manner (essentially asking the jury to find him not guilty), the judge also shared opinions with the jury that were not factual (bias opinions regarding my evidence)."

"We were in a romantic relationship that turned violent. [The] Jury was told that romantic partnerships can still become non-consensual."

"There was no explanation on freeze responses and so the defence was like "she's an intelligent woman, it defies all common sense, clearly if this had happened, you'd have just left the room and walked out and the reason she didn't do that is because it didn't happen"."

The persistence of misconceptions within and beyond the courtroom creates a harmful environment that perpetuates secondary victimisation and stigmatisation of survivors while allowing offenders to undermine the accountability of the justice system. Although the existing instructions do explicitly address many misconceptions, concerns have been raised regarding their efficacy, particularly in relation to the timing of deliberation, the complexity and ambiguity of legal language, and the discretionary nature of their implementation. This section will critically evaluate the current model of jury directions and propose actionable remedies to address the issues that have arisen from its implementation.

Issues with the current model of Jury directions

Both the New South Wales Law Reform Commission and Victorian Law Reform Commission have recommended amendments to jury directions to address common misconceptions in rape trials, such as the credibility of the victim's character, reporting delays, and the relationship between victims and offenders. In response to the recommendations, sections 292A-292E of the *Criminal Procedure Act 1986* (NSW) have been implemented to include more expanded jury directions to prevent jurors from reaching an unfair decision based on faulty beliefs.

However, it is questionable if those recommendations have substantially tackled the misconception inside of courtrooms and impacted the trial outcome. The recommendations and further amendments primarily focus on expanding the contexts in which the directions can be applied, without addressing the crucial issue of when and how the direction should be delivered, and to what extent it may impact trial outcomes. As a result, despite the expanded contexts in which the directions can be applied being a step in the right direction, the stagnant low conviction rate suggests that the manner in which jury directions are delivered still needs significant improvement. Further, as the experiences of the surveyed victim-survivors highlight, the efficacy and reliability of jury directions in rape trials are still contestable.

Timing of Jury Direction

Studies suggest that the timing of the delivery of jury directions have a tremendous impact on the deliberation of narratives in trials. Guidance on jury directions allows for judges to give jury directions when they see fit, with most jury directions given at the end of the trial as the judge's conclusion to the jury. However, such timing is counterintuitive since studies have shown that the earlier the information is presented to the jury, the more influential it would be due to narrative schemata.⁶⁵ In other words, once the jury has already built the narrative based on the existing misconceptions at the start of the trial, little differences could be made to challenge the existing narrative when they are asked to reconsider the evidence in light of the rape myth at the later stage of the proceeding.

In a comparative study of 10 rape trials which uses the timing of jury direction as the key variable, early introduction of jury directions showed a predominately higher conviction rate compared to when they were introduced later.⁶⁶ Overall, it is essential that guidance on jury direction be revised to include mandatory early introduction of jury directions at the start of the trial in the interest of justice. Full Stop Australia urges for the consideration of pre-trial or in-trial juror training about the existence and detrimental influence of rape myths and misconceptions relating to how victim-survivors respond to sexual violence (e.g. freezing is not consent). By reducing the false beliefs which are instilled in jurors through social and community misconceptions, the courts and judicial systems will have a better chance of removing rape myths from trials and ensuring the experiences of victim-survivors are better understood throughout the justice system. Ensuring all actors in the judicial system are trauma informed, and aware of the misconceptions surrounding sexual violence will help better the justice system for those most impacted by sexual, family and domestic violence. One victim-survivor suggests:

"I think normalising the calling of expert witnesses to give evidence on rape myths and trauma responses and education on domestic violence and sexual assault if we have jury trials as well as specific directions they explain all of this by the judge, or ideally specialist trained judges to preside over sexual assault would be best.."

⁶⁵ Victorian Law Reform Commission (VLRC), *Sex Offences: Interim Report*, Report No 78 (2004) Ch 7.

⁶⁶ Emma Henderson & Kirsty Duncanson (n64) 759.

The Victorian Law Reform Commission found that amending jury directions through legislative reform to reflect affirmative models of consent would likely lead to significant outcomes in rape cases.⁶⁷ By clarifying the law through jury directions, the court can reinforce the legal understanding of consent, and negate the social prevalence of rape myths held by jurors. Further, through exploring the overwhelming evidence that rape myths play a significant role in jury decision-making, and the detrimental impact this has upon impartiality, it is paramount that reforms are implemented regarding the manner in which jury directions are delivered and their timing.

Impacts of Consent Education

To ensure the broader community has a strong understanding of consent and consent laws education must be disseminated to the wider public. Issues are created where the law fails to be appropriately incorporated into current education schemes, there is a lack of appropriately curated education programmes for certain demographics or where the education schemes themselves lack efficacy in altering traditional values. Given the introduction of recent consent laws resulting in tailored consent education being introduced this year this topic is more relevant than ever.

There is a strong need for effective and targeted education to explicitly counter myths and misled opinions that have been developed and maintained due to a lack consent and respectful relationship education. As explored above through the survey responses, the general public's in-built beliefs of what constitutes sexual assault, inclusive of the definition of consent, is much narrower than what current law prescribes.⁶⁸

When Full Stop Australia's Counsellors were asked as to how many clients come to the service with a clear understanding of consent, the majority reported that only **"a few"**, **"1/3"**, and **"very minimal"**. Continuing one Counsellor stated, **"every time I discuss [consent] with a client, I have to correct their understanding of consent"**.

Further, victim-survivors who were surveyed expressed how if they had received appropriate and in-depth consent education, they would have realised earlier that what they had experienced was in fact sexual violence.

"Only now with passage of affirmative consent laws am I coming to terms with my experience."

"I never considered as a wife I had the right to consent every time, or to not consent. Marital Rape is not discussed openly."

⁶⁷ VLRC (n64).

⁶⁸ Gail Mason, 'Sexual assault law and community education: A case study of New South Wales, Australia' (2021) 56 *Australia Jus Soc Issues* 409 - 426.

"I had no idea that I was being abused. Nowhere in my childhood education was it ever mentioned... I believe consent must be discussed in schools. Every year level, until children and young adults truly understand their rights and responsibilities. Obviously at each level this needs to be tailored to be age appropriate. Simply repeating the exact same message over and over will breed complacency and end up being ignored. It needs to be engaging not instructive. It needs to involve students not thrown at them."

"Like many women, I learnt consent through my experiences of being assaulted. I would have the discussion of consent begin at the start of education... I would have been much more secure in my understanding of right and wrong if consent was taught in school, and likely would have spoken sooner and stronger about my experiences."

"I think consent in girls' schools particularly needs a shifted focus to indicate that it isn't a girls responsibility to avoid getting assaulted but actually a perpetrators responsibility not to assault anyone. Part of that process is establishing a clear yes - it is also so important that people are educated on what consent in a legal sense is because I think often definitions given are way too vague."

"I was given a catholic all-girls school education which was: be scared of sex because STIs and pregnancy. Nothing about consent, nothing about pleasure, nothing about what happens if someone crosses your boundaries wilfully. I think it definitely would have helped because my understanding of rape was a different context than what I had experienced. And when I learned the legal definition, I actually realised that I had been raped, and also that it had happened to me in the past; multiple times. I had not had a healthy understanding of sexual conduct at all."

"I wish someone would have spoken to us about what consent was and wasn't. I think this would have helped me to understand how power, control, and coercion can influence the dynamics of the relationship/situation and that true consent is a continual physical and verbal negotiation between both parties. Most importantly, it would have helped me understand that using sexual violence is a choice and that I wasn't to blame."

"I think the lessons I was taught were very much about no means no, but there was very little discussion around power dynamics and coercion. What I was taught in school was just like one class so I don't have much memory of what was really discussed but I think it needs to go much deeper. Exploring the impact of rape, sexual assault and also supporting someone through that would also be very beneficial. I told many young people when I was raped at 15 and they all kind of

failed me, no one suggested I go to the police, tell my parents or even really knew how messed up it was, which had a profound impact on me.”

“Initially I didn’t even know I had been raped, I just knew it was a horrible experience and I was in shock. Then when I described it to friend he was horrified and told me what coercion was and that it was rape. So I had that problematic understanding of consent in the first place, where I knew I had said no so many times but somehow I wasn’t able to make that “no” stick and instead of fighting back I was manipulated into doing what he wanted. And I definitely learned that from being socialised as a girl where being a people pleaser is drummed into you, making men feel comfortable at your expense, giving way too much for nothing in return.”

Studies consistently show that individuals gain a greater understanding of consent when they engage in discussion around policies and sexual assault as opposed to the laws being read out loud to them.⁶⁹ Consent laws and policies must be thoroughly engaged with and understood by the wider community in order for legal progress and amendments to have real effect. A knowledge gap is often created as a result of a policy vacuum.⁷⁰ The failure to establish a pathway for informing the public of changes in law affects the community access to the changing definition.

This is ultimately damaging for survivors as research continues to show that even progressive sexual assault laws can fail to deliver cultural and criminal justice change resultant of the knowledge gap.⁷¹ Failure to incorporate the law as the forefront of education programmes results in ambiguity within the community. Educational campaigns must cover multiple avenues and be shown widely to have any effect.

⁶⁹ Angela M. Borges, Victoria L. Banyard & Mary M. Moynihan, ‘Clarifying Consent: Primary Prevention of Sexual Assault on a College Campus’ (2008) *Journal of Prevention & Intervention in the Community* 36(1, 2), 75-88.

⁷⁰ Gail Mason, ‘Sexual assault law and community education: A case study of New South Wales, Australia’ (2021) 56 *Australia Jus Soc Issues* 409 - 426.

⁷¹ Larcombe et al. 2016; Burgin 2019; Mason & Monaghan 2019.

As highlighted below, many people receive consent education across various avenues.

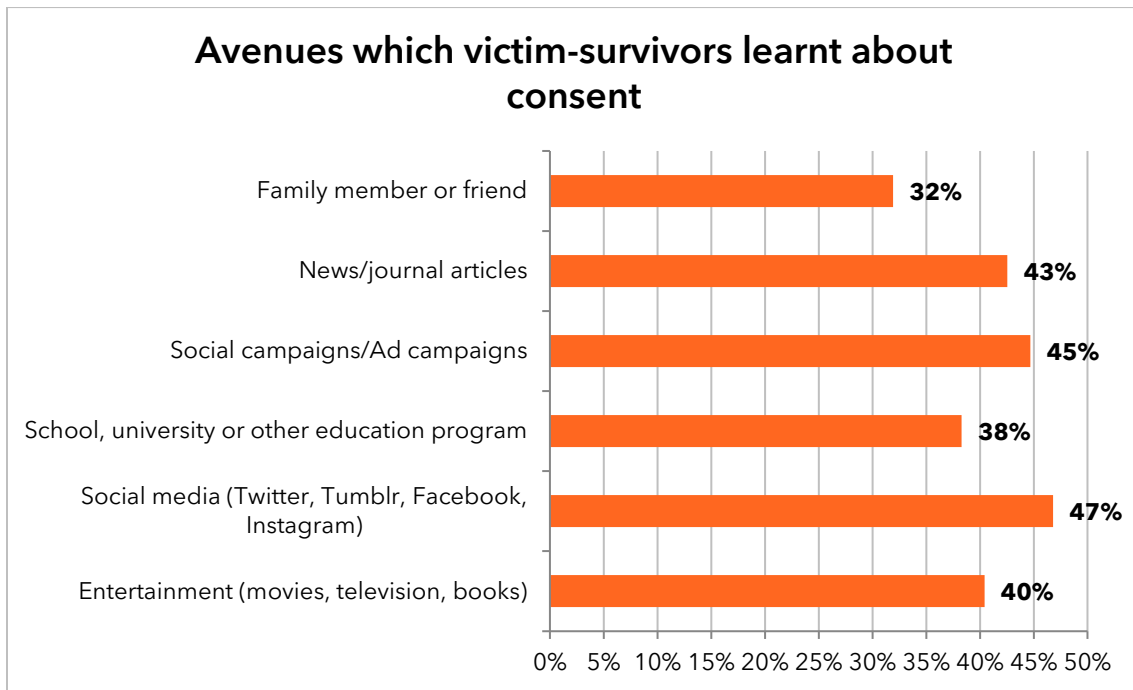


Figure 6: Responses to the survey question: "What were the avenues through which you learned about consent? Please select all that apply" 47 total responses.

A targeted approach to consent education would actively challenge these beliefs to fully allow a reciprocal situation wherein consent laws being amended are reflected in societal understandings. This remains pertinent as shared understandings of consent laws and sexual assault support victim-survivors and provide them with tools to appropriately approach situations. Law reform must be accompanied if not driven by communication and community education.⁷²

This is further supported when the surveyed victim-survivors were asked if they felt problematic attitudes in the community impacted their own perception of the incident and decision to not report **with 86% (n=48/56) responding "Yes"**.

"I was drugged and raped. The fear of disbelief and especially living in a small town definitely made me wait before reporting."

"[Yes] Because I drank alcohol. Because I put myself in that situation. Because what they want matters too. Because eventually I stopped saying no."

"[Yes] Because I drank alcohol. Because I put myself in that situation. Because what they want matters too. Because eventually I stopped saying no."

⁷² Australian Law Reform Commission (ALRC) and NSW Law Reform Commission (NSWLRC), Family Violence—A National Legal Response, ALRC Report No 114, NSWLRC Report No 128 (2010), 1150.

"There are persistent, pervasive victim blaming narratives in the media, popular culture, and community. I always thought I was to blame and that I had been responsible for what had happened to me."

"Yes, particularly when you are coerced into sex or its someone you know. People still have the impression of real rape only being strange men in alleys sort of vibes and that really prevents most experiences of rape as being perceived as 'real rape'."

"Because he was my boyfriend, I wasn't sure if I would be taken seriously, and I wasn't believed by many of our mutual friends. Many of the boys would say things at parties like 'no means yes and yes means anal' as a 'joke' but it didn't ever make me feel safe to say no."

"I continued to let my ex in knowing he would sexually assault me. This was safer than not letting him in. I did not think anyone would understand this. It also took a lot of therapy for me to understand that this was not me giving him permission and blaming myself. I had one conversation with my support workers with the Police DVLO and she asked me why I kept letting him in. If the Police DVLO could not understand the trauma response, then I didn't have much faith in the system helping me."

"I wasn't even sure if it was assault because you never hear about such examples in the media. It's all just stranger rape or maybe date rape on drugs/too intoxicated. I've never read an article or seen news on the tv about a man convicted for sexually assaulting their girlfriend, especially if the assault doesn't involve physical injuries but is just a matter of relenting after endless coercion so you give up resisting (non-consent was clear, but no physical resistance anymore because it seemed pointless) or under threat e.g. "I need to have "sex" because I'm angry and it will calm me down or else...." and so you have no options to freely and voluntarily consent because you don't want to have sex with them but they're so erratic that if you don't give it to them they'll just keep escalating the domestic violence."

Education and training on myths and law must be delivered to stakeholders in the community encompassing teachers, parents, carers, hospital staff, social workers, police recruits and journalists. Rigorous examination of studies shows the importance of consent laws and its subsequent impact on consent education. Following the recent affirmative consent campaigns across New South Wales, victim-survivors were asked if they believed current conversations regarding consent were changing:

"I think people do not have an excuse now and they must understand the need to seek actual and explicit consent. This cannot be a bad thing. If it makes some

people too terrified to have sex, then that's probably a good outcome honestly - if you can't face the consent convo, then you can't/shouldn't have sex with someone."

"You would need to have been in isolation from all media to have missed the conversations about consent in the last few years."

"Affirmative consent somehow has to be presented as being of benefit to males and females. Sometimes I feel like it's like males have to be forced to give up what they perceive as their entitlements. Education that focuses on what you must not do or on what you will lose or how you will be punished will alienate males. Somehow we need to find the language that shows how everyone benefits and is entitled to give consent."

"Time will tell, but right now, I don't think so. There needs to be more education and awareness. People need real life example situations, because even though the law has changed, people's perceptions about something are so ingrained."

"I think that there are a growing number of people who understand what consent is and why consent is important. However, there are also an alarming number of men and teenage boys who think that consent is optional and who wilfully choose to hurt and violate others for their own gratification. They do it not because they were not able to read the other person or the situation, but because they feel entitled to pleasure and find it in having power and control over others".

"I think that the events preceding the laws have had an impact on how people in society understand and discuss consent, and the new laws have definitely kept the conversation going, but for people to properly understand what these laws mean, more accessible information needs to be available to facilitate a better understanding of consent."

"I think they are starting to adjust peoples understanding but I think the behaviour still has a long way to go. And when the behaviour is not consistently there, people aren't going to blame men for not fulfilling it."

"I think it has normalised speaking about SA however I still think in rural towns and certain groups of men (private school boys!) need to be explicitly told examples of situations that are wrong."

"As mentioned before - there is a huge lack of awareness above a certain age group. The current campaign is targeted to 16-24 yr olds. What about everyone else? They are left? I had a non-consensual experience just after the campaign launched this year in NSW and the 50 yr old man had absolutely no idea what it was. He'd never heard about it."

"Today is much better to the Australia of last century and yesteryear."

Consent education adapting to consent laws that uphold societal values is impertinent given the importance of starting prevention early in life. This ensures that education is disseminated prior to the emergence of risk factors, thereby having the potential to prevent risk factors which are associated with sexual assault perpetration.⁷³ Beyond this the survey provided to both survivors and service providers highlights that schooling is identified as an under-reported source of education regarding consent laws.

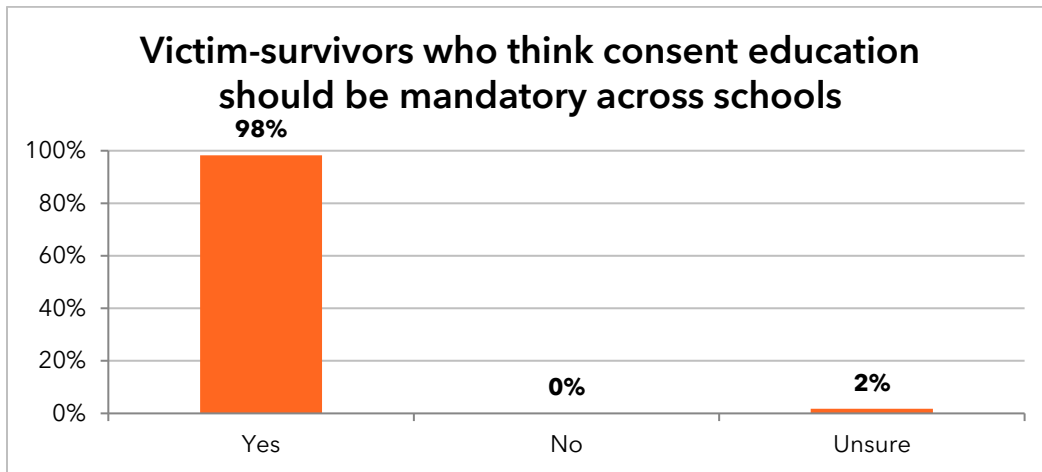


Figure 7: Responses to the survey question: "Do you think consent education should be mandatory across Australian schools?" 57 total responses.

"It should start from Kindergarten to Year 6 starting off as general consent and maintained + sexual consent all throughout high school till year 12 and beyond."

"Age-appropriate consent education can begin very early - we start teaching kids about stranger danger when they can talk, there's no reason why that could not be extended to education around non-consensual activities and bodily autonomy."

"As young as kindergarten if delivered in an age-appropriate way and the teachers are aware that even a discussion could be very difficult and triggering for some children who have experienced sexual violence. Had I received education around consent then possibly I may have been more able to tell someone, probably not my parents, but may a teacher what had happened."

"It needs to start at age-appropriate levels from the time they enter day-care. Simple things like "you can't take her toy, you have to ask, and if she says no then you will have to wait until she's done." People need to be better prepared to cope"

⁷³ Madeline Schneider & Jennifer S Hirsch, 'Comprehensive Sexuality Education as a Primary Prevention Strategy for Sexual Violence Perpetration' (2020) *Trauma Violence Abuse* 21(3) 439 - 455.

with "No, you can't have that". Respect is the biggest thing behind it all. Everyone is deserving of respect. No one is more superior or more entitled to something than anyone else. It's these fundamental belief systems that need to be shifted, and it starts from 18 months of age. In primary school it should be about body awareness and self-respect and taking care of your own person. Knowing that it's not OK for people to touch you if you don't want, and never OK for people to touch you in certain areas even if you'd like them to... By the time they get to high school, it should definitely be in line with the current awareness campaign, with direct language and specific situational examples. And discussion! Actual conversations about "What would you do if this happened?" Because no one thinks it will happen to them so they can't be prepared to act fast if they are put in that position. They may freeze or fawn."

"Absolutely from the very start of education. It is something I am so passionate about, it needs to start as prep, with things as basic as 'this is his toy, you cannot take it without asking' and then moving up to more delicate and harder to understand concepts. Consent isn't just a 'thing', it's a value, it's something that needs to be instilled in and educated to people from the very beginning, so they know the importance of it, and how it applies in so many aspects of life."

"I'd like consent education aimed at parents and authority figures too especially to dispel myths when they receive disclosures"

A concerted effort must be made to ensure that education begins at a young age as a means to educate people on the nature of consent, power and coercion and a clear understanding in later years on the legal meaning of consent. When victim-survivors were asked about what important factors should be captured in consent education there was an overwhelming response:

"Rape culture, Toxic Masculinity, Gender Equality"

"What to do if you a) are pressured and/or b) are coerced."

"Increase and address as age appropriate- Misogyny, victim-blaming, rape culture, porn and domestic violence, rape and human trafficking, incest, child abuse, strangulation, social media, image-based abuse, sexual harassment inc at work, stalking, teen dating and sexual torture."

"Ultimately respect and what this means in all relationships."

As such, it is evident that consent laws must reflect societal understandings of consent and further that amendments to law must be accompanied with all forms of education being reformed accordingly.

Recommendations

Full Stop Australia is advocating for urgent and significant reform which improves the criminal justice system for victims of sexual violence. Addressing the terms of reference, Full Stop Australia recommends:

1. The harmonisation of consent laws across all States and Territories to ensure there is a nationally consistent definition and understanding of affirmative consent.
2. A commitment to improving victim-survivors' understanding of, and access to, legal assistance and resources, including specialised legal services. Further consider the merits of independent victim-survivor advocates and other existing models of support operating domestically and internationally.
3. Developing a national approach to education and training to foster a trauma-informed, shared understanding among judicial officers, legal and justice sector professionals of the common rape myths and misconceptions about sexual assault.
4. Implementing reforms which enable greater admissibility of tendency and coincidence evidence in child sexual abuse matters and apply these changes to sexual offence proceedings involving adult victim-survivors.
5. Expanding forensic units across each state and territory to ensure universal availability of trauma-informed and culturally appropriate forensic examinations nation-wide. This would also involve the employment of culturally appropriate forensic examination staff so that Aboriginal and Torres Strait Islander victim-survivors have greater access to culturally appropriate forensic examinations. High-quality forensic medical services must be available to all victims of sexual violence across the country. These services must all be trauma-informed and culturally competent.
6. Developing and implementing ongoing professional development and vicarious trauma support for experts who may be required to prepare reports and give evidence in criminal proceedings for sexual offences.
7. Enacting legislative protections for vulnerable witnesses giving evidence in criminal proceedings as well as victim-survivors of sexual offences.
8. Reviewing opportunities to provide tailored and accessible support to victim-survivor witnesses who require communication assistance or other non-legal services, including witness intermediary schemes, interpretation and translation services, or assistance animals.
9. Committing to improving access to, and the operation of, audio visual link technologies, court support resources, specialist court facilities, and other available capabilities.
10. Coordinating and collecting annual reporting on relevant actions to provide MAG and the public with greater visibility of efforts across Australia.
11. Strengthening national datasets, sharing research and learnings (including via the National Working Group on Criminal Justice Responses to Sexual Assault), and commissioning academic research to build a shared evidence base. that informs best practice policy development, implementation, and evaluation.

12. Train and support all actors in the justice system to identify and respond appropriately and consistently to sexual violence and specialised training for police officers investigating sexual offences to ensure they respond in a trauma-informed and culturally appropriate way. This would involve a commitment from all actors in the justice system to adopt a trauma-informed model of supporting victims through the process of reporting and giving evidence in criminal procedures. It would also require adequate supervision and support for all actors in the justice system, including managing burnout, compassion fatigue, and secondary or vicarious trauma.
13. Establish Sexual Violence Liaison Officers in every police local area command to meet the needs of individual communities. Liaison officers across each police force must be trained in culturally sensitive practice. As an initial step, existing Domestic or Family Violence Liaison Officers could be trained to work specifically with survivors of sexual violence.
14. Establish state and territory-wide automatic referral processes for police incidents of sexual assault, including those which occur in non-domestic settings. These should be triaged through 24/7 state or territory-wide sexual assault services to local sexual assault services.
15. Undertake a review of the translation and interpreting services to ensure they provide appropriate assistance to enable police officers and civilian staff working in its communications centre, and on front counters in police stations to communicate meaningfully with all First Nations peoples, including in relation to sexual violence cases. This review of the translation and interpreting services should also be extended to include CALD communities and ensure appropriate and culturally specific assistance is being provided.
16. Partner with community leaders, cultural and faith-based leaders in culturally and linguistically diverse communities and Elders in First Nations communities to co-design and implement local plans to enable people who have experienced sexual violence to come forward and make a complaint without fear of, or actual retaliation or retribution to them or their families, friends, or supporters.
17. Implement ongoing competency-based sexual violence and trauma-informed training across each police service, including for frontline police, investigators, communications centre staff and staff working on front counters in police stations. This training must be evidence-based and trauma-informed and supported by professional supervision to ensure learnings are applied by individual officers and staff in practice.
18. In consultation with people with lived experience including people from culturally and linguistically diverse backgrounds, LGBTIQ+ people and people with disability, First Nations peoples and legal and service system stakeholders, police services should review and update their operational policies and procedures about the investigation of sexual violence cases.
19. In consultation with police services and Directors of Public Prosecution, state and territory governments must establish a clear, robust, transparent and easily accessible internal 'right to review' process of police and prosecutorial decisions for victim-survivors of sexual violence.

20. We recommend each Australian government implement a state and territory-wide triage approaches through state and territory-wide 24/7 sexual violence crisis lines which can provide immediate trauma specialist support and connect survivors to localised trauma specialist services operating during business hours. In this way, sexual violence victim-survivors could be assured of a trauma informed response to their disclosure, not having to re-tell their story, and being supported whilst they're linked in with ongoing wraparound services at the local level.
21. Survivors of sexual violence to be afforded access to wraparound specialist support, which includes court support and care coordination. Notably, care coordination and referral pathways need to include Primary Health Networks as a significant pathway for people accessing support following experiences of sexual violence.