

The Senate

Legal and Constitutional Affairs
References Committee

Current and proposed sexual consent laws
in Australia

September 2023

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List of recommendations

Recommendation 1

- 5.7 The committee recommends that, in all responses to sexual violence, governments and non-government organisations ensure that the agency of victim-survivors is paramount, actively respected and upheld.

Recommendation 2

- 5.17 The committee recommends that Australian jurisdictions that have recently legislated an affirmative consent model, design and implement a framework for the evaluation of that standard, with outcomes to be reported to the Standing Council of Attorneys-General and the Australian Law Reform Commission, to inform all Australian governments about the impacts of an affirmative consent model in sexual consent laws and to assist the Australian Law Reform Commission in conducting its review process (referred to below).

Recommendation 3

- 5.18 The committee recommends that state and territory evaluations of the impact of affirmative consent models is an annual standing item on the agenda of the Standing Council of Attorneys-General.

Recommendation 4

- 5.29 The committee recommends that the Australian Law Reform Commission includes an affirmative consent standard in any proposal to harmonise Australia's sexual consent laws and taking into account the evidence of the operation of recently adopted affirmative consent laws.

Recommendation 5

- 5.30 The committee recommends that the Commonwealth government responds to recommendations made by the Australian Law Reform Commission, within six months of the Commission presenting its report.

Recommendation 6

- 5.36 The committee recommends that the Commonwealth government provides ongoing funding for research into the prevalence of sexual violence in Australia and the impact of responses to it, including through regular surveys of students (including those living in university residences) and young people.

Recommendation 7

5.43 The committee recommends that state and territory governments, in collaboration with relevant stakeholders, develop and deliver materials to provide people who report sexual assaults with appropriate guidance and information, including:

- an explanation of how a complaint will be investigated;
- an explanation of how the criminal justice system operates;
- the purpose of giving evidence-in-chief and cross examination;
- the level of detail required for evidential purposes; and
- the obligation on the accused's legal representative to challenge evidence.

Recommendation 8

5.45 The committee recommends that the Commonwealth government assess the success of pilot projects for specialised and trauma-informed legal services and, if successful, fund an expansion of the provision of such services for the benefit of victim-survivors.

Recommendation 9

5.52 The committee recommends that the state and territory governments consider establishing a restorative justice pilot program and a specialist sexual violence court pilot for sexual offending, to explore more sensitive and trauma-informed approaches to sexual violence in the criminal justice system.

Recommendation 10

5.59 The committee recommends that the Commonwealth government, through the Police Ministers Council, develops principles to guide ongoing specialist education and training to state and territory law enforcement officers, to ensure culturally appropriate and trauma-informed responses to victim-survivors of sexual assault.

Recommendation 11

5.69 The committee recommends that the Attorney-General's Department, in collaboration with the Australian Institute of Judicial Administration and other relevant stakeholders, develops and delivers a National Sexual Violence Bench Book, to assist judicial officers to recognise and respond to sexual violence in a culturally appropriate and trauma-informed manner. This resource should specifically address rape myths and misconceptions.

Recommendation 12

5.73 The committee recommends that the Australian Law Reform Commission considers whether model jury directions should be developed as part of any

initiative to harmonise Australia's sexual consent laws. This model should include express requirements as to the timing and circumstances in which jury directions must be given.

Recommendation 13

5.85 The committee recommends that the Commonwealth government, through the Education Ministers Meeting and in consultation with relevant stakeholders, develops a strategy and delivers funding (in conjunction with the states and territories) for upskilling the education workforce, to achieve the consistent and effective delivery of comprehensive Respectful Relationships Education in Australian schools. This should include consideration of mandatory education in the Initial Teacher Education Curriculum.

Recommendation 14

5.87 The committee recommends that the Commonwealth government considers ongoing funding as a National Partnership Payment, to sufficiently resource those elements of Australian Curriculum 9.0 that provide for Respectful Relationships Education, including through a strategic investment in workforce development. Particular consideration should be given to addressing long-standing concerns about under-funding in public schools and the need to additionally resource specialist third-party providers.

Recommendation 15

5.97 The committee recommends that Universities Australia conducts a second National Student Safety Survey, with survey results made publicly available no later 2025, and commits to conducting a national student safety survey on an ongoing basis every three years, to provide all stakeholders with up-to-date and accurate information about sexual violence on campus. This survey should encompass students of all ages on campus, including 17-year-old students who are at no less risk of sexual harm by virtue of not yet being 18.

Recommendation 16

5.119 The committee recommends that the Commonwealth government implements an independent taskforce with strong powers, to oversight universities' policies and practices to prevent and respond to sexual violence on campus and in residences. The committee recommends that the taskforce provides:

- an effective and accessible complaints process;
- meaningful accountability for both universities and residences if standards are not met; and

- **transparency around which institutions are providing appropriate and effective responses and prevention initiatives.**

Recommendation 17

5.121 The committee recommends that the Commonwealth government commissions an independent review of the Tertiary Education Quality and Standards Agency's response to sexual violence on university campuses.

Chapter 1

Introduction and context

Content warning

Please note that this report contains content which some readers may find distressing. If you need to speak to someone, you can contact these free support services:

- 1800 RESPECT: Ph. 1800 737 732
- Lifeline: Ph. 13 11 14
- No to Violence: Ph. 1300 766 491
- QLife: Ph. 1800 184 527
- Relationships Australia: Ph. 1300 364 277
- Mensline Australia: Ph. 1300 789 978

Introduction

- 1.1 At the outset, the Senate Legal and Constitutional Affairs References Committee (the committee) wishes to express its deep gratitude and respect for the victim-survivors who shared their stories with us. Their willingness to share their experiences, and the courage and generosity of spirit they demonstrated in doing so, was both inspiring and invaluable to the work of the inquiry. The impact of their evidence on committee members was profound and will be long-lasting. The committee gives its heartfelt thanks to them.
- 1.2 That some victim-survivors are motivated by the abuse and trauma they experienced to advocate for others who have been similarly affected is both humbling and inspiring. Their advocacy makes a profound difference to the lives of countless people, including people they do not and will never know. Their courage, resilience and selflessness are extraordinary. The evidence they provided had a material impact on formulating the recommendations in this report. Again, the committee gives its heartfelt thanks to them.

Referral and terms of reference

- 1.3 On 29 November 2022, the Senate referred the following matter to the committee for inquiry and report by 30 June 2023:
 - Current and proposed sexual consent laws in Australia, with particular reference to:
 - a. inconsistencies in consent laws across different jurisdictions;
 - b. the operation of consent laws in each jurisdiction;

- c. any benefits of national harmonisation;
- d. how consent laws impact survivor experience of the justice system;
- e. the efficacy of jury directions about consent;
- f. impact of consent laws on consent education;
- g. the findings of any relevant state or territory law reform commission review or other inquiry; and
- h. any other relevant matters.¹

- 1.4 The Senate granted the committee three extensions of time to report, first from 30 June 2023 to 9 August 2023, then from 9 August 2023 to 13 September 2023, and finally, from 13 September 2023 to 14 September 2023.²

Conduct of the inquiry and acknowledgement

- 1.5 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to numerous individuals and organisations, inviting submissions by 2 March 2023. This date was twice extended, with submissions ultimately due by 31 March 2023. To assist submitters, the committee published a Discussion Paper on 31 January 2023.
- 1.6 The committee received 79 submissions, which are listed at Appendix 1, and held public hearings in Canberra on 25 July 2023, Melbourne on 26 July 2023 and Sydney on 27 July 2023, and an in-camera hearing in Brisbane on 22 August 2023. A list of the witnesses who appeared at the hearings is at Appendix 2.
- 1.7 The committee wishes to thank the individuals and organisations who made submissions and who gave evidence at the public hearings. The committee also thanks Ms Jess Hill, Ms Tosca Looby, the Special Broadcasting Service (SBS) and Screen Australia who contextualised these experiences with the presentation of a curated screening of the documentary, *Asking for it*.

Note on terminology

- 1.8 This report uses the term ‘victim-survivor’ to refer to those people who have experienced or are experiencing sexual assault. The committee recognises that not everyone identifies with this term. This report may also intermittently use the terminology presented in submissions and in evidence.

Scope of this report

- 1.9 The term ‘consent laws’ encompasses a range of provisions, for example: the legal definition of ‘consent’; the age of consent; and penalties for sexual

¹ *Journals of the Senate*, No. 25–29 November 2022, p. 749.

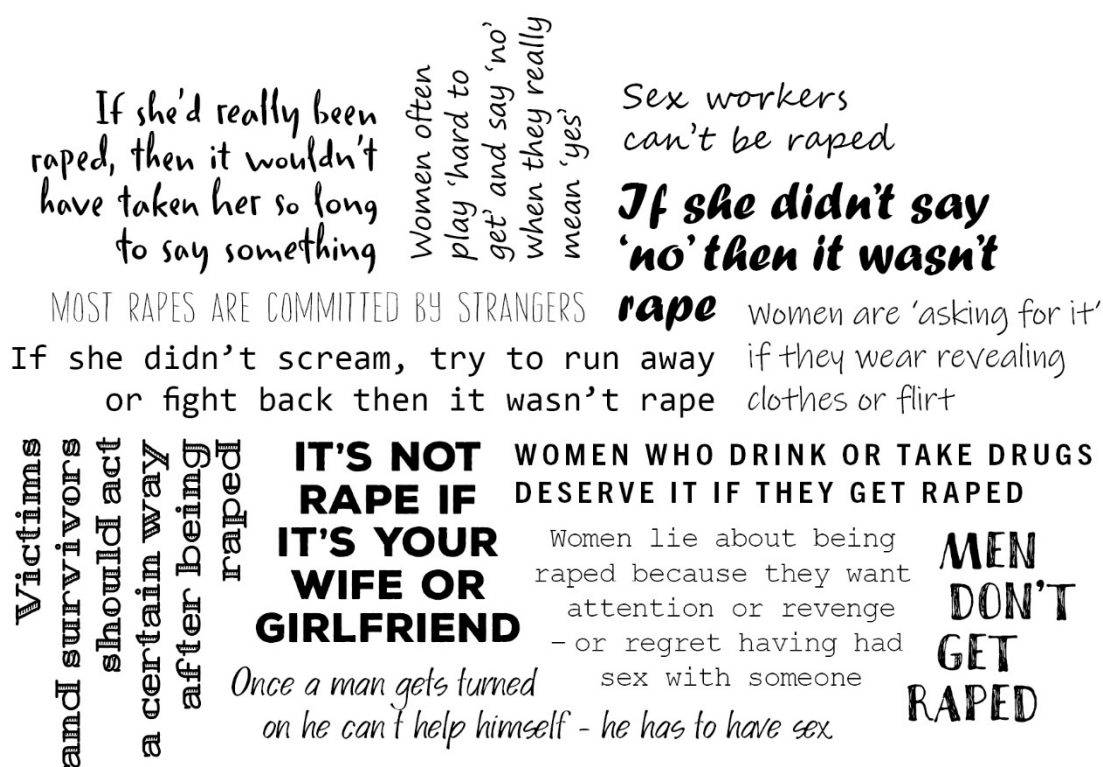
² *Journals of the Senate*, No. 41–24 March 2023, p. 1193; *Journals of the Senate*, No. 45–30 March 2023, p. 1293; *Journals of the Senate*, No. 68–7 September 2023, p. 1959.

offences. This report focuses on the legal definition of 'consent' and its associated provisions.

Background and context

- 1.10 It cannot be ignored that this inquiry engages with some unpalatable and, at times, shocking realities about sexual violence in Australia. These unpalatable realities are borne out in research, such as the experiences of young people outlined in La Trobe University's *National Survey of Secondary Students and Sexual Health*,³ and typified by 'rape myths' and misconceptions, which pervade Australian society, including our criminal justice system.
- 1.11 'Rape myths' are widely held-but incorrect-views about rape, victim-survivors and perpetrators.

Figure 1.1 Common rape myths and misconceptions (sample)



Source: Compiled by the secretariat

- 1.12 Sexual violence is not a new phenomenon. However, in recent years, international and national events have led to an increased focus on sexual violence against women.⁴ In Australia, in the context of a number of high-profile

³ La Trobe University, *7th National Survey of Secondary Students and Sexual Health*, 2022.

⁴ See, for example: Global Fund for Women, 'Me Too' Global Movement', www.globalfundforwomen.org/movements/me-too/ (accessed 1 September 2023).

cases,⁵ and aided by the work of outspoken advocates,⁶ a groundswell of community sentiment became a crucible for change.

- 1.13 With the media comprehensively covering high-profile cases, Australians began to have conversations about sexual assault and the meaning of ‘consent’, without which a sexual activity becomes an unlawful criminal act.
- 1.14 In this context, on 29 November 2022, Labor Senator, and Deputy Chair of this committee, Nita Green moved a notice of motion leading to the referral of the current inquiry.⁷ Victim-survivors responded to the call for submissions and invitations to give evidence, clearly demonstrating that governments must do more to protect women and men from sexual assault:

In my early twenties, I was a victim of a violent sexual assault, I was not the perpetrator’s first victim. The sexual assault caused physical and psychological harm which I am still receiving counselling for. I attempted to end my life following the assault, and suffer with [Post Traumatic Stress Disorder] as a result. The incident has left me with significant trauma, however it was the legal process that I have spent the last year recovering from, not from the crime.⁸

I was raped by someone I trusted. We had been dating for only a month...Looking back now, I see the warning signs that I didn't see at the time...I am not a weak or unintelligent person. I'm a professional...Yet I was raped after a sober sushi dinner with a man that I was keen on. How did this happen? I wasn't walking drunk or drugged down a dark alley. I was supposed to be in a safe place.⁹

- 1.15 Submitters and witnesses remarked repeatedly that while legal reform and education are significant parts of the solution, transformative change to entrenched and pervasive views about respectful relationships and sexual consent will require a whole of society response.

Criminal law responsibilities and frameworks

- 1.16 The Australian Constitution sets out the powers of the federal Parliament, including the matters for which the Commonwealth has responsibility and can make laws. Except for matters falling within the purview of the Commonwealth,

⁵ See, for example, Australian Broadcasting Corporation, ‘I am that girl’, *Four Corners*, www.abc.net.au/news/2018-05-07/kings-cross-rape-case-that-put-consent-on-trial/9695858 (accessed 1 September 2023).

⁶ See, for example, Australian of the Year Awards, Grace Tame: advocate for survivors of sexual assault, <https://cms.australianoftheyear.org.au/recipient/grace-tame> (accessed 5 September 2023).

⁷ Also see: D. Giannini, ‘Sexual consent laws go under spotlight’, *The Canberra Times*, 29 November 2022, www.canberratimes.com.au/story/8000925/sexual-consent-laws-go-under-spotlight/ (accessed 1 September 2023).

⁸ Name Withheld, *Submission 62*, p. 2.

⁹ Mr Andrew Doherty, private capacity, *Committee Hansard*, Melbourne, 26 July 2023, p. 10.

the criminal law falls within the jurisdiction of the states and territories. Consequently, each jurisdiction has its own criminal law system.¹⁰

- 1.17 Since 2022, several jurisdictions have reformed, or are reforming, their criminal law legislation to better reflect the gravity and complexity of sexual offending, and its impacts on victim-survivors.¹¹
- 1.18 In relation to the definition of 'consent', there are common features among the various Acts and Codes.¹² One notable feature is the affirmative consent provisions, which exist in four jurisdictions (New South Wales, Victoria, the Australian Capital Territory, and Tasmania) and which are under consideration in other states and the Northern Territory.
- 1.19 Australia's National Research Organisation for Women's Safety (ANROWS) provided the following useful description of the affirmative consent model, which has been adopted throughout this report:

The affirmative consent model requires individuals to communicate their consent and to take steps to ensure that the other person is also consenting. The model reflects that consent is an ongoing process and must be present for every sexual act. This marks a shift away from a "no means no" model of consent whereby silence can be interpreted as consent. This is important, as victims and survivors may experience the "freeze" response in non-consensual situations and be unable to verbally communicate that they are not consenting.¹³

- 1.20 Mr Nathan MacDonald, Deputy Director of Policy at the Law Council of Australia, explained that the affirmative consent model and the communicative consent model are similar in that they both require 'positive consent...communicated between parties'. The difference between the two models is that affirmative consent has an extra element of requiring an accused to demonstrate that they said or did something to ensure that there was consent.¹⁴

¹⁰ Note: the Commonwealth has limited responsibility for sexual offences: *Criminal Code Act 1995* (Cth), Divisions 71, 268, 272–273 and 474; Attorney-General's Department (AGD), *Submission 38*, p. 10.

¹¹ AGD, *The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault, 2022|2027*, 2022, p. 8.

¹² See, for example: Ms Anabella Dumas, *Submission 25*, Tables 1 and 2; Voices of Influence Australia, *Submission 34*, Appendix 1; AGD, *Submission 38*, pp. 8–10; Law Council of Australia, *Submission 73*, Attachment 1.

¹³ Australia's National Research Organisation for Women's Safety, *Submission 69*, pp. 2–3.

¹⁴ Mr Nathan MacDonald, Deputy Director of Policy, Law Council of Australia *Committee Hansard*, Sydney, 27 July 2023, p. 9.

Prevalence of sexual assault

- 1.21 In 2020, the Australian Institute of Health and Welfare (AIHW) reported that sexual assault is a major health and welfare issue in Australia, with many victim-survivors experiencing broad and long-term effects. These effects include physical injuries, mental health impacts, and disruption to everyday activities (such as eating and sleeping habits).¹⁵
- 1.22 Women and men who experience sexual assault often find it difficult to discuss this experience. Ms Tosca Looby, Creative Director for Northern Pictures, found that, in making her documentary:
- So many people were telling us their stories off the record and not being able to speak out more publicly than that about what had happened to them...[T]here were so many people who got quite a long way with us in terms of telling their stories and then, for all sorts of reasons that we certainly respect, they had to stop.¹⁶
- 1.23 Ms Jess Hill, Presenter and Consultant Producer for Northern Pictures and the SBS, noted that, although a national conversation has begun, cultural inhibitions continue to prevent men from participating comfortably in that conversation:
- There is almost a taboo around young men talking about sexual violence both as people who have been victimised but also as people who have perpetrated it. That's something culturally that we really need to address...It's a real risk...that we end up stoking male resentment by not welcoming them into the conversation.¹⁷
- 1.24 According to the Australian Bureau of Statistics (ABS) 2021–22 Personal Safety Survey, an estimated 2.8 million people aged 18 years and over (14 per cent of the adult population) have experienced sexual violence (assault and/or threat) since the age of 15. One in five women (two million) had experienced sexual assault and one in 20 men (438 800) had experienced sexual assault.¹⁸
- 1.25 The Australian Longitudinal Study on Women's Health suggested, however, that there is a much higher prevalence of sexual violence against women than

¹⁵ Australian Institute of Health and Welfare, 'Sexual assault in Australia', 28 August 2020, www.aihw.gov.au/reports/domestic-violence/sexual-assault-in-australia/contents/summary (accessed 1 September 2023). Also see: Centre for Women's Health Research and Australian Longitudinal Study on Women's Health, *Submission 22*, p. [4].

¹⁶ Ms Tosca Looby, Creative Director, Northern Pictures, *Committee Hansard*, Canberra, 25 July 2023, p. 3.

¹⁷ Ms Jess Hill, Presenter and Consultant Producer, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, Canberra, 25 July 2023, p. 3.

¹⁸ Australian Bureau of Statistics, 'Personal Safety, Australia', 15 March 2023, www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release (accessed 1 September 2023).

has been reported.¹⁹ The National Association of Services Against Sexual Violence supported this view: ‘sexual violence is much more common than previously thought’.²⁰

- 1.26 Ms Padma Raman, Chief Executive Officer of ANROWS, referenced one of its recent research reports, which found:

...the lifetime prevalence of sexual violence amongst women is shocking. This research indicated that 51 per cent of women in their 20s had experienced sexual violence and that 34 per cent of women in their 40s and 26 per cent of women aged 68 to 73 had experienced sexual violence. These rates were higher for women with disability or illness.²¹

- 1.27 From the ABS 2016 *Personal Safety Survey*, and subject to the limitations of that data, the AIHW also presented information indicating that certain populations are more likely to experience sexual assault: the homeless, people with disability or long-term health conditions, people who identify as LGBTIQ+, First Nations people, and people from CALD communities.²²

Standing Council of Attorneys-General

- 1.28 On 12 August 2022, the Standing Council of Attorneys-General (SCAG, formerly the Meeting of Attorneys-General) endorsed the *Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–27* (the SCAG Work Plan).²³
- 1.29 Under the SCAG Work Plan, each jurisdiction agreed to take collective and individual action to improve the experiences of victim-survivors of sexual

¹⁹ Centre for Women’s Health Research and Australian Longitudinal Study on Women’s Health, *Submission 22*, p. 2. For more information on the Australian Longitudinal Study on Women’s Health, see: Women’s Health Australia, <https://alswh.org.au/> (accessed 1 September 2023).

²⁰ National Association of Services Against Sexual Violence, *Submission 23*, p. 3. Also see: Ms Angela Lynch, Executive Officer, Secretariat of the Queensland Sexual Assault Network, *Committee Hansard*, Sydney, 27 July 2023, p. 46, who noted that ‘the victims are getting younger, and the acts of violence more violent’.

²¹ Ms Padma Raman, Chief Executive Officer, Australia’s National Research Organisation for Women’s Safety (ANROWS), *Committee Hansard*, Canberra, 25 July 2023, p. 34. Also see: ANROWS, *A life course approach to determining the prevalence and impact of sexual violence in Australia: Findings from the Australian Longitudinal Study on Women’s Health*, Research Report Issue 14, August 2022, p. 8.

²² Australian Institute of Health and Welfare, ‘Sexual assault in Australia’, August 2020, p. 3, www.aihw.gov.au/getmedia/0375553f-0395-46cc-9574-d54c74fa601a/aihw-fdv-5.pdf.aspx?inline=true (accessed 1 September 2023). Also see: WESNET, *Submission 53*, p. 2, which noted that these are intersectional factors, meaning that particular individuals or communities might be at heightened risk.

²³ Meeting of Attorneys-General, *Communiqué*, 12 August 2022, p. 2, www.ag.gov.au/sites/default/files/2022-08/meeting-attorneys-general-communique-august-2022.pdf (accessed 1 September 2023).

assault in the criminal justice system. The plan identified the following three priority areas:

1. strengthening **legal frameworks** to ensure victim-survivors have improved justice outcomes and protections, wherever necessary and appropriate, across Australia
2. building **justice sector capability** to better support and protect victim-survivors
3. supporting **research and greater collaboration** to identify best practices, and to ensure actions are supported by a sound and robust evidence base.²⁴

1.30 In relation to Priority 1: Legal Frameworks, the workplan identified as a short to medium term initiative (one to three years) a review and possible reform options for the criminal law relating to sexual offences:

1.1 Criminal laws: Review the criminal offences and legal definitions (including consent) relating to sexual offending in the context of the unique characteristics of each jurisdiction's legislative framework and criminal justice system and, if necessary, consider progressing and implementing appropriate reforms.²⁵

1.31 Immediately following SCAG's August 2022 meeting, the federal Attorney-General, the Hon Mark Dreyfus KC MP, announced that work would begin on Initiative 1.1:

The Attorney-General's Department [AGD] and the Australian Institute of Criminology [AIC] will review the definitions of consent, as well as broader definitions relating to sexual assault and child sexual abuse. This will include legislation with respect to consent and stealthing, which has been the subject of recent calls for reform from advocates.²⁶

1.32 The AGD advised that this review is analysing legislation across Australia to identify any gaps and inconsistencies, and is examining any implications of

²⁴ AGD, *The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault, 2022|2027*, 2022, p. 7 (bold in the original), www.ag.gov.au/system/files/2022-08/MAG-work-plan-strengthen-criminal-justice-responses-to-sexual-assault-2022-2027.pdf (accessed 1 September 2023). Note: Priorities 1 to 3 each comprise specific initiatives that jurisdictions will endeavour to consider, with discretion to progress, over the lifespan of the SCAG Work Plan.

²⁵ AGD, *The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault, 2022|2027*, 2022, p. 8 (bold in the original).

²⁶ Hon Mark Dreyfus QC MP, Attorney-General, 'Meeting of Attorneys-General progresses actions to address family, domestic and sexual violence', *Media Release*, 13 August 2022, www.markdreyfus.com/media/media-releases/meeting-of-attorneys-general-progresses-actions-to-address-family-domestic-and-sexual-violence-mark-dreyfus-qc-mp/ (accessed 1 September 2023). Note: the term 'stealthing' refers to non-consensual act of removing or tampering with a condom before or during sexual intercourse.

those gaps or substantive inconsistencies, while additionally exploring best practice approaches.²⁷

1.33 As at the time of writing, the AIC national review is in its final stages. An interim report has been provided to the SCAG officials-level National Working Group on Criminal Justice Responses to Sexual Assault and relevant Commonwealth agencies, for feedback in early August 2023. A final report is expected to be published in December 2023, subject to editing processes.²⁸

1.34 In submissions to the inquiry, several state and territory governments reiterated their commitment and support for the objectives of the SCAG Work Plan.²⁹ The AGD noted:

While legislation and legal frameworks relating to sexual violence are predominantly the responsibility of states and territories, the scale and severity of sexual violence makes consideration of laws and the improvement of criminal justice responses to sexual assault a national priority.³⁰

Structure of the report

1.35 This report comprises five chapters, as follows:

- Chapter 1 provides an introduction, background and context to the inquiry;
- Chapter 2 discusses the similarities and differences in Australia's sexual consent laws, the case for and against the national harmonisation of these laws, and the limitations of law reform in this area;
- Chapter 3 examines police responses to reports of sexual assault and victim-survivors' experiences within the criminal justice system;
- Chapter 4 discusses the need for improved consent education in primary and secondary schools, tertiary settings and the Australian community; and
- Chapter 5 sets out the committee's findings and recommendations.

Note on references

1.36 In this report, references to the *Committee Hansard* transcript are to proof (uncorrected) transcripts. Page numbers may vary between the proof and official (corrected) transcripts.

²⁷ AGD, *Submission 38*, p. 7. Note: further details on the content of the review are provided at pp. 7–8.

²⁸ AGD, answer to question on notice, 25 July 2023 (received 16 August 2023). Also see: Ms Julie Zezovska, Director, Responses to Sexual Assault, AGD, *Committee Hansard*, Canberra, 25 July 2023, pp. 48–49, for some detail on the scope of the national review.

²⁹ Tasmanian Government, *Submission 13*, pp. 3–4; NT Government, *Submission 20*, p. 1; Queensland Government, *Submission 51*, p. 1.

³⁰ AGD, *Submission 38*, p. 4.

Chapter 2

Australia's sexual consent laws

- 2.1 Over the last two years, New South Wales (NSW), the Australian Capital Territory (ACT), Victoria, Queensland and Tasmania have amended their sexual consent laws. Western Australia (WA) and the Northern Territory (NT) are currently considering legislative reform, and South Australia is not currently reviewing its sexual consent laws.
- 2.2 The Law Council of Australia (Law Council) compiled a table of the sexual consent laws across Australia.¹ This compilation shows the similarities and differences in the laws and, due to its comprehensive nature, has been of great assistance throughout the inquiry.
- 2.3 Another highly useful contribution by the Law Council was its distinction between the two criminal law approaches adopted in Australia:
- the common law jurisdictions—NSW, Victoria and South Australia—rely on common law and statute law to proscribe criminal conduct; and
 - the code jurisdictions—Queensland, WA, Tasmania, the NT and the ACT—rely only on statute law to proscribe criminal conduct.²
- 2.4 Submitters and witnesses acknowledged the jurisdictional variance, including in relation to the definition of ‘consent’.³ This chapter of the report discusses the following matters:
- the definition of ‘consent’ and concerns about legislative inconsistency;
 - the national harmonisation of sexual consent laws; and
 - the limitations of sexual consent law reform.

Definition of ‘consent’

- 2.5 In 2010, the Australian Law Reform Commission (ALRC) and the NSW Law Reform Commission recommended that federal, state and territory sexual offence provisions contain a statutory definition of ‘consent’ based on the concept of ‘free and voluntary agreement’:

...a definition based on agreement properly reflects the two objectives of sexual offences law: protecting the sexual autonomy and freedom of choice

¹ Law Council of Australia, *Submission 73*, Attachment 1.

² Law Council of Australia, *Submission 73*, p. 8.

³ See, for example: Dr Natalia Antolak-Saper, *Submission 47*, p. 3; Legal Aid NSW, *Submission 75*, p. 9.

of adults; and reinforcing both positive and communicative understandings of consent through use of the term agreement.⁴

2.6 The Law Council submitted that, in general, all jurisdictions now define sexual consent based on a variation of the concept of ‘free and voluntary agreement’, which reflects the communicative consent model.⁵ Submitters and witnesses agreed that this creates a level of consistency across jurisdictions.

2.7 The Law Council noted that in two jurisdictions—Queensland and WA—the definition of ‘consent’ requires consent to be ‘freely and voluntarily given’. The law reform commissions in those states have questioned whether there is any real significance with the different terminology:

...the Law Reform Commission of Western Australia noted that the Supreme Court of WA has held that ‘consent requires, in effect, an agreement as to what it is that is being consented to’ and that ‘consequently, changing the wording of the [*Criminal Code Act Compilation Act 1913 (WA)*] provision to refer to agreement may have little effect...[T]he Queensland Law Reform Commission was doubtful that the difference in terminology between Queensland and other jurisdictions in relation to the expression of the definition of sexual consent had any practical significance. That Commission reasoned that the current definition of consent already reflects a communicative model of consent, in that it requires consent to be ‘given’ (that is, communicated) to the other person and the introduction of a new term like ‘agreement’ would not substantially change the operation of the law, and might contribute to uncertainty in interpretation because of the loss of case law guidance applying to the existing definition.⁶

2.8 The Law Council suggested that there are more significant legislative differences, such as in the elaboration of circumstances where consent is vitiated (see ‘Circumstances that vitiate consent’ below) and applicable defences that inform the application of the definition of sexual consent in particular cases (see ‘Mental state requirement’ below). Its submission also noted important differences in the rules of criminal evidence and procedure.⁷

⁴ Australian Law Reform Commission (ALRC) and NSW Law Reform Commission, *Family Violence—A National Legal Response, Final Report*, ALRC Report 114, Vol. 1, October 2010, paragraph 25.86, www.alrc.gov.au/wp-content/uploads/2019/08/ALRC114_WholeReport.pdf (accessed 1 September 2023). Also see: WESNET, *Submission 53*, p. 1; National Foundation for Australian Women, *Submission 54*, p. 2, who commented that ‘consent goes to the heart of upholding women’s rights to bodily autonomy, agency and self-determination’.

⁵ Law Council of Australia, *Submission 73*, p. 10.

⁶ Law Council of Australia, *Submission 73*, pp. 10–11.

⁷ Law Council of Australia, *Submission 73*, p. 10. Also see: Mr Richard Wilson SC, Co-Chair, National Criminal Law Committee, Law Council of Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 3.

Circumstances that vitiate consent

- 2.9 All jurisdictions set out an exhaustive or non-exhaustive list of circumstances in which people do not consent to a sexual activity.⁸ Dr Natalia Antolak-Saper, a comparative criminal law expert based at Monash University, submitted that, the lists ‘typically include factors such as force or the fear of force, circumstances affecting consciousnesses [sic], fraud, unlawful detention, and abuse of authority’.⁹
- 2.10 Submitters and witnesses commented, however, on circumstances that are not considered uniformly as vitiating factors, such as domestic and family violence (DFV) and capacity.¹⁰

Dynamics of domestic and family violence

- 2.11 Women’s Legal Services Australia (WLSA) submitted that coercion, which is commonly included in legislation as a vitiating factor, intersects with DFV, which is not a vitiating factor for consent in all jurisdictions.¹¹
- 2.12 WESNET, a national peak body for specialist women’s DFV services, and the National Foundation for Australian Women explained that the concept of consent is particularly ‘fraught’ in this context, as there are several overlapping dynamics:

DFV involves the exertion of power and control, and the exploitation of power imbalances, enabling the more powerful to drive and develop relationship parameters which may involve sexual violence...The nature of DFV, and the coercive control inherent within it, blends the lines between ‘normal’ and not. Combined with the effect of trauma on diminishing self-worth, self-esteem and autonomy, this can render people more likely to enter into and stay within an abusive relationship.¹²

- 2.13 WLSA agreed that sexual assault is frequently part of a broader pattern of coercive control, relationship dependence, power imbalance and violence, which can obfuscate whether consent is being freely given:

Domestic and family violence can create a climate of entrenched fear which makes it difficult to facilitate or negotiate safe sexual activity. At times, a natural response to coercive control will be to compromise autonomy to manage safety. In such situations, women may prioritise other aspects of physical safety for themselves and others, rather than take the risk of

⁸ See: Law Council of Australia, *Submission 73*, Attachment 1, Column 4 (Circumstances where consent is vitiated).

⁹ Dr Natalia Antolak-Saper, *Submission 47*, p. [3].

¹⁰ Note: another circumstance raised in submissions was stealthing.

¹¹ Women’s Legal Services Australia, *Submission 52*, p. 6. Also see: Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 10.

¹² National Foundation for Australian Women, *Submission 54*, p. 7. Also see: WESNET, *Submission 53*, pp. 1–2.

triggering an escalation of violence or abuse by refusing to engage in sexual activity.¹³

- 2.14 WLSA argued that consent in family and like relationships must be understood as being within ‘an entrapment context that is riddled with risks, survival mechanisms, and based on the perpetrator’s establishment of power’. It argued:

It is vitally important that all sexual consent laws respond to the complex dynamics of coercive control, and acknowledge that there is no consent where a sexual act is submitted to because they are a victim of coercive control.¹⁴

- 2.15 Women With Disabilities Australia (WWDA) also supported the recognition of power imbalances in sexual consent laws, advising that these imbalances often foreshadow sexual violence against women and girls with disability.¹⁵

Capacity of people with disability

- 2.16 WWDA highlighted particularly that sexual consent laws sometimes do not recognise and uphold the agency, autonomy and abilities of women with disability. In its view, legislative provisions should be more nuanced to properly balance protection and human rights.¹⁶

- 2.17 Queensland Advocacy for Inclusion (QAI) agreed that sexual consent laws can infringe the human rights of people with disability, by limiting their right to sexual expression. To illustrate its argument, QAI referenced section 216 of the *Criminal Code Act 1899 (Qld)*, which criminalises sexual activity involving a person with an ‘impairment of the mind’ (as defined):

Assumptions about a person’s capacity cannot and should not be drawn simply from the presence of an impairment. All adults at law are presumed to have decision-making capacity until proven otherwise and capacity should be assessed on a decision-by-decision basis...including decisions about engaging in sexual activity...Singling out people with an ‘impairment of the mind’ and denying their right to sexual expression is discriminatory to people with disability in the sense that they are treated less favourably than others by the law. This is contrary to various legal instruments...exemplifies antiquated attitudes towards people with disability and perpetuates harmful stereotypes that conceptualise people with disability as ‘victims’ or asexual, unable to enjoy autonomy over their bodies and unable to exercise self-determination and personal control over

¹³ Women’s Legal Services Australia, *Submission 52*, p. 6. Also see: National Foundation for Australian Women, *Submission 54*, p. 6; No To Violence, *Submission 16*, p. 10.

¹⁴ Women’s Legal Services Australia, *Submission 52*, pp. 6–7. Also see: No To Violence, *Submission 16*, p. 10; National Association of Services against Sexual Violence, *Submission 23*, p. 5; Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 10.

¹⁵ Women With Disabilities Australia, *Submission 36*, p. 5.

¹⁶ Women With Disabilities Australia, *Submission 36*, p. 5. Also see: Sexual Assault Services Victoria, *Submission 27*, p. 7.

their own lives. Such attitudes are extremely destructive and have no place within today's society.¹⁷

Mental state requirement

2.18 A key difference between the common law and code jurisdictions is the mental state requirement for sexual offences. The Law Council explained:

In common law jurisdictions, the prosecution is required to show that the accused demonstrated a specific mental state to establish the offence. In Victoria, [for example], establishing the offence of rape requires proof that:

- the accused sexually penetrated the complainant;
- the complainant did not consent to the sexual penetration; and
- the accused did not reasonably believe that the complainant consented.¹⁸

2.19 In evidence, some witnesses commented on the mental state requirement and in particular, the requirement for the accused to have said or done something 'within a reasonable time', in order for a belief in consent to be reasonable (for example, subsection 61HK(2) of the *Crimes Act 1900* (NSW); subsection 36A(2) of the *Crimes Act 1958* (Vic)).

2.20 Mr William Douglas, Acting Manager Policy and Research at No to Violence, shared the view of Dr Rachael Burgin, Chief Executive Officer of Rape and Sexual Assault Research and Advocacy (RASARA), when he queried the meaning of the phrase 'within a reasonable time':

... 'reasonable' time' is ambiguous... and that needs to be looked at, because there's nothing in the research evidence that gives a clear picture of what that reasonable time is, and that could be interpreted in many different ways.¹⁹

2.21 In contrast to the common law jurisdictions, sexual offences in code jurisdictions usually do not contain a mental state requirement as an element of the offence. The Law Council referenced the Law Reform Commission of Western Australia which has highlighted that an accused's mental state is relevant to a defence only:

The Law Reform Commission of Western Australia noted that, in code jurisdictions, establishing rape would only require proof that the accused committed the relevant conduct (for example, sexual penetration) and (if relevant) that the complainant did not consent to that conduct. Critically,

¹⁷ Queensland Advocacy for Inclusion, *Submission 33*, pp. 4–5 and 5–6.

¹⁸ Law Council of Australia, *Submission 73*, p. 8. Also see: *Crimes Act 1958* (Vic), ss. 38(1).

¹⁹ Mr William Douglas, Acting Manager Policy and Research, No to Violence, *Committee Hansard*, Melbourne, 26 July 2023, p. 5. Also see: Dr Rachael Burgin, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 21.

the accused's mental state would only be relevant to defences contained in the code such as mistake of fact.²⁰

Mistake of fact defence

2.22 Some code jurisdictions—Queensland, WA and Tasmania—have a mistake of fact defence.²¹ This defence enables an accused to argue that there was an honest and reasonable, but mistaken, belief that a complainant consented to a sexual activity.

2.23 The Law Council advised that 'there is some convergence in code jurisdictions to clarify the scope of mistake of fact defences in their application to sexual offence cases, to better realise communicative consent principles'. Its submission cited the example of subsection 348A(2) of the *Criminal Code Act 1899* (Qld):

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.²²

2.24 Notwithstanding these reforms, some submitters argued that the mistake of fact defence should be removed entirely from sexual consent laws, as it conflicts with the affirmative consent standard (see Chapter 1). Australia's National Research Organisation for Women's Safety (ANROWS) submitted, for example:

The mistake of fact defence undermines the principles and positive duty of the affirmative consent model, which requires individuals to take active steps to ensure that the other party is providing clear and ongoing consent.²³

2.25 WLSA agreed, explaining that the mistake of fact defence creates a loophole:

Although the law in most jurisdictions provides that a failure to offer physical resistance does not of itself constitute consent, a perpetrator could still argue that because the victim-survivor did not resist they had reason to believe they were consenting, and that in light of the lack of resistance their belief was reasonable.²⁴

²⁰ Law Council of Australia, *Submission 73*, pp. 8–9. Also see: *Criminal Code Act Compilation Act 1913f* (WA), ss. 325(1). Note: the exception is the Northern Territory where the offence of sexual intercourse without consent contains a mental state requirement: *Criminal Code Act 1983* (NT), ss. 192(3)–(4A).

²¹ See: Law Council of Australia, *Submission 73*, Attachment 1, Column 5 (Knowledge about consent).

²² Law Council of Australia, *Submission 73*, p. 9. Also see: Queensland Sexual Assault Network, *Submission 4*, p. 3, which stated that this change and changes to the definition of 'consent' will shortly result in an affirmative consent standard. Note: similar reforms to the ambit of the mistake of fact defence are currently being considered in Western Australia.

²³ Australia's National Research Organisation for Women's Safety, *Submission 69*, p. 3. Also see: One Woman Project, *Submission 37*, p. [2]; Dr Rachael Burgin, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 21.

²⁴ Women's Legal Services Australia, *Submission 52*, p. 11.

Intoxication

2.26 At the public hearings, several witnesses addressed the subject of intoxication being used as a shield when invoking the mistake of fact defence. ANROWS Chief Executive Officer, Ms Padma Raman, commented that intoxication combined with the defence perpetuates common rape myths, in particular: an intoxicated man is less responsible for perpetrating sexual assault.²⁵

2.27 In this context, Ms Karen Iles, Director and Principal Solicitor of Violet Co Legal and Consulting, also referred to two rape myths that she fully rejected:

...one of the first myths to unpack in all of this—a sense that sometimes victim survivors may not know that they are being raped. I would like to say that is absolute poppycock. Victim survivors know when we are being raped. I kicked and I fought like hell. I said, 'No. Stop. Get off me' repeatedly. I bit. I had to be held down. I was locked in a room. I was threatened in the presence of a weapon. I had a dirty sock shoved in my mouth to muffle the noise...I wasn't confused and I would suggest my rapists were not confused. Regardless, I was 14 years old. I was a child. I was incapable of consent.²⁶

2.28 Ms Iles continued:

...I would like to unpack myth No. 2—that perpetrators, criminals, don't know when they are raping. I would submit that many do. To say otherwise is a polite and somewhat palatable way of excusing rape...In my experience—I will refer now as a solicitor—of being in conversation with defence lawyers, it is a tactic that is used by those who are accused of sexual assault to say that they didn't know and that they were confused.²⁷

2.29 Ms Angelique Wan, Chief Executive Officer and Co-Founder of Consent Labs, emphatically stated that 'intoxication can never be used as an excuse for sexual violence':

You may liken it to another act of violence, which is punching someone. You would still know even if you had consumed alcohol or another drug that punching someone is morally or ethically wrong and that you should not do it. Sexual violence should be considered in the same way.²⁸

²⁵ Ms Padma Raman, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, *Committee Hansard*, Canberra, 25 July 2023, p. 36.

²⁶ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, 25 July 2023, p. 41.

²⁷ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, 25 July 2023, p. 41.

²⁸ Ms Angelique Wan, Chief Executive Officer and Co-Founder, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, p. 16. Also see: Ms Chanel C. Contos, Founder and Chief Executive Officer, Teach Us Consent, *Committee Hansard*, Canberra, 25 July 2023, p. 16.

Affirmative consent standard

2.30 As part of their recent legislative reforms, three jurisdictions—NSW, Victoria and the ACT—introduced an affirmative consent standard into their sexual consent laws, whereby an accused is required to do or say something to find out whether a person consents to a sexual activity.²⁹

2.31 Dr Burgin from RASARA explained that affirmative consent is a social theory of consent that wasn't designed to be a legal principle:

So that translation of affirmative consent into law and legal practice is really what we're still grappling with...Ultimately, if we want to have an affirmative consent standard at law, we require certain elements to be present in the criminal law, including within the definition of consent but also more broadly in the fault element to the crime or the mistake of fact excuse, depending on the jurisdiction. Affirmative consent requires that consent is active and performative, that all parties to a sexual act are indicating through their actions and words that they want to consent. That means that someone's silence or passivity obviously doesn't equate to consent and that a person doesn't need to say no or withdraw consent.³⁰

2.32 Ms Saxon Mullins, Director of Advocacy at RASARA, elaborated on what this looks like in practice:

It is you engaging in a sexual activity with somebody. You are asking them continually whether they want to be here and whether they are having a good time and they are continually giving you that response that they do and that they are. When you break it down in that way, I think it seems as simple as it really is.³¹

2.33 Ms Mullins noted that the affirmative consent standard would overcome the rejection of legitimate trauma responses—'fawning' and 'freezing'³²—that are

²⁹ See: *Crimes Act 1900* (NSW), subsection 61HK(2); *Crimes Act 1958* (Vic), paragraph 36A(2); *Crimes Act 1900* (ACT), ss. 67(4). Also see: Tasmanian Government, *Submission 13*, p. 4, where the government argued that Tasmania has been 'a leader in affirmative consent models' since 2004.

³⁰ Dr Rachael Burgin, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 18. Also see: Dr Natalia Antolak-Saper, *Submission 47*, p. 3; Ms Julia Cooper, Executive Director and Head of Legal Research, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, pp. 12–13.

³¹ Ms Saxon Mullins, Head of Advocacy, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 18.

³² Note: 'fawning' is a common survival response during sexual assault, which means the victim survives by appeasing the abuser; 'freezing' is also a common survival response during sexual assault, where the body freezes, including being unable to talk, feeling temporarily paralysed and dissociating.

perpetuated by rape myths: '[the standard] does overcome that one small barrier of making sure that people are asking and the consent is given'.³³

- 2.34 Mr Andrew Doherty described his own experience of a freeze response and indicated why recognition and understanding of that response is so important for victim-survivors seeking justice:

...the fragments that I do remember were tiny, bizarre details, not what you would expect someone in that position to remember...The laws are set up in such a way that I'm supposed to clearly remember not freezing and speaking clearly and putting down a memo: 'I would like to stop being raped, please. Oh, what is the time? That's the time. That's when I said it. I looked at my watch.' If that's what's expected of people who've been through significant trauma...then we will always be in a situation where rapists, who get to make up their narrative, are winning against victims, who are encouraged to tell the truth...[V]ictims who freeze and become dissociative are not going to remember particularly saying anything. If they do, what they tell you that they remember is going to either sound bizarre or not be helpful, in most cases.³⁴

- 2.35 In relation to dispelling rape myths, Ms Mullins said that 'there is a lot of focus on jurors and what sort of notions they bring to trials', however, this underestimates the influence of judicial officers and legal practitioners:

Our judges don't understand this. Our prosecutors don't understand this. Our defence lawyers don't understand this. We can't be expecting them to guide a jury through what can be a confusing system with the right ideas when they don't have them.³⁵

Improved protection for victim-survivors

- 2.36 Many submitters and witnesses welcomed implementation of the affirmative consent standard, which, they argued, provides better and fairer protection for victim-survivors of sexual assault.

- 2.37 No to Violence argued that affirmative consent aims to deliver justice where the criminal justice system has failed:

It has been common in sexual assault trials for the defence (representing the accused person) to challenge the Crown's (prosecution) ability to prove non-consent by citing evidence that the complainant (victim-survivor) did nothing to show non-consent, such as her silence or lack of resistance. Under reforms on affirmative consent, evidence that a person or complainant

³³ Ms Saxon Mullins, Head of Advocacy, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 19.

³⁴ Mr Andrew Doherty, private capacity, *Committee Hansard*, Melbourne, 26 July 2023, p. 13.

³⁵ Ms Saxon Mullins, Head of Advocacy, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 22.

(victim-survivor) did not say or do anything to communicate consent will be evidence of non-consent – which becomes a prosecution strength.³⁶

2.38 Similarly, Legal Aid NSW highlighted that the affirmative consent standard dispenses with the concept of assumption: ‘if a victim does not actively affirm their consent to sexual activity an accused cannot assume that their silence means “yes”’.³⁷

2.39 The National Foundation for Australian Women submitted:

Personal agency includes the right to decide freely when and with whom to have sex...[The affirmative consent model] represents a significant divergence from the historical emphasis on when consent is not given or not obtainable, rather than when it is...[A]ffirmative consent means that consent is actively sought and actively communicated. This switches the emphasis from the actions of the victim-survivor to the actions of the perpetrator, and from a ‘no means no’ standard to ‘yes means yes’.³⁸

2.40 WESNET remarked that the ‘switch’ is fairer and more balanced:

...an individual seeking to have sex with another person must obtain clear, express consent from them before (and while) engaging in a sexual act. It circumvents some of the complexities and subjectivities associated with contemplation of the perpetrator’s beliefs and the victim’s behaviour.³⁹

Fundamental legal principles and protections for the accused

2.41 Some stakeholders acknowledged the current and important focus on improving the experience of victim-survivors in the criminal justice system. They cautioned, however, that the rights of the accused should not be overlooked. Liberty Victoria argued that sexual consent law reforms have challenged fundamental legal protections and principles for accused persons:

Any reforms to the law of consent, or to sexual offences more broadly, need to ensure that the presumption of innocence, the right to silence, and the right to a fair trial are still protected.⁴⁰

2.42 The Law Council agreed that the fundamental principles that underpin the criminal justice process must be maintained. One such principle is the

³⁶ No To Violence, *Submission 16*, p. 9. Also see: Dr Julia Quilter, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 15, who said that rape myths and stereotypes continue to frame evidence and submissions in sexual offence trials.

³⁷ Legal Aid NSW, *Submission 75*, p. 7.

³⁸ National Foundation for Australian Women, *Submission 54*, p. 2. Also see, for example: Sexual Assault Services Victoria, *Submission 27*, p. 7; Dr Natalia Antolak-Saper, *Submission 47*, p. [4]; WESNET, *Submission 53*, p. 1.

³⁹ WESNET, *Submission 53*, p. 1.

⁴⁰ Liberty Victoria, *Submission 43*, pp. 6 and 24. Also see: Mr Michael Stanton, President, Liberty Victoria, *Committee Hansard*, Melbourne, 26 July 2023 p. 29, where he noted the difficulties with statistics in this area.

presumption of innocence and the onus upon the Crown to prove guilt beyond reasonable doubt.⁴¹

- 2.43 The Law Council referenced the Victorian Law Reform Commission, which also reiterated the importance of maintaining these fundamental principles of the common law within the context of sexual offending:

Changing fundamental features of our criminal justice system, such as the burden and standard of proof or the adversarial nature of the trial, would have wide-ranging effects, including on the right to a fair trial. Any such changes would need to have strong support and evidence. We did not find such support or evidence in this inquiry.⁴²

- 2.44 The Law Council observed that some stakeholders consider recent implementation of an affirmative consent model in Victoria to be unnecessary, with a detrimental impact on the fundamental principles of the criminal justice system:

The Law Institute of Victoria, the Victorian Bar and other civil society stakeholders, such as Liberty Victoria expressed concerns arising from the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic). They said that some aspects of the reforms, which effectively impose an obligation on an accused person to give evidence to demonstrate what steps he or she took to ascertain consent [the affirmative consent standard], were not necessary to realise communicative consent and unacceptably erode the presumption of innocence and the right to silence.⁴³

- 2.45 Dr Rachael Burgin from RASARA responded by expressing the view that such concerns are always raised whenever ‘something that is deemed radical arises’. She staunchly rejected the evidentiary basis for any such concern:

...there's no evidence, firstly, that affirmative consent undermines the presumption of innocence. It certainly doesn't reverse any right to silence in that it doesn't change laws around whether a person has to take the stand. We don't hold weight to those criticisms. There is no evidence to support that it will result in increased wrongful convictions. Some criticism is that we will see more people ending up in court held accountable for their behaviour. We would welcome that.⁴⁴

Unintended consequences for young people

- 2.46 Liberty Victoria submitted that Victoria's 2014 sexual consent law reform had already provided for an affirmative model of consent. It noted that this reform

⁴¹ Law Council of Australia, *Submission 73*, p. 18.

⁴² Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences*, September 2021, p. 413.

⁴³ Law Council of Australia, *Submission 73*, p. 19. Also see: Liberty Victoria, *Submission 43*, p. 24.

⁴⁴ Dr Rachael Burgin, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 19.

has not yet been evaluated, and expressed concern in relation to further complexities and potential unintended consequences:

...there have been many significant reforms to sexual offence provisions over the past decade, which have in practice resulted in much stronger directions on consent and consent-negating circumstances in criminal trials, including whether an accused person's belief in consent is reasonable. In that context, the impact of some of these proposed reforms should not be overstated...[T]he impact of the previous and significant reforms made in relation to sexual offences need to be properly considered and evaluated before adding these additional layers of complexity to an already highly complex area of the law, which may have unintended consequences.⁴⁵

2.47 The Law Council highlighted that sexual offences are disproportionately investigated and prosecuted against teenagers and other young people. It suggested that sexual inexperience makes young people more vulnerable to sexual offending and also places them at higher risk of contravening the criminal law.⁴⁶

2.48 The Law Council noted that some of its constituent bodies (notably, those based in Victoria) have expressed concern that 'rigid requirements on young people to take active steps to ascertain consent' could disproportionately affect them.⁴⁷

2.49 Ms Iles from Violet Co Legal and Consulting strongly rejected any suggestion that the legal requirements should be any different for young people:

For young people, the largest single cohort of perpetrators are boys and men aged 15 to 19 years of age...I do not think they should be given a free pass. I don't think that the expectations on them should be any different...[Y]oung men in our society should absolutely be expected to understand right from wrong...As a society, can we do better in supporting boys and young men to understand the law? Absolutely.⁴⁸

2.50 WLSA's Executive Officer, Ms Lara Freidin, agreed:

...young men or boys between the ages of 15 and 19 are the single largest cohort of offender. So what we really need to be focusing on is how we hold

⁴⁵ Liberty Victoria, *Submission 43*, pp. 16 and 18. Also see: pp. 12–14.

⁴⁶ Law Council of Australia, *Submission 73*, p. 17.

⁴⁷ Law Council of Australia, *Submission 73*, p. 17.

⁴⁸ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, Canberra, 25 July 2023, p. 45. Also see: Mr William Douglas, Acting Manager Policy and Research, No to Violence, *Committee Hansard*, Melbourne, 26 July 2023, p. 6; Ms Taylah Spirovski, Chief Executive Officer, Voices of Influence Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 23; Mr Luke Murphy, President, Law Council of Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 8.

those young boys accountable or how we educate them to think differently about consent, and I think that should be the focus of reform in this space.⁴⁹

- 2.51 Ms Jacqui Watt, Chief Executive Officer of No to Violence, referenced the significant proportion of women who do not report sexual assaults. She argued that this has resulted in sexual violence not being properly addressed by the criminal justice system:

Using complexity or the fact that some people might be harmed by this [reform] is not a reason not to do it...[T]his is not about seeking to use legislation to change behaviour; it's about making a level playing field in the judicial process so that everyone knows where they stand and to remove some ambiguity that exists across jurisdictions and laws.⁵⁰

- 2.52 Mr Michael Bradley, Director of the Grace Tame Foundation, also rejected arguments of the potential over-criminalisation of young people as a 'nonsense':

The easiest way to look at that is to appreciate the current probability of a rapist being convicted, which is well under one per cent. If we moved to a national model of true affirmative consent, if all our laws embodied affirmative consent as part of the rape provisions, that might shift that less than one per cent to somewhere closer to one per cent or maybe slightly over one per cent, but that's about it. You won't get higher than that because of that change. So we're talking about something operating right at the margins of negligibility. So the whole argument is a nonsense. At a theoretical level it has all been completely misplaced because all affirmative consent does is get us closer to a position where a person—and, let's be frank, a woman—who has not consented to a sexual act will not find herself in a position where she has been raped but the law has no response to that.⁵¹

Concerns about legislative inconsistencies

- 2.53 Numerous submitters and witnesses raised concerns about inconsistencies in state and territory legislation. They argued that this national inconsistency exacerbates misunderstandings about legal rights and responsibilities, and creates challenges for national consent education.⁵²

⁴⁹ Ms Lara Freidin, Executive Officer, Women's Legal Services Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 30.

⁵⁰ Ms Jacqui Watt, Chief Executive Officer, No to Violence, *Committee Hansard*, Melbourne, 26 July 2023, p. 6.

⁵¹ Mr Michael Bradley, Director, Grace Tame Foundation, *Committee Hansard*, Melbourne, 26 July 2023, p. 66.

⁵² See, for example: No to Violence, *Submission 16*, p. 8; Sexual Health Victoria, *Submission 19*, p. 1; National Association of Services Against Sexual Violence, *Submission 23*, p. 5; We Are Womxn, *Submission 24*, p. 1; One Woman Project, *Submission 37*, p. [1]; National Tertiary Education Union, *Submission 44*, p. [2].

- 2.54 Ms Chanel Contos, Founder and Chief Executive Officer of Teach Us Consent, supported having more consistent sexual consent laws, stating that the jurisdictional variation has always been ‘bizarre’:

People travel. People go places to party, to celebrate Schoolies and all of these different things. I noticed it when Teach Us Consent was running a campaign on the criminalisation of stealthing unified across Australia. We had testimony from a young woman saying that she had been stealthed in a state where it wasn't a criminal act but she was from Victoria, where it was. She was confused why, when she was googling it, this mismatch was happening.⁵³

- 2.55 Consent Labs argued that young people do not always understand that sexual consent laws operate on a jurisdictional basis, which can affect their identification of sexual assault and decision to seek assistance or justice for the assault:

Young people under the age of consent are uniquely vulnerable to misunderstanding the laws, putting them at a disadvantage in being able to first identify when non-consensual behaviour has occurred, which then may dissuade them from seeking help from law enforcement when needed. Other compounding factors such as low education or intellectual disability can further place young people in significant vulnerability.⁵⁴

- 2.56 Voices of Influence Australia, a youth-led organisation, submitted that there should be no ambiguity when it comes to consent:

Unfortunately, under Australia’s current patchwork of consent legislation, definitions of consent, standards for proving non-consent and penalties for sexual assault offences vary widely from state to state. This sets a dangerous and precarious situation for victim-survivors of sexual assault. A non-unified definition and approach means that victim-survivors have varying experiences of the criminal justice system and levels of protections based solely on where they live or where their assault took place.⁵⁵

- 2.57 Ms Abigail Gregorio, Founder of WA Consent, described how intoxication is a vitiating factor for consent in many jurisdictions, but not in WA where she was sexually assaulted:

...it is incredibly important to have a unified approach from the government to something that is as insidious as sexual assault...It's really important because it affects how people view sexual assault. It affects how victim-survivors view their own sexual assault...When I read that other

⁵³ Ms Chanel C. Contos, Founder and Chief Executive Officer, Teach Us Consent, *Committee Hansard*, Canberra, 25 July 2023, p. 11.

⁵⁴ Consent Labs, *Submission 30*, p. 4. Also see: Sexual Health Victoria, *Submission 19*, p. 1; MacKillop Family Services and the University of Melbourne, *Submission 31*, p. 3, which highlighted the particular vulnerability of children and young people in care, especially residential care.

⁵⁵ Voices of Influence Australia, *Submission 34*, p. [6]. Also see: Body Safety Australia, *Submission 29*, p. 3, which noted the additional complexities created by the exchange of information via digital technologies.

jurisdictions did acknowledge intoxication affecting the ability to consent to sexual acts, I broke down for days. I'll be frank. I was a sobbing mess...To know that there are other people possibly getting the support that the people around me aren't getting is incredibly devastating.⁵⁶

- 2.58 On this point, the Grace Tame Foundation remarked that sexual assault does not recognise state borders:

[T]here are no contextual differences between Australian jurisdictions that justify differences in how the law responds to it. We are a single society with, presumably, commonly held basic values. One of these is that women and children should be, and feel, safe to exist without the risk of being subjected to sexual acts to which they do not (or cannot) consent. Defining what consent is should not be beyond our ability.⁵⁷

National harmonisation of sexual consent laws

- 2.59 In 1990, the Standing Committee of Attorneys-General (now the Standing Council of Attorneys-General, SCAG) commenced work on a national model criminal code for Australian jurisdictions (the Model Criminal Code, MCC).⁵⁸ The states and territories committed to implementing the MCC, however, this has not occurred as envisaged.⁵⁹
- 2.60 In 2017, Dr Arlie Loughnan, a criminal law expert based at the University of Sydney Law School, wrote:

Measured in terms of ambition and scope, the MCC was the most significant criminal law reform project in Australia's history but, measured in terms of outcomes, the MCC has not been as significant, nor as successful, as its drafters had hoped. By modelling 'best practice' in criminal law, the MCC aimed to bring Australia's nine criminal jurisdictions—six state governments, two territory governments and the federal government—into some sort of alignment. This was no easy task: in the Australian Federation, most criminal law is state-based, and Australia has both common law criminal jurisdictions (New South Wales, Victoria and South Australia) and, as a result of earlier systematising efforts, jurisdictions with criminal codes (Australian Capital Territory, Northern Territory, Queensland, Tasmania, and Western Australia, as well as the Commonwealth). Crucially, as the common law states and the code states adopt different approaches to the principles of criminal responsibility. The drafters of the MCC attempted to resolve this issue once and for all, and to generate a centripetal force in criminal law in Australia. But, with state jurisdictions taking up the MCC

⁵⁶ Ms Abigail Gregorio, Founder, WA Consent, *Committee Hansard*, Sydney, 27 July 2023, pp. 22–23.

⁵⁷ Grace Tame Foundation, *Submission 66*, p. 2.

⁵⁸ M. Goode, 'The Model Criminal Code Project', [1997] AULawLib 57, www.austlii.edu.au/au/journals/AULawLib/1997/57.pdf (accessed 1 September 2023).

⁵⁹ Northern Territory Law Reform Commission, *Submission 15*, p. 1, which noted that the Northern Territory is the only jurisdiction to have generally adopted the Model Criminal Code, which is codified in Part IIAA of the *Criminal Code 1983* (NT).

provisions in a piecemeal and uneven way, it has not been thought to have had a decisive influence on the Australian criminal law landscape.⁶⁰

Challenges for national harmonisation

2.61 Against this challenging and historical background, the Law Council submitted that there would be many—not insurmountable—challenges in achieving the national harmonisation of sexual consent laws, which it described as a ‘substantial undertaking’:

National harmonisation of sexual consent laws...would need to involve iterative consultations with all relevant stakeholders, extensive technical drafting, and a detailed implementation process. The Law Council notes that many of the challenges that might impede the adoption of model sexual consent definitions and offence provisions were obstacles in the context of the Model Criminal Code Project in the 1990s which failed to achieve wider adoption. However, the challenges...are by no means prohibitive and, with sustained consideration, may be overcome. The Law Council considers that a crucial determinant of the prospects of realising national harmonisation of sexual consent laws will be the level of granularity at which norms are prescribed.⁶¹

2.62 The Law Council then identified a number of challenges, such as the risk that frequent change in this area may undermine legal certainty:

The area of sexual offences has been subject to significant and ongoing reform across multiple jurisdictions, particularly in the last decade. Changes introduced by legislation take time to have practical effect on criminal charges before the courts...[I]t can take four to five years to ascertain whether legislative changes are having their intended effect...The experience of practitioners in this area is that frequent legislative amendment of sexual assault offence provisions and the definition of consent has resulted in the diminished applicability of case law guidance in interpreting the meaning of key provisions. This has the potential to undermine legal certainty for all parties involved. It is necessary to ensure that any reforms are evidence-based, principled, carefully considered to avoid unintended consequences, and designed to minimise the likelihood of further legislative tinkering.⁶²

2.63 In addition to complexity and uncertainty, the Law Council and other stakeholders raised jurisdictional considerations and the risk of ‘levelling down’ as challenges that would need to be overcome.

⁶⁰ A. Loughnan, ‘The Very Foundations of Any System of Criminal Justice’: Criminal Responsibility in the Australian Model Criminal Code’, *International Journal for Crime, Justice and Social Democracy*, 2016 6(3), p. 9. Also see: Dr Natalia Antolak-Saper, *Submission 47*, pp. [4–5].

⁶¹ Law Council of Australia, *Submission 73*, p. 12.

⁶² Law Council of Australia, *Submission 73*, pp. 13–14. Also see: Legal Aid NSW, *Submission 75*, p. 5; Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, pp. 9–10; Sexual Assault Services Victoria, *Submission 27*, p. 11, which all commented on the need to evaluate sexual consent law reforms.

Jurisdictional considerations

2.64 As noted in Chapter 1, the federal Parliament’s ability to make laws with respect to sexual assault is limited by the Australian Constitution. Distinguished constitutional law experts, Dr Gabrielle Appleby and Dr John Williams, have noted that ‘law and order is one of the few areas of responsibility over which the states continue to hold the reins’.⁶³

2.65 The Law Council submitted that, historically, the rationale for the distribution of residual powers to the states and territories is to enable diversity at the local level, ‘such that states and territories act as “laboratories of democracy”’. In its view, the national harmonisation of sexual consent laws risks ‘drowning out the voices of the local communities’ and crowding out ‘progressive local solutions’.⁶⁴

2.66 With respect to the local element, With You We Can, a national network of victim advocates, experts and services, argued:

Laws are inherently intertwined with social principles, and different jurisdictions with distinct cultures and values will naturally have varying laws. Maintaining diversity in consent laws has value, as it allows for the observation of evidence-based practices from progressive states that others can adopt.⁶⁵

2.67 As indicated earlier in this chapter, there are entrenched differences between the common law and code jurisdictions. The Law Council pointed out that the MCC project was unable to shift these differences despite its best intentions:

Differences between jurisdictions including differences in the specification of sexual consent definitions, sexual offences, elements of offences and applicable defences, should be viewed in the context of entrenched differences between jurisdictions that have tried, statutorily, to codify rules of evidence and procedure through implementation of the Model Uniform Evidence Bill and common law jurisdictions. Consideration should be given to the difficulties encountered in relation to material changes in the implementation of the Model Uniform Evidence Bill across states and territories, and the realities that case law interpretation in a jurisdiction may create jurisdiction-specific differences over time.⁶⁶

⁶³ G.J. Appleby and J.M. Williams (2012), ‘A New Coat of Paint: Law and Order and the Refurbishment of Kable’, *Federal Law Review*, Vol. 40 Issue 1, p. 1.

⁶⁴ Law Council of Australia, *Submission 73*, p. 14.

⁶⁵ With You We Can, *Submission 71*, p. [2]. Note: the submission added that uniformity in practice does little beyond reducing confusion about jurisdictional differences.

⁶⁶ Law Council of Australia, *Submission 73*, pp. 14–15. Also see: Queensland Government, *Submission 51*, p. 5, which argued that the divergence in criminal and evidence law, as well as practice, would make it impossible to achieve perfect harmonisation of the criminal law across Australia.

2.68 Dr Antolak-Saper made similar comments in relation to jurisdictional jurisprudence and queried whether it would even be possible to agree on a range of sexual offences where consent is a critical element:

The interaction of consent with other elements of sexual offences can be complex and varied. It would be challenging for one element to be decoupled from the others and given uniform expression. For it to have the desired effect, the whole of the sexual offence frameworks ought to be harmonised including, for example, sexual assault, indecent assault, and procuring sexual acts by threat or fraud.⁶⁷

2.69 The Tasmanian Government agreed that definitions and other elements of sexual offences cannot be assessed in a vacuum. Its submission argued that, in Tasmania, the consent provisions are intertwined with other fundamental parts of the law:

Taken together, the linkage of Tasmania's consent definition with the various offence and criminal responsibility provisions across the rest of the Criminal Code should ensure fair trials, limit the application of (inherently limited) potential legal defences by requiring assessment of the reasonableness of an accused's belief, and counter harmful, wrong stereotypes about consent, victim response and relational power dynamics... These are required to work together not to create complexity, but to ensure that the Criminal Code operates holistically and reliably for all complainants and accused persons, in relation to all Tasmanian indictable criminal offences.⁶⁸

2.70 The Tasmanian Government cautioned that jurisdictional differences in criminal law frameworks do not necessarily mean that outcomes across jurisdictions will vary or that one jurisdiction's 'quality' of justice differs from another. However:

It does mean that altering consent and sexual offence laws across jurisdictions in the pursuit of high-level national uniformity risks creating a different standard for those sexual offences as against the remainder of the criminal law in each home jurisdiction.⁶⁹

Risk of 'levelling down'

2.71 Some submitters and witnesses voiced concerns that the national harmonisation of sexual consent laws might lead to the 'levelling down' of protections, to achieve common standards. For example, With You We Can suggested:

When proposing harmonisation, there is a tendency to imagine an ideal scenario where states that lag behind progressive affirmative consent laws will promptly draft new legislation. However, the reality of achieving

⁶⁷ Dr Natalia Antolak-Saper, *Submission 47*, p. [5].

⁶⁸ Tasmanian Government, *Submission 13*, p. 7.

⁶⁹ Tasmanian Government, *Submission 13*, p. 7.

uniformity may instead be the dilution of progressive laws, which victim advocates have dedicated themselves tirelessly to.⁷⁰

2.72 The Law Council did not agree with this view:

...it seems unlikely that jurisdictions that have invested, over time, in law reform intended to strengthen the realisation of communicative models of consent will agree to any perceived dilution in order to achieve consistency. Conversely, it is also possible that a sustained national campaign may produce the kind of broad-based consensus required to lift standards across jurisdictions.⁷¹

2.73 The Grace Tame Foundation concurred:

Nobody is asking those State or Territory governments with more progressive views to reduce their ambitions to match those of more conservative inclination...There is nothing stopping the States and Territories from co-operating in this field and working sincerely towards a consistent and better set of laws. The only element lacking is imagination.⁷²

Benefits of harmonisation

2.74 Although submitters identified concerns with implementing harmonised sexual consent laws, most stakeholders supported national harmonisation, including an affirmative consent standard.⁷³ In their view, harmonisation would eliminate jurisdictional inconsistencies, provide clarity, and better support awareness and education about sexual assault.⁷⁴

2.75 As has been noted by Professor Jonathan Crowe, based at Bond University, and Dr Guzyal Hill, Senior Lecturer at Charles Darwin University:

The current push to harmonise sexual consent law is important and timely. It would help support educational efforts around sexual consent and reduce confusion about the law. It has the potential to clarify the standard of

⁷⁰ With You We Can, *Submission 71*, p. [2]. Also see, for example: No to Violence, *Submission 16*, p. 8; Body Safety Australia, *Submission 29*, p. 3; WESNET, *Submission 53*, p. 5.

⁷¹ Law Council of Australia, *Submission 73*, p. 13.

⁷² Grace Tame Foundation, *Submission 66*, p. 2. Also see: National Foundation for Australian Women, *Submission 54*, p. 4.

⁷³ See, for example: Children by Choice, *Submission 14*, p. 5; No to Violence, *Submission 16*, p. 8; MacKillop Family Services and the University of Melbourne, *Submission 31*, p. 4; National Foundation for Australian Women, *Submission 54*, p. 2; Grace Tame Foundation, *Submission 66*, p. 2; Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 3.

⁷⁴ See, for example: UNSW Law Society, *Submission 26*, p. 8; National Women's Safety Alliance and Teach Us Consent, *Submission 32*, p. 7; Women with Disabilities Australia, *Submission 36*, p. 2; WESNET, *Submission 53*, pp. 4–5.

ongoing communication expected before and during sex – a crucial component of affirmative consent models.⁷⁵

- 2.76 Several submitters and witnesses contended that sexual consent laws have a role in setting standards that underpin education and behavioural change.⁷⁶ Consent Labs' Ms Wan advised that having affirmative consent as a legal standard in NSW has already improved the delivery of sexual consent education:

It has been incredible since affirmative consent has been adopted in New South Wales to be able to say to students, 'This is now also the expectation of the law. It's not just a moral or an ethical expectation that we urge you to consider. It is also a legal expectation that we encourage you to consider.'...[I]t is incredibly important that we harmonise our laws towards affirmative consent.⁷⁷

- 2.77 ANROWS referenced findings from the 2021 *National Community Attitudes towards Violence against Women Survey* (NCAS, see Chapter 4). The NCAS revealed that a notable minority of the Australian population does not understand affirmative consent. In ANROWS' view, a nationally consistent model could support the development of a more advanced community understanding.⁷⁸ ANROWS representative Ms Raman, explained:

Our attitudes are shaped by the world around us. They are influenced by our families, friends and communities as well as through formal societal systems and institutions, such as schools, the media, police and, most importantly, the law. Attitudes have a real impact. They influence social norms about what is acceptable behaviour and how people respond to violence against women. Consent laws and community attitudes together can impact whether victims and survivors recognise their experience as actually being sexual assault or sexual violence, whether they choose to disclose or report and the responses that they receive to these reports. The NCAS shows us that much more work needs to be done. Putting the symbolic weight of the law behind the changes we need to community

⁷⁵ J. Crowe and G. Hill, 'It's time we aligned sexual consent laws across Australia – but this faces formidable challenges', *The Conversation*, 15 December 2022, <https://theconversation.com/its-time-we-aligned-sexual-consent-laws-across-australia-but-this-faces-formidable-challenges-196115> (accessed 1 September 2023). Also see: Consent Labs, *Submission 30*, p. 1; Law Council of Australia, *Submission 73*, p. 13.

⁷⁶ See, for example: Tasmanian Aboriginal Legal Service, *Submission 9*, p. [2]; Sexual Assault Services Victoria, *Submission 27*, p. 12; National Foundation for Australian Women, *Submission 54*, p. 3; Law Council of Australia, *Submission 73*, p. 12; Dr Julia Quilter, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 18.

⁷⁷ Ms Angelique Wan, Chief Executive Officer and Co-Founder, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, p. 13.

⁷⁸ Australia's National Research Organisation for Women's Safety, *Submission 69*, p. 3.

attitudes will help us to reach our aim of ending violence against women and children in one generation.⁷⁹

- 2.78 The potential to ‘raise the legal bar’ to better support victim-survivors featured throughout the inquiry,⁸⁰ with ANROWS pointing out that a national standard for sexual consent is also consistent with the *National Plan to End Violence against Women and Children 2022–2032* (National Plan):

While legislation alone cannot be expected to change attitudes or behaviour, the national harmonisation of consent laws (including an affirmative consent standard) would provide a clear framework for acceptable behaviour and a reference point for victims and survivors to understand their own experiences of sexual violence.⁸¹

- 2.79 Sexual Assault Services Victoria, a peak body for specialist sexual assault and harmful sexual behaviour services, added that, without an affirmative consent standard, many victim-survivors consider that the law does not recognise the sexual violence perpetuated against them:

The 350 expert therapists that work with specialist [sexual assault] and [harmful sexual behaviour] services in Victoria work with over 17 000 victim survivors a year – from children as young as four to young people and adults of all ages. Too many of our adult and older adolescent clients have told us the same thing – they could not seek justice, because the violence against them was not adequately recognised in law. Enshrining affirmative consent in law addresses this historic injustice.⁸²

- 2.80 Women’s Legal Services Australia submitted:

The Commonwealth Government should work with State and Territory Governments to ensure that all jurisdictions establish nationally consistent, strong models of affirmative consent. A uniform national approach to affirmative consent will send a powerful message to the community about appropriate sexual conduct, contribute to cultural change, and will better serve victim-survivors and deter perpetrators.⁸³

- 2.81 The Attorney-General’s Department advised that, through the SCAG, the Australian Institute of Criminology and the ALRC, there are ‘a whole lot of

⁷⁹ Ms Padma Raman, Chief Executive Officer, Australia’s National Research Organisation for Women’s Safety, *Committee Hansard*, Canberra, 25 July 2023, p. 34.

⁸⁰ See, for example: National Union of Students, *Submission 35*, p. 4.

⁸¹ Australia’s National Research Organisation for Women’s Safety, *Submission 69*, p. 7.

⁸² Sexual Assault Services Victoria, *Submission 27*, p. 7.

⁸³ Women’s Legal Services Australia, *Submission 52*, p. 10. Also see: National Foundation for Australian Women, *Submission 54*, p. 5..

things in place to have those conversations and to support and facilitate states and territories across the board lifting their legislative responses'.⁸⁴

2.82 The National Women's Safety Alliance and Teach Us Consent cautioned, however:

Uniformity...is not a panacea in and of itself and must be approached cautiously to avoid gaps, errors, or unforeseen outcomes that, when harmonised, would compound. Furthermore, even where uniformity is achieved, there is a risk that it may effectively be undone through unilateral amendments by state and territory legislatures, non-cooperation, political cycles, or radical societal change.⁸⁵

Principles to underpin national harmonisation

2.83 Ms Angela Lynch, Board Member of the National Association of Services Against Sexual Violence (NASASV), commented that 'harmonisation is the actual law reform', however, what is required are uniform principles that underlie the legislation. Ms Nicole Lambert, Chair of the NASASV, added:

It is about the implementation of the principles which support the legislation. If they are really embraced, endorsed and embedded into practice, that provides some of that structure to support the implementation of legislation change.⁸⁶

2.84 The Law Council proposed eight principles that it suggested could guide the assessment of sexual consent laws and be the basis for further consultation, for example:

Principle 5: consideration should be given to vulnerable groups disproportionately impacted by implementation of communicative model of consent laws, including persons with disability and young persons.

...

Principle 8: the aims of any legislative change towards better realising the communicative model of consent should be supported by community education; there should be ample lead-in time to allow for targeted education of young people and vulnerable people who may be disproportionately impacted by changes.⁸⁷

2.85 In evidence, Mr Luke Murphy explained that Principles 5 and 8 must be read together to understand the position of the Law Council with respect to young people: 'the particular need to have targeted awareness and education programs

⁸⁴ Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, Attorney-General's Department, *Committee Hansard*, Canberra, 25 July 2023, p. 53.

⁸⁵ National Women's Safety Alliance and Teach Us Consent, *Submission 32*, p. 7.

⁸⁶ Ms Nicole Lambert, Chair, National Association of Services Against Sexual Violence, *Committee Hansard*, Canberra, 25 July 2023, p. 28. Also see: Ms Angela Lynch, Board Member, National Association of Services Against Sexual Violence, *Committee Hansard*, Canberra, 25 July 2023, p. 28.

⁸⁷ Law Council of Australia, *Submission 73*, pp. 17–18.

for the vulnerable groups because of their disproportionate representation in this space'.⁸⁸

Limitations of sexual consent law reform

2.86 In 2021, the Grace Tame Foundation launched its 'Harmony Campaign', a campaign aimed at bringing consistency to sexual assault laws throughout Australia.⁸⁹ In its submission, the Foundation commented that, even if all jurisdictions legislated an affirmative consent model, this reform would not resolve the 'scourge of sexual violence in our society':

There are far bigger issues we must address if we are serious about this. These include addressing why young men and women in our society are so misinformed about what a healthy sexual relationship looks like; and why the experiences of sexual assault survivors in our criminal justice system are uniformly re-traumatising, regardless of the outcome of their cases.⁹⁰

2.87 Many submitters and witnesses agreed that legislative reform cannot fully address the issue of sexual assault in Australia.⁹¹ Legal Aid NSW referenced international experiences, where significant changes to the content and structure of some sexual offence legislation has had 'limited impact'.⁹²

2.88 Sexual Assault Services Victoria submitted that, in addition to law reform, it is equally important to 'implement initiatives with a whole-of-community approach'. It referenced research into the affirmative consent model in Tasmania, which revealed that 'the legislative spirit of the [2004] reforms is not being fully realised', as those reforms were not accompanied by 'education for members of the legal community that were implementing the changes, and broad attitudinal change at the societal level'.⁹³

2.89 Ms Raman from ANROWS concurred that 'you can have the best laws in the world, but it is its implementation that is really important'. Similar to Sexual

⁸⁸ Mr Luke Murphy, President, Law Council of Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 5.

⁸⁹ Grace Tame Foundation, 'The Harmony Campaign', www.thegracetamefoundation.org.au/the-harmony-campaign (accessed 1 September 2023).

⁹⁰ Grace Tame Foundation, *Submission 66*, p. 2.

⁹¹ See, for example: Youth Affairs Council of South Australia, *Submission 7*, p. 3; UNSW Law Society, *Submission 26*, p. 10; Western NSW Community Legal Centre and Western Women's Legal Support Service, *Submission 45*, p. 2; NSW Aboriginal Women's Advisory Network, *Submission 72*, p. 2; Mr Michael Bradley, Director, Grace Tame Foundation, *Committee Hansard*, Melbourne, 26 July 2023, p. 66.

⁹² Legal Aid NSW, *Submission 75*, p. 10.

⁹³ Sexual Assault Services Victoria, *Submission 27*, p. 8. Also see: Ms Kathleen Maltzahn, Chief Executive Officer, Sexual Assault Services Victoria, *Committee Hansard*, Canberra, 25 July 2023, p. 27, who commented that changing the law is cheap but ineffectual without all the other things that are needed.

Assault Services Victoria, she noted that the numerous protections provided in Victoria have not affected conviction rates.⁹⁴

2.90 In relation to sexual assault trials, WLSA highlighted:

...statutory reforms and [jury directions] addressing rape myths and misconceptions are not self-executing. Unconscious biases towards victim-survivors will not change, nor will sexual consent literacy increase, until there is social and cultural change in regard to attitudes towards women and sexual violence.⁹⁵

2.91 Ms Iles from Violet Co Legal and Consulting stated that improvements to sexual consent laws and the national harmonisation of affirmative consent is a 'no brainer' but 'not the main game'. While there is a need for law reform, she considered that the emphasis must be upon enforcement:

...deeds, not words. We must quickly fix these words in legislation...We then need the deeds. We must address the gap in what the law says and what our community expects and what the justice system—in particular, the police and the courts—actually do in practice. What use are laws when they are not enforced?⁹⁶

2.92 Other submitters contended that, in addition to societal and cultural changes, legislative reform must be complemented by a victim-survivor centred response within the healthcare, criminal justice and education sectors.⁹⁷ For example, the Youth Affairs Council of South Australia, which represents young people, identified some areas in which, it argued, better responses are required, including the investigation and prosecution of sexual assault complaints (see Chapter 3).⁹⁸

2.93 Ms Tosca Looby observed:

...cultural change is going to lead to so many other changes. That includes cultural changes in the courts and in the parliament and in all those places where, I guess, people are going to be heard. When they are, they are not getting the reception they should. I think we need to so desperately address that cultural issue.⁹⁹

⁹⁴ Ms Padma Raman, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, *Committee Hansard*, Canberra, 25 July 2023, p. 38.

⁹⁵ Women's Legal Services Australia, *Submission 52*, p. 16.

⁹⁶ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, Canberra, 25 July 2023, p. 40.

⁹⁷ See, for example: Western NSW Community Legal Centre and Western Women's Legal Support Service, *Submission 45*, p. 2; Legal Aid NSW, *Submission 75*, p. 10.

⁹⁸ Youth Affairs Council of South Australia, *Submission 7*, p. 3.

⁹⁹ Ms Tosca Looby, Creative Director, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, 25 July 2023, p. 5.

Law in practice

2.94 Dr Julia Quilter and Dr Luke McNamara articulated what their legal research has revealed to be a common problem:

...the reality that whatever laws are ‘on the books’, there is a documented problem with the incapacity of law reform to positively transform the practices of the law...[P]rogressive statutory changes are repeatedly undermined by what happens in practice in courtrooms.¹⁰⁰

2.95 Dr Antolak-Saper concurred, submitting that ‘there is an ongoing disconnect between the way in which the offences, jury directions, and evidentiary provisions are articulated and the way in which they are applied in practice’.¹⁰¹

2.96 Dr Quilter and Dr McNamara elaborated on their argument, including with the observation that cross-examination lines are regularly contrary to express legislation relevant to the proof of non-consent (such as paragraph 36AA(a) of the *Crimes Act 1958* (Vic), the vitiating factor that a person has not said or done anything to indicate consent to the sexual activity).¹⁰²

2.97 Dr Quilter and Dr McNamara suggested that ‘legislative change needs to be *activated* in trials’:

For example, where defence cross-examination elicits evidence that the complainant said or did nothing...the prosecution should submit to the judge that the jury should be directed that there is no dispute that non-consent has been proven. If this begins to occur, provisions like [paragraph 36AA(a)] of the *Crimes Act 1958* (Vic) will finally (belatedly) have their intended effect.¹⁰³

2.98 Dr Quilter and Dr McNamara concluded that ‘the operation of consent laws needs to be contextualised and assessed in conjunction with other evidence laws (and practices) that may exacerbate rape myths and undermine progressive law reform in relation to consent’.¹⁰⁴

2.99 Overall, submitters found it difficult to comment on the operation of sexual consent laws that have only recently been enacted.¹⁰⁵ The National Women’s

¹⁰⁰ Dr Julia Quilter and Dr Luke McNamara, *Submission 17*, p. 2.

¹⁰¹ Dr Natalia Antolak-Saper, *Submission 47*, p. [6]. Note: Dr Antolak-Saper attributed this disconnect in part to the nature of the adversarial justice system.

¹⁰² Dr Julia Quilter and Dr Luke McNamara, *Submission 17*, p. 2. Also see: Dr Natalia Antolak-Saper, *Submission 47*, pp. [6-7]. Note: this provision states that a person who says or does nothing does not consent to a sexual activity.

¹⁰³ Dr Julia Quilter and Dr Luke McNamara, *Submission 17*, pp. 3–4.

¹⁰⁴ Dr Julia Quilter and Dr Luke McNamara, *Submission 17*, p. 4.

¹⁰⁵ See, for example: Aboriginal Legal Service (NSW/ACT), *Submission 28*, p. 1; National Women’s Safety Alliance and Teach Us Consent, *Submission 32*, p. 7; Western NSW Community Legal Centre and Western Women’s Legal Support Service, *Submission 45*, p. 2; ACT Government, *Submission 58*, p. 8.

Safety Alliance and Teach Us Consent noted, however, that in two jurisdictions—NSW and the ACT—early indications are that the legislative changes are not translating to better outcomes:

Feedback from Alliance members who provide advocacy support for survivors of sexual assault in these jurisdictions, have reported that while ‘the legislation is arguably better, the expectations of survivors have still not been met by improvements in conviction rates or handling’. In NSW, latest crime data shows reports of sexual assaults continue to trend upwards. In trial practice, there is not yet enough information from the emerging case law in either the ACT or NSW, to determine how defence counsels will represent against the provisions at 67(5) and 61HK(2), respectively, and whether it becomes, effectively, a ‘box ticking exercise’ of steps taken to determine consent. Furthermore, it remains to be seen how these reforms will impact on jury directions and deliberations, as it has been found that juries in rape trials are often influenced by non-legal factors such as likeability of witnesses.¹⁰⁶

¹⁰⁶ National Women’s Safety Alliance and Teach Us Consent, *Submission 32*, p. 9. Also see: Mr Andrew Doherty, private capacity, *Committee Hansard*, Melbourne, 26 July 2023, p. 11, who was informed that sexual consent law reform in NSW had increased the chances of conviction from ‘exactly zero to slightly more than zero’.

Chapter 3

Lived experience

3.1 In 2021, the Australian Bureau of Statistics (ABS) published *Sexual Violence-Victimisation*, which reported that only 13 per cent of women reported their most recent incident of sexual assault by a male perpetrator to police.¹

3.2 Submitters and witnesses agreed that, for multiple reasons, the vast majority of victim-survivors do not report when they have been sexually assaulted. No to Violence provided the following summary of these reasons:

Victim-survivors do not report to police for a range of reasons, including: the stigma around sexual assault, shame, self-blame, humiliation, embarrassment, fear of not being believed, unsympathetic response, lack of evidence, distrust in the justice system, lack of support from police, re-traumatisation with re-telling their story, the length of time sexual assault matters take to be finalised in court, fear of the impact on their visa/residency status, fear of reprisal from the perpetrator and fear [of] how it may impact on any Family Law Court proceedings.²

3.3 Ms Angela Lynch, Executive Officer of the Secretariat for the Queensland Sexual Assault Network noted that victim-survivors are also discouraged from reporting, by knowing that their private lives and personal information will be publicly examined during any criminal trial:

...their counselling notes, their own private thoughts and feelings, can be put before the court and can be looked at by the defendant...[T]hat really is an issue for victim-survivors...[V]ictim-survivors are very aware that their lives become pretty much opened up. They can see what's happened. They have a pretty good idea about what can go on in these cases and how their medical records can be opened up, how their other records can be opened up...All of these issues play into someone's decision making because they know that they will be judged. They know that they will be judged by that.³

¹ Australian Bureau of Statistics, 'Sexual Violence-Victimisation', 24 August 2021, www.abs.gov.au/articles/sexual-violence-victimisation#cite-window1 (accessed 1 September 2023). Also see: Chapter 1.

² No to Violence, *Submission 16*, p. 12. Also see: Women's Legal Services Australia, *Submission 52*, p. 12; Australia's National Research Organisation for Women's Safety, *Submission 69*, p. 5; Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, pp. 13–14. For one victim-survivor's comments on this point, see: Mr Andrew Doherty, private capacity, *Committee Hansard*, Melbourne, 26 July 2023, p. 10.

³ Ms Angela Lynch, Executive Officer, Secretariat, Queensland Sexual Assault Network, *Committee Hansard*, Sydney, 27 July 2023, p. 51. Also see: Dr Julia Quilter, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 16, who commented that, in the area of sexual offences, 'an especially elastic conception of relevance can be engaged—one that casts a very wide net over aspects of the complainant's life'.

3.4 Australia's National Research Organisation for Women's Safety (ANROWS) added that there are additional barriers to reporting for victim-survivors from specific population groups—women with disability, people with diverse gender identities and sexualities, women from culturally and linguistically diverse (CALD) backgrounds, and First Nations women:

These barriers can include, but are not limited to, historical and cultural distrust of authorities, language barriers, geographical isolation, inaccessibility of services for women with disability, and the cultural appropriateness of services.⁴

3.5 Women With Disabilities Australia agreed that there are specific barriers for women and girls with disability:

When it comes to reporting sexual violence and assault, processes are often inaccessible, police or frontline domestic violence workers are rarely trained in how to support and communicate with women with disability and often doubt the truth of the claims, particularly when they come from women with intellectual or psychosocial impairments. When women with disability do go through the process to report sexual assault, they face further barriers in the court.⁵

3.6 Sexual Assault Services Victoria pointed out that the barriers to reporting, and experiences once sexual assaults have been reported, can undermine confidence in the law enforcement and the criminal justice systems. In turn, this affects reporting and attrition rates.⁶

3.7 This chapter examines:

- law enforcement responses to reported sexual assaults;
- victim-survivors' experiences within the criminal justice system; and
- actors within the law enforcement and criminal justice systems.

Law enforcement responses to reported sexual assaults

3.8 Submitters and witnesses commented that many victim-survivors have poor experiences when they report sexual assaults to law enforcement personnel.⁷ Ms Karen Iles from Violet Co Legal and Consulting reflected on her own experience, as follows:

⁴ Australia's National Research Organisation for Women's Safety, *Submission 69*, p. 5. Also see: Women's Legal Services Australia, *Submission 52*, p. 12.

⁵ Women With Disabilities Australia, *Submission 36*, p. 6. Also see: Ms Catherine McAlpine, Chief Executive Officer, Inclusion Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 61, who said that, for women with intellectual disability, sexual assault often goes unreported as it can be hard to tell that the assault has occurred.

⁶ Sexual Assault Services Victoria, *Submission 27*, pp. 12–13.

⁷ Note: for similar comments in relation to universities, see Chapter 4.

...police forces in both Queensland and New South Wales [where the aggravated child sexual assault occurred] have completely, and I would say negligently, failed their public duty not only to hold rapists accountable but failed to protect subsequent girls and women from other sexual assaults from this predatory gang. Despite laws clearly defining these sexual assaults as crimes, police have now, only 19½ years after I first reported them, referred the matter to a specialist police unit in New South Wales.⁸

3.9 Mr Andrew Doherty's complaint did not proceed past the reporting stage:

...it feels like the whole system is set up to protect the bad guys. We victims aren't just fighting our traumatic memories of being raped; we're fighting a broken and fractured legal system that is set up almost by design to fail us and to protect rapists. What happened to me can happen to anyone. I followed every step, every legal process that I could. I followed it down every termination, every path. I wrote every letter that could be written to every person that could help, and here I am still. I've gotten nowhere.⁹

3.10 Ms Iles said that, in four-and-a-half years of private legal practice, none of her victim-survivor clients has ever set foot in a courtroom:

It is the absolute minority of victims who actually have any legal consequences on their perpetrator. When I say legal consequences, I mean charges. In New South Wales, nine out of 10 victims who report to police have no legal consequences for their perpetrators. That is 90 per cent of the 13 per cent who muster up the crazy courage to bother reporting to a justice system that really does not produce outcomes for victim survivors. It's the definition of insanity doing the same thing multiple times and expecting a different result, yet we persist.¹⁰

3.11 In relation to First Nations women, who disproportionately experience sexual violence, Women's Legal Services Australia (WLSA) submitted:

[Northern Territory Women's Legal Services'] clients have reported experiences of being 'cut off' when reporting, often being turned away, a lack of interpreters and very few available female officers. The communication gap that often exists between police and sexual assault victim-survivors is particularly pronounced for First Nations women. When police do respond to First Nations women's calls for help, they can often apply gender bias along with racists myths about First Nations.¹¹

⁸ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, 25 July 2023, pp. 41–42. Note: Ms Iles described the police recording of her complaints as 'dreadful' and noted that the police (in)action has caused her 'unspeakable trauma'.

⁹ Mr Andrew Doherty, private capacity, *Committee Hansard*, Melbourne, 26 July 2023, p. 12.

¹⁰ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, 25 July 2023, p. 44.

¹¹ Women's Legal Services Australia, *Submission 52*, p. 12. Also see: No to Violence, *Submission 16*, p. 15; Ms Dixie Link-Gordon, Program Coordinator, Aboriginal Women's Advisory Network, *Committee Hansard*, Melbourne, 26 July 2023, p. 31.

Outcomes of reporting

- 3.12 Some stakeholders reflected on sexual assaults that are reported to police but either do not proceed past the investigation stage or do not result in criminal convictions. The National Association of Services Against Sexual Violence (NASASV) expressed the view that:

The Departments of Public Prosecutions in the various states will often choose not to prosecute as they don't believe there is a reasonable chance of a conviction – that is, they are of the view the jury will...believe his version of events over hers. The impact is devastating to the victim as it sends a clear message that her word is not as valued as his.¹²

- 3.13 Ms Iles said only certain types of victim ultimately get access to justice:

Typically, victims who get through that very narrow funnel to actually have their perpetrator stand trial are typically young, stereotypically good looking, white, well and wealthy. They are the deserving victim. That is who goes before our courts...[W]hat we don't see is Aboriginal women's complaints, if Aboriginal women even choose to report to police.¹³

- 3.14 Ms Katherine Berney, Director of the National Women's Safety Alliance, stated that, for sexual offences, there is a 1.7 per cent conviction rate. Further, she indicated that sentencing outcomes do not match the severity of the crime:

Within that tiny percentage, we see sentencing outcomes of community service for convicted rapists, with the primary concern of the judiciary being that the perpetrator's life is not permanently impacted.¹⁴

- 3.15 In contrast, several submitters highlighted that victim-survivors must deal with the ongoing trauma caused by the sexual assault, as well as re-traumatisation caused by pursuing redress through the criminal justice system.

- 3.16 Western NSW Community Legal Centre and Western Women's Legal Support Service submitted that it is common for their clients to avoid engagement with the criminal justice system, due partially to the fear of additional trauma:

Clients who do engage with the legal system report finding it traumatising, humiliating and distressing. Often, they are not happy with the outcome, but are also equally unhappy and traumatised by the process they must survive, from the time of reporting until the end of the trial.¹⁵

¹² National Association of Services Against Sexual Violence, *Submission 23*, p. 3. Also see, for example: Women's Legal Services Australia, *Submission 52*, p. 13.

¹³ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, Canberra, 25 July 2023, pp. 40–41. Also see: p. 44, where Ms Iles described five factors which, she argued, determine whether a victim-survivor can get access to justice.

¹⁴ Ms Katherine Berney, Director, National Women's Safety Alliance, *Committee Hansard*, Canberra, 25 July 2023, p. 8.

¹⁵ Western NSW Community Legal Centre and Western Women's Legal Support Service, *Submission 45*, pp. 3–4. Also see: pp. 2–3; Queensland Sexual Assault Network, *Submission 4*, pp. 3–4; MacKillop Family Services and the University of Melbourne, *Submission 31*, p. 5, which noted that adult

- 3.17 The NASASV submitted that participating in the criminal justice system often proves ‘too difficult’ for many victim-survivors, who become ‘disheartened’ and ‘part of the attrition statistics’:

Those who do continue to court frequently report that this experience is...as retraumatising as their original assault. Universally, victims report that their experience of the legal system resulted in them being minimised as mere ‘witnesses’ to violent crimes that were actually committed against them.¹⁶

- 3.18 Ms Jess Hill suggested that Australia needs to focus on what is happening from the moment victim-survivors engage with the police and the criminal justice system:

We looked at the South Africa model, which actually has the victim not just as a witness to their trial but as someone who is seen as deeply involved with prosecutors weeks out from the court date, not just the day before. They are involved in that whole process and taken through in a trauma and empathy informed way. At the moment, we brutalise people. We seem to throw up our hands as though there's no other choice.¹⁷

Victim-survivors’ experiences within the criminal justice system

- 3.19 ANROWS—and others (see above)—noted that sexual consent laws can help people to recognise sexual violence, the dynamics of which are still poorly understood in the community (see 2021 National Community Attitudes towards Violence against Women Survey, Chapter 4). Its submission highlighted that peoples’ attitudes and beliefs about sexual violence affect how they respond to victim-survivors:

A recent ANROWS study investigated Australians’ mistrust of women’s reports of sexual assault and found that participants viewed allegations with a default position of mistrust, informed by an interplay of rape myths and problematic stereotypes about women...This mistrust and the underlying beliefs that drive suspicions around victims’ and survivors’ reports of sexual violence persist despite research that indicates that false rape allegations are extremely rare.¹⁸

- 3.20 ANROWS argued that sexual consent laws also help victim-survivors to recognise sexual assault as a crime rather than ‘wrong but not a crime’ or ‘something that “just happens”’:

victim-survivors’ experiences deter children and young people from engaging with the criminal justice system; Women’s Legal Services Australia, *Submission 52*, p. 12.

¹⁶ National Association of Services Against Sexual Violence, *Submission 23*, p. 3. Also see: Australia’s National Research Organisation for Women’s Safety, *Submission 69*, p. 6, which added that victim-survivors can also feel ‘invalidated where the offence is not prosecuted or conviction is not achieved’.

¹⁷ Ms Jess Hill, Presenter and Consultant Producer, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, Canberra, 25 July 2023, p. 4.

¹⁸ Australia’s National Research Organisation for Women’s Safety, *Submission 69*, p. 5. Also see: p. 4.

Consent laws could serve a symbolic purpose by providing victims and survivors with a reference point that clearly defines sexual violence. The introduction of consistent consent laws across Australian jurisdictions would further support this...[It would also] support improved responses to sexual violence in the criminal justice system, through clearer identification of the scope of non-consensual behaviours and an increased focus on the perpetrator.¹⁹

- 3.21 While submitters and witnesses agreed that sexual consent laws are important, they also agreed that other reforms are necessary, including those identified through victim-survivors' experiences with the law enforcement and criminal justice systems.

The criminal court process

- 3.22 Some stakeholders commented on the extent to which victim-survivors are retraumatised by the criminal court process. The Centre for Women's Health Research and Australian Longitudinal Study on Women's Health submitted:

Women who have experienced sexual assault can be re-traumatised by the legal system and often face difficulties and obstacles while navigating court proceedings, including: inadequate support, information and court preparation; societal victim-blaming myths and attitudes; and frequent legal delays.

There is a misalignment of the needs of women who have experienced sexual assault and their experiences of the legal system, with women indicating a lack of information, validation, voice, and sense of control.²⁰

- 3.23 The NSW Aboriginal Women's Advisory Network commented that First Nations people must feel culturally safe when engaging with the legal system:

Cultural safety requires the legal system and the professionals involved to provide services in a manner that acknowledges their history and treatment in Australia, that is respectful of their culture and beliefs and that is free from discrimination. Being free from discrimination requires conscious efforts to identify and address direct discrimination, as well as indirect discrimination born from unconscious biases within the system and its professionals against Aboriginal and Torres Strait Islander people.²¹

¹⁹ Australia's National Research Organisation for Women's Safety, *Submission 69*, pp. 5–6. Also see: Queensland Sexual Assault Services, *Submission 4*, p. 3.

²⁰ Centre for Women's Health Research and Australian Longitudinal Study on Women's Health, *Submission 22*, p. 3. Note: the submission noted also trial periods, emotional distress, and a lack of support.

²¹ NSW Aboriginal Women's Advisory Network, *Submission 72*, p. 2. Also see: Ms Julie Perkins, Member, Australian Services Union, *Committee Hansard*, Sydney, 27 July 2023, pp. 49–50, who listed compounding factors, such as intergenerational trauma, deaths in custody and over-incarceration.

3.24 Ms Tosca Looby reflected that, in making *Asking for it*, the thing that most surprised her was how many disincentives there are for someone to make and pursue a complaint:

There are a lot of people we met who said, 'After my experience, if someone asked me if I should report it and go through the police process and take it to court if that becomes an option...I would say don't do it. I would say you're just going to be more traumatised than you are now and actually you'll come out the other side more damaged than you are now.' In my naivete, I was completely blindsided by that. I hadn't realised just how badly we dealt with sexual assault in our courts and the kind of experiences that victim survivors were having. It's not historical.²²

Reforms other than to sexual consent laws

3.25 Some submitters and witnesses noted recent reforms aimed at improving victim-survivors' experiences of the criminal justice system.²³ The Law Council of Australia encouraged sexual consent law reform to be seen in a broader context, specifically:

...in the context of the constraints of the criminal trial process, recent changes to court processes, and broader options for policy reform. This may have a greater bearing on the experience of victim-survivors and, thereby, more directly address issues of under-reporting and attrition in the criminal justice system.²⁴

Information and support

3.26 Mr Michael Bradley from the Grace Tame Foundation works with victim-survivors who have been or are engaged with the criminal justice system. He said that victim-survivors do not initially understand this process:

...they usually come to [the criminal justice system] with an absolute lack of knowledge or understanding of how that system works and what it is that they're subjecting themselves to. That's one of the prime causes of the fresh trauma that they pretty much always suffer when they go through that process. It's an escalating and compounding process, as they get deeper into it, and it culminates in the experience of finding themselves in a courtroom, being aggressively cross-examined by a barrister and feeling like they are on trial. That's not something that anyone expects when they first go to the police to report that they've been raped, but that is how the system is designed...[T]hat's because the whole system is built on the fundamental

²² Ms Tosca Looby, Creative Producer, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, Canberra, 25 July 2023, p. 4.

²³ See, for example: Ms Annabella Dumas, *Submission 25*, p. 5 (rape shield law); Aboriginal Legal Service (NSW/ACT), *Submission 28*, p. 6 (witness intermediaries for child victim-survivors); Liberty Victoria, *Submission 43*, pp. 19–23 (a variety of legislative reforms, such as jury directions, criminal procedure, courtroom practice, evidence and sentencing); Law Council of Australia, *Submission 73*, pp. 28–29 (limits on improper questioning, jury directions, enhanced roles for victim-survivors); Legal Aid NSW, *Submission 75*, p. 14.

²⁴ Law Council of Australia, *Submission 73*, p. 27.

principle of protecting the interests of accused people. That's fine in the general criminal law; it's just that in the context of sexual violence offences it both doesn't work and necessarily and inevitably causes drastic harm to victims-survivors.²⁵

3.27 Submitters supported a range of measures designed to provide victim-survivors with more information and assistance, from the time of reporting through to the conclusion of any criminal trial. No to Violence suggested, for example, increasing awareness about available services and the reporting process, improving reporting mechanisms and court processes, expanding legal and social supports, investing in court services, and ensuring that victim-survivors have access to information prior to attending court.²⁶

3.28 WLSA emphasised that victim-survivors should have access to specialist legal assistance to pursue their rights and entitlements:

Traditionally, victim-survivors have not been recognised as participants in the criminal justice system, and victims have merely been treated as witnesses for the prosecution. However, this is slowly changing and there is increasing recognition in many jurisdictions that victims have rights and entitlements and a personal stake in the criminal justice process, for example through the introduction of Victims' Charters and additional legislative protections for victims.²⁷

3.29 WLSA's submission highlighted the various ways in which victim-survivors would find specialist legal assistance useful:

Victim-survivors often need legal assistance to engage in the criminal justice process, for example they may require assistance with drafting special witness arrangements applications, applications for ground rule hearings, victim impact statements, or applications in relation to protecting confidential records. Victim-survivors may also seek assistance with understanding their options in relation to civil litigation, financial compensation, and restorative justice. Particularly given the barriers to reporting to police, and the difficulties with successfully prosecuting sex offences, legal representatives for victim-survivors can advocate for them throughout the process and ensure that it meets their needs.²⁸

²⁵ Mr Michael Bradley, Director, Grace Tame Foundation, *Committee Hansard*, Melbourne, 26 July 2023, p. 65. Also see: Mr Andrew Doherty, private capacity, *Committee Hansard*, Melbourne, 26 July 2023, p. 12, who gave evidence about his lack of knowledge when he first reported a sexual assault to the police.

²⁶ No To Violence, *Submission 16*, pp. 17–18. Also see: Legal Aid NSW, *Submission 75*, p. 15.

²⁷ Women's Legal Services Australia, *Submission 52*, p. 9.

²⁸ Women's Legal Services Australia, *Submission 52*, p. 9.

3.30 At the Sydney public hearing, Ms Jarmira Borwick-Parker, Ms Julie Perkins, and Ms Josephine Rechichi gave evidence about their experience as specialist workers.²⁹ This evidence strongly reinforced WLSA's arguments.

3.31 Ms Borwick-Parker, a Family and Domestic Violence Specialist, supports 'women who are victims of domestic and family violence within the local court context'.³⁰ She provided the following description of their typical experience:

...women who have experienced family, domestic and sexual violence have experienced trauma. Occasionally the court process can add to their trauma because of the following: the crowded court environment on a busy list day; the fear of running into the defendant or his family; the initial confusion as the woman enters the court building to find the safe room; the sense of feeling completely overwhelmed as she speaks with support workers, police and solicitors; the incomprehensible legal jargon; the numerous court dates as the matter is adjourned a number of times; and a significant wait if the matter does proceed to a hearing.

...Women may feel invalidated or not believed. This sense of not being believed also occurs when women are being cross-examined by the defendant's solicitor and compounds the trauma that she has already experienced.

...Women can often feel invisible in the court process....

If the matter proceeds to a hearing, women often struggle as they are required to be at court early in the morning. They have to organise to get time off work, meaning that they may have to disclose their situation to their employers. It can also be an issue when women have children and need to drop them off to school before court. Young children may need to attend court with their mother, which can also be quite overwhelming for the women...Domestic, family and sexual violence are extremely complex issues which are mirrored by the judicial proceedings that follow.³¹

Restorative justice options

3.32 The Law Council suggested that 'consideration should be given to a broader range of policies to substantially reduce the incidence of sexual violence', including increasing investment in restorative justice for 'suitable' sexual offence matters.³²

3.33 Ms Chanel Contos from Teach Us Consent strongly supported restorative justice options. She explained that young people experience sexual violence in a social context and it can take years to realise that a sexual assault has occurred:

²⁹ See: *Committee Hansard*, Sydney, 27 July 2023, pp. 47–50.

³⁰ Ms Jarmira Borwick-Parker, Family and Domestic Violence Specialist, Member, Australian Services Union, *Committee Hansard*, Sydney, 27 July 2023, p. 47.

³¹ Ms Jarmira Borwick-Parker, Family and Domestic Violence Specialist, Member, Australian Services Union, *Committee Hansard*, Sydney, 27 July 2023, p. 48.

³² Law Council of Australia, *Submission 73*, Principle 6, p. 18.

...we need to accept that not all victim survivors of sexual violence want to go through a reporting process in order to get justice...It is just devastating that the police and the criminal justice system is the only option for these young people. Often they want an apology and validation for their emotions and their experience. It is basically that you don't get that at all or you go through this process that is basically stacked against you.³³

3.34 ANROWS' Ms Padma Raman concurred:

We need alternatives. We know that especially when you are talking about young people. When you ask them what they want, they say that they want an acknowledgement, an apology and accountability and that they don't want it to happen to other people. From a broader systemic point of view, we need to be offering victim survivors other ways to achieve justice when the criminal justice system is just not delivering on it.³⁴

3.35 Ms Lara Freidin from WLSA agreed but contended that it is equally important that the criminal justice system be 'fixed':

...it's important to recognise that the legal system, including our criminal justice system, is how we set the standard of behaviour that we tolerate in society. So making sure that we have criminal laws that say, 'This is what is appropriate conduct and this is what is not,' is really important. I don't think we should looking solely at alternatives to the criminal justice system. We should be trying to fix a broken system to make sure that it achieves better and more just outcomes for victims-survivors.³⁵

3.36 South-East Monash Legal Service representative, Ms Ashleigh Newnham, shared that view:

We've assisted hundreds and hundreds of women who have experienced sexual assault, and there's a range of views about restorative justice. But I would say they do want the criminal justice system to work properly. They do want that, first and foremost. I think that some people within that cohort would appreciate a restorative justice model, and others wouldn't touch it with a 10-foot pole.³⁶

³³ Ms Chanel C. Contos, Founder and Chief Executive Officer, Teach Us Consent, *Committee Hansard*, Canberra, 25 July 2023, p. 15.

³⁴ Ms Padma Raman, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, *Committee Hansard*, Canberra, 25 July 2023, pp. 35–36. Also see: Ms Saxon Mullins, Head of Advocacy, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 23, who emphasised the agency of victim-survivors in this regard; Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, Melbourne, 26 July 2023, p. 35, who expressed concern about women being pressured to choose a restorative justice option over criminal prosecution.

³⁵ Ms Lara Freidin, Executive Officer, Women's Legal Services Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 34.

³⁶ Ms Ashleigh Newnham, Director, Advocacy and Development, South-East Monash Legal Service, *Committee Hansard*, Melbourne, 26 July 2023, p. 34. Also see: Ms Gabrielle Bashir SC, Member,

3.37 Ms Saxon Mullins and Dr Rachael Burgin from Rape and Sexual Assault Research and Advocacy (RASARA) stated that the availability of restorative justice options should not be seen as a ‘decriminalisation of rape’. Dr Burgin cautioned:

Restorative justice feeds into [the decriminalisation of rape]. We have to be careful where the push for restorative justice comes from. Sometimes it comes from survivors themselves. That is good if that is what survivors are asking for.³⁷

3.38 Similarly, Sexual Assault Services Victoria’s Ms Kathleen Maltzahn cautioned against a ‘two-track system’, where ‘for every other crime, you get a decent go...For sexual assault, you have a different process’.³⁸

3.39 Ms Heather Clarke, Board Member and Secretary of NASASV highlighted that restorative justice must also be a safe and practical choice for victim-survivors:

It really starts from the premise that the accused or the person who has done the sexual harm totally recognises the harm they have done to the victim and acknowledges that they have committed a sexual assault...[E]xperience tells us that doesn't happen very often...The first step in the restorative justice process...is obviously meeting with the victim to see what—it is generally she—she wants and the person who has committed the sexual harm and seeing what their stance is. At that point, there has to be a really detailed assessment about whether they are prepared to acknowledge what they've done and the harm it has caused and then to take reparative steps to give the victim some sense of justice and healing.³⁹

3.40 Most importantly, witnesses emphasised that it would be essential for each victim-survivor to choose for themselves whether or not to utilise a restorative justice option. Ms Mullins said:

...that's a really important way to phrase it...what a survivor chooses to do. The idea has been bandied about that a lower offence would make conviction rates higher. We are making the defence's job easier. We are often doing that at the expense of survivors' experiences and survivors' views of justice...[T]hat is an important thing to think [about] when we're talking

National Criminal Law Committee, Law Council of Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 13.

³⁷ Dr Rachael Burgin, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 23. Also see: Ms Saxon Mullins, Head of Advocacy, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 23.

³⁸ Ms Kathleen Maltzahn, Chief Executive Officer, Sexual Assault Services Victoria, *Committee Hansard*, Canberra, 25 July 2023, p. 32.

³⁹ Ms Heather Clarke, Board Member and Secretary, National Association of Services Against Sexual Violence, *Committee Hansard*, Canberra, 25 July 2023, p. 33.

about restorative justice. It is the idea of what is the survivor choosing to do.⁴⁰

3.41 Similarly, Full Stop Australia's Ms Emily Dale said:

I think of the needs and recovery of victim survivors. If restorative justice is to be an option for dealing with sexual violence matters, victim survivors' needs in recovery need to be centre. I think in considering that option, we need to remember that the victim survivor is someone whose agency has been taken away. To the extent that they really want to engage with that process and that is something that is going to help them on their recovery journey, that would be a great option.⁴¹

Specialist sexual violence courts

3.42 Full Stop Australia advised that it would be 'really valuable to have specialist sexual violence focussed courts'. Ms Dale argued that sexual assault victim-survivors have experienced a particular type of trauma and therefore have specific needs. In Ms Dale's view, specialist courts would enable better courtroom experiences for victim-survivors:

...there are still ongoing issues with the way the defence does cross-examination. They weaponise victim survivors' experience of trauma against them to question their credibility and lean into harmful victim blaming myths and real rape myths. These continue to be really damaging to victim survivors today, even when a number of jurisdictions have introduced affirmative consent reforms. Perhaps if there were a specialist jurisdiction, and everyone working in that system were receiving the right kind of training, that would help address those kinds of ongoing problems.⁴²

3.43 Several witnesses remarked upon the potential for specialist courts to improve victim-survivors' experience of the criminal justice system. Dr Julia Quilter, a criminal law and justice expert based at the University of Wollongong, considered that there is a role for specialist courts in this area:

...if it was possible to have specialised defence, prosecutors and judges involved in the running of these matters, it would improve things significantly, not least because the relevant law is often changing...and I think there needs to be specialisation. Having said that, I can also see that there is the potential for burnout and issues to do with having particular Crown Prosecutors only running sexual assault matters...As you are probably aware, in New Zealand they have done a pilot of judge-alone trials in relation to these kinds of areas—not all with great success...Piloting and

⁴⁰ Ms Saxon Mullins, Head of Advocacy, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 23.

⁴¹ Ms Emily Dale, Head of Advocacy, Full Stop Australia, *Committee Hansard*, Canberra, 25 July 2023, p. 33.

⁴² Ms Emily Dale, Head of Advocacy, Full Stop Australia, *Committee Hansard*, Canberra, 25 July 2023, p. 28. Also see: Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal and Consulting, *Committee Hansard*, Canberra, 25 July 2023, p. 43, who supported the concept of specialist courts and specialist accreditation for police and legal practitioners, to reduce re-traumatisation.

evaluation is really important...because it is one thing to make a change, but it's another thing to evaluate how that's running, practically. Any pilot or any attempt at moving towards a specialist court needs to be properly evaluated.⁴³

3.44 La Trobe University's Dr Kirsty Duncanson acknowledged that implementing a specialist court would require considerable effort, time and money.⁴⁴ However, Ms Clarke suggested that less costly and flexible options—such as independent sexual violence advisors or specialist lawyers for victim-survivors—could achieve the same outcomes.⁴⁵

3.45 The NASASV added:

Currently, sexual assault counsellors try their best to support victim survivors to deal with police and courts as well as providing them with counselling. Access to Independent Sexual Violence Advisors would leave sexual violence counsellors free to focus on their primary role – providing trauma informed therapeutic support for victim survivors to deal with and recover from the impacts of their sexual assault experience.⁴⁶

3.46 Dr Natalia Antolak-Saper agreed that it 'would be really wonderful to see... independent legal advice for victim-survivors'. She noted that there is limited capacity for victim-survivors to engage with the legal proceedings, and suggested that there might be better ways to uphold their dignity and experience.⁴⁷

3.47 Ms Lynch highlighted that specialist domestic violence courts have been successful in Queensland and, when asked if the Queensland Sexual Assault Network supported a similar approach for sexual violence, stated:

Well, the current approach isn't working. Let's face it. We've got a 1.7 per cent conviction rate and 13 per cent of sexual violence victims reporting. There's enormous attrition through the system. We have to do something differently. They have just evaluated and trialled an approach in New Zealand for specialist sexual violence courts, and that evaluation was quite positive. That's where we found that those findings in relation to earlier

⁴³ Dr Julia Quilter, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 20.

⁴⁴ Dr Kirsty Duncanson, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 76, who considered that there are multiple advantages to specialist courts.

⁴⁵ Ms Heather Clarke, Board Member and Secretary, National Association of Services Against Sexual Violence, *Committee Hansard*, Canberra, 25 July 2023, p. 29. Also see: Ms Kathleen Maltzahn, Chief Executive Officer, Sexual Assault Services Victoria, *Committee Hansard*, Canberra, 25 July 2023, p. 29, who added that there are other mechanisms that could achieve the same results as specialist courts (eg. specialist accreditations).

⁴⁶ National Association of Services Against Sexual Violence, *Submission 23*, p. 9. Also see: Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences*, September 2021, p.xxv www.lawreform.vic.gov.au/wpcontent/uploads/2021/11/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf (accessed 1 September 2023).

⁴⁷ Dr Natalia Antolak-Saper, private capacity, *Committee Hansard*, Melbourne, 26 July 2023, p. 43.

guilty pleas, victims being satisfied and also, actually, the accused being satisfied. They didn't feel like it was an unfair process.⁴⁸

- 3.48 The Attorney-General's Department (AGD) highlighted an ongoing joint project with the Australasian Institute of Judicial Administration to review specialist approaches to managing sexual assault proceedings:

AGD is working with the Australasian Institute of Judicial Administration to examine specialised approaches to sexual violence matters. The research project will comprise a literature review into specialist approaches to managing sexual assault proceedings. The literature review will seek to identify and synthesise practice examples of specialised approaches to sexual assault, including specialist sexual assault courts, and is expected to be finalised by mid-2023.⁴⁹

Jury directions

- 3.49 Most jurisdictions have a framework for the authorisation of jury directions in relation to sexual offence trials. Victoria exhaustively prescribes the bases for authorisation; New South Wales prescribes some or most circumstances where jury directions should be given; other jurisdictions substantially regulate the giving of jury directions with reference to the case law (South Australia, Western Australia, Tasmania and Queensland).⁵⁰

- 3.50 The Law Council did not endorse any particular approach, noting that 'the different conclusions have been reached by law reform commissions in light of the differing experiences in each state or territory'. Its submission noted:

...the overarching objective of the criminal justice system has been to evolve a balanced approach circumscribing the role of juries to ensure verdicts reflect the standards and conscience of the community while guarding against 'uninhibited popular reaction'.⁵¹

- 3.51 In addition to this variation, Dr Quilter and Dr Luke McNamara submitted that the 'current directions on consent tend to be weakly drafted in many jurisdictions and have the capacity to run contrary to the substantive law of consent'. They cited as examples section 292B of the *Criminal Procedure Act 1986* (NSW) and paragraph 61HJ(1)(a) of the *Crimes Act 1900* (NSW).⁵²

⁴⁸ Ms Angela Lynch, Executive Officer, Secretariat, Queensland Sexual Assault Network, *Committee Hansard*, Sydney, 27 July 2023, p. 53.

⁴⁹ AGD, *Submission 38*, p. 15.

⁵⁰ Law Council of Australia, *Submission 73*, p. 30. Also see: Ms Annabella Dumas, *Submission 25*, pp. 21–22, who noted the lack of reform in the ACT and Tasmania despite the existence of the communicative consent standard.

⁵¹ Law Council of Australia, *Submission 73*, p. 30. Note: the Law Council also argued that it is important that the frameworks accommodate the need to preserve flexibility: p. 31.

⁵² Dr Julia Quilter and Dr Luke McNamara, *Submission 17*, p. 5.

Timing and use of jury directions

3.52 Submitters and witnesses expressed their support for jury directions that help clarify the law, and challenge rape myths and misconceptions.⁵³ The Law Council submitted that jurors, like other members of the community, can be influenced by myths and misconceptions about sexual violence and consent:

...jury directions can play a powerful educative role by clarifying the law, and on legal standards of behaviour required in the context of sexual relations. They are an important mechanism by which such myths and misconceptions about consent can be addressed, including, for example, that physical resistance is required to demonstrate a lack of consent.⁵⁴

3.53 Dr Duncanson and Dr Emma Henderson submitted that ‘jury directions about rape myths should be utilised before and throughout sexual offence trials, rather than only at the conclusion of a trial’, as human beings process information a certain way:

Listeners deploy implicit strategies in order to organise and make sense of complicated, disordered and emotionally challenging information. In particular, listeners use pre-existing schemas or narratives, triggered by the information they see or hear, to construct narratives to aid their comprehension and memory of that information. The order of information delivery is crucial to this process, because once a schema or narrative has been triggered, noncompliant information is forgotten or reconfigured to ‘fit’.⁵⁵

3.54 Dr Duncanson and Dr Henderson elaborated that, in a conventional sexual assault trial, the jury hears a rape myth followed by its refutation in a jury direction, the problem being:

...a jury direction coming at the end of the trial is not...sufficient to undo this ordering of information – the jury have already sorted, discarded and forgotten any evidence that does not accord with their theory of the case.⁵⁶

3.55 Dr Duncanson and Dr Henderson hypothesised that jury directions need to be given greater prominence in sexual offence trials, if they are to dispel rape myths and misconceptions:

It is possible that if used in the early stages of decision-making, at pre-trial hearings and in evidentiary rulings throughout the trial, jury directions aimed at dispelling rape myths may help prosecution and defence counsel

⁵³ See, for example: Australia’s National Research Organisation for Women’s Safety, *Submission 69*, p. 7.

⁵⁴ Law Council of Australia, *Submission 73*, p. 31. Also see: National Association of Services Against Sexual Violence, *Submission 23*, p. 6, which set out particular myths and misconceptions that it considered should be the subject of jury directions.

⁵⁵ Dr Kirsty Duncanson and Dr Emma Henderson, *Submission 5*, pp. 1–2. Also see: Sexual Assault Services Victoria, *Submission 27*, p. 14.

⁵⁶ Dr Kirsty Duncanson and Dr Emma Henderson, *Submission 5*, p. 2.

to move away from a continued tendency to rely on myths at trial. It also seems likely that a judicial direction to the jury before the airing of evidence which is likely to have the effect of triggering rape myth schemas, would be much more likely to reduce the impact of narratives based on myths.⁵⁷

3.56 At the public hearing in Sydney, Dr Quilter suggested that legislation must be explicit about the need for a contemporaneous jury direction, for the direction to be applied consistently.⁵⁸

3.57 Dr Quilter and Dr Luke McNamara agreed that jury directions must be used:

...proactively and at the time of the evidence in question, rather than simply as part of the judge's summing up to the jury at the end of the trial. Research suggests that, for maximum effect, it is preferable if judges give 'corrective' directions (eg that delay in complaint does not necessarily mean fabrication) at the time this suggestion is raised.⁵⁹

Content of jury directions

3.58 In 2021, the Victorian Law Reform Commission (VLRC) examined the issue of jury directions. According to the Victorian Government, the VLRC recognised the success of reforms previously introduced by the government:

[The VLRC] recommended building on that strong foundation by, among other things, introducing new jury directions to address misconceptions about sexual violence in relation to:

- an absence or presence of emotion or distress when reporting or giving evidence
- a person's appearance (including their clothing), use of drugs and alcohol, and presence at a location behaviour perceived to be flirtatious or sexual
- the many different circumstances in which non-consensual sexual activity may take place
- maintaining a relationship or communication with the perpetrator after non-consensual sexual activity.⁶⁰

3.59 The Victorian Government legislated and extended the reforms recommended by the VLRC:

...to also prohibit statements that diminish the credibility of complainants because they are sex workers or have a particular sexual orientation or gender identity, and prohibit suggestions that the evidence of these

⁵⁷ Dr Kirsty Duncanson and Dr Emma Henderson, *Submission 5*, p. 2. Also see: Dr Kirsty Duncanson, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 74.

⁵⁸ Dr Julia Quilter, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 19.

⁵⁹ Dr Julia Quilter and Dr Luke McNamara, *Submission 17*, p. [4].

⁶⁰ Victorian Government, *Submission 67*, pp. 14–15. Also see: Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences*, September 2021, Chapter 20, www.lawreform.vic.gov.au/publication/improving-the-justice-system-response-to-sexual-offences/ (accessed 1 September 2023).

complainants requires more careful scrutiny by the jury. The [*Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022 Act (Vic)*] also introduced a new process to require judges to give directions about sexual offences at the earliest opportunity and at any time in the trial, if the judge considers there are good reasons to do so.⁶¹

3.60 Ms Freidin from WLSA described the Victorian legislation as having ‘a lot of really great examples of jury directions that go to the heart of the types of rape myths that we would be wanting to combat’. In particular:

...the idea that rape can [not] occur in the context of a relationship or in marriage, or the idea that just because a woman is drunk or wearing a short skirt doesn't necessarily mean that she consented. We assume that every Australian would already know these kinds of basic ideas, but we know from community attitude surveys that they don't.⁶²

Efficacy of jury directions

3.61 Some stakeholders noted that it is difficult to determine the efficacy of jury directions. The Youth Affairs Council of South Australia noted 2019 research, which found that jurors struggle to understand and apply jury directions. Further, ‘there has been a high number of appeals lodged and convictions overturned on the grounds of judicial directions given during proceedings’.⁶³

3.62 According to Ms Annabella Dumas, ‘there has been some debate amongst scholars, practitioners and indeed legislators, as to whether jury directions are effective at all in dispelling misconceptions’. Ms Dumas argued that much depends upon how deeply a myth is entrenched:

What is clear, is that some myths are more entrenched than others. Whilst juror directions are increasingly important, they are not a ‘panacea for correcting juror misconception’.⁶⁴

3.63 The Tasmanian Aboriginal Legal Service (TALS) indicated that it would support ‘non-binding model directions that form the core of directions on consent, with Judges given the flexibility to expand upon directions as they apply to each particular case’. TALS suggested that guidelines be provided on the use of any such directions at earlier opportunities, to overcome misconceptions and inaccurate narratives surrounding consent in sexual offence trials.⁶⁵

⁶¹ Victorian Government, *Submission 67*, p. 15.

⁶² Ms Lara Freidin, Executive Officer, Women’s Legal Services Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 31.

⁶³ Youth Affairs Council of South Australia, *Submission 7*, pp. 3–4. Also see: Tasmanian Aboriginal Legal Service, *Submission 9*, p. 3.

⁶⁴ Ms Annabella Dumas, *Submission 25*, pp. 31.

⁶⁵ Tasmanian Aboriginal Legal Service, *Submission 9*, p. 3.

3.64 Legal Aid NSW also identified concerns with mandatory jury directions:

We consider that mandatory, legislated jury directions are problematic and can unsettle and complicate law which has developed over many years. In addition, legislated jury directions may further complicate the process of explaining relevant law to a jury at the conclusion of a criminal trial, which is already a complex task. It may also make the process more open to error as weight may be given to one jury direction that is entirely irrelevant in the circumstances of the case. We consider that any jury directions in sexual assault trials should be available, but not mandatory.⁶⁶

Actors within the law enforcement and criminal justice systems

3.65 In 2021, the VLRC expressed its view that people working in the criminal justice system should have specialist skills:

Sexual offences is a complex area to work in. To handle these matters well, people working in the criminal justice system need to understand sexual violence. They also need to understand complex laws and procedures.⁶⁷

3.66 The VLRC noted that past reforms have helped to develop the specialist knowledge and skills needed to respond to sexual violence. However, as good practice is still not happening ‘across the board’, a specialised criminal justice workforce is needed.⁶⁸

3.67 Many submitters and witnesses shared the view that people working with victim-survivors of sexual assault—first responders (such as health or social workers), police officers, legal professionals, court officers and members of the judiciary—should receive specialist training, to ensure that their responses are sensitive, culturally appropriate and trauma-informed.⁶⁹

3.68 For example, the Federation of Community Legal Services (Victoria) and South-East Monash Legal Service supported comprehensive and ongoing training. Its submission emphasised: ‘it is essential that this entire process, from

⁶⁶ Legal Aid NSW, *Submission 75*, p. 11.

⁶⁷ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences*, September 2021, p. xxvii.

⁶⁸ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences*, September 2021, p. xxvii.

⁶⁹ See, for example: Tasmanian Aboriginal Legal Service, *Submission 9*, p. 2; No to Violence, *Submission 16*, p. 16; National Association of Services Against Sexual Violence, *Submission 23*, p. 6; Sexual Assault Services Victoria, *Submission 27*, p. 15; Aboriginal Legal Service (NSW/ACT), *Submission 28*, p. 5; Voices of Influence Australia, *Submission 34*, p. [10]; Women With Disabilities Australia, *Submission 36*, p. 7; NSW Aboriginal Women’s Advisory Network, *Submission 72*, p. 2; Legal Aid NSW, *Submission 75*, p. 12.

initial reporting, through to investigation and prosecution, is victim-centred, culturally safe and trauma-informed'.⁷⁰

3.69 Similarly, No to Violence submitted:

Training has to be ongoing and focus on the gendered nature of sexual violence; correcting common misconceptions about sexual assault and demonstrating the impact of these myths on access to justice; the role of sexual violence within [domestic and family violence]; the cumulative impact of all forms of domestic, family and sexual violence; and systems abuse tactics commonly employed by perpetrators. Such training should take an intersectional and pro-feminist approach, specifically identifying the ways in which gender, race, visa status/residency, employment, and geographic location influence a person's experience of sexual assault and of the criminal justice system.⁷¹

State and territory police

3.70 State and territory police are often victim-survivors' first point of contact with the criminal justice system. Consent Labs argued that it is 'imperative that they are equipped to receive the information and evidence and respond in a trauma-informed way. This will require specialised training that is both up-to-date and evidence based'.⁷²

3.71 The National Women's Safety Alliance and Teach Us Consent expressed their concerns about misogyny within police forces, referencing the 2022 *Inquiry into Queensland Police Service responses to domestic and family violence*:

The Commission of Inquiry found that misogyny was an entrenched problem in the service and that in some cases, the values, attitudes and 'general distrust of women' held by serving Queensland police officers, made a discernible impact on their response to domestic and family violence...The institutional failings of the Queensland Police Service are broadly representative of the immense cultural and workplace burdens that must be overcome if legislative reform is to have a meaningful impact on the lives of survivors of gender-based violence.⁷³

⁷⁰ Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 13.

⁷¹ No to Violence, *Submission 16*, p. 16. Also see: Voices of Influence Australia, *Submission 34*, p. [9].

⁷² Consent Labs, *Submission 30*, p. 8. Also see: No to Violence, *Submission 16*, p. 16; Aboriginal Legal Service (NSW/ACT), *Submission 28*, p. 5, who submitted that the way in which police record and investigate a complaint can have a critical impact on the victim-survivor.

⁷³ Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *A Call for Change*, 2022, www.qpsdfvinquiry.qld.gov.au/about/report.aspx (accessed 1 September 2023). Also see: Ms Saxon Mullins, Head of Advocacy, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 20.

3.72 To address unhelpful beliefs and attitudes, Dr Burgin from RASARA supported investment in policing practices,⁷⁴ and No to Violence’s Chief Executive Officer, Ms Jacqui Watt, agreed that working with police forces to change police culture

is absolutely essential:

There's still this thing that women are making it up—there are still the myths about that story—whereas, in fact, we know that most women don't even report it, and those who do often have a pretty horrendous process of trying to get to court, and then the level of conviction is very low. 'Women are making it up.' 'It wasn't that bad.' 'Well, she went back to his flat with him, so what did she expect?' We hear all this. This is endemic...[T]he police in Victoria are actually getting a lot better...[S]ome really advanced training is taking place.⁷⁵

Criminal justice system

3.73 WLSA commented on victim-survivors’ experiences at court, as follows:

Judicial officers and court staff are often not aware of the impacts of court proceedings and process on victim-survivors. For example, victims report that their court experience was “...disrespectful of their dignity as human beings” and that they found the process “humiliating”, “brutal, abrupt and traumatising”, “aggressive and insensitive” and “damaging and gruelling”. Women’s Legal Services regularly hear concerns from clients about having to wait in common areas near the perpetrator (particularly in the lower courts or in regional areas) and needing to request a screen in court to block-out the perpetrator (which should be standard practice). Clients are also often concerned about how they will be treated during cross-examination, particularly given that it is well-known how victim-survivors are often treated by defence counsel, and that judges will often be slow to interject or respond to aggressive behaviour.⁷⁶

3.74 Several submitters and witnesses focussed upon the courtroom behaviour of legal representatives. Dr Duncanson and Dr Henderson detailed their research findings on how barristers think and act in sexual offence trials. Their research revealed: ‘a persistent impediment to achieving justice for adult sexual offence complainants is the implicit belief in rape myths held by both defence and prosecuting barristers’.⁷⁷

⁷⁴ Dr Rachael Burgin, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 20.

⁷⁵ Ms Jacqui Watt, Chief Executive Officer, No to Violence, *Committee Hansard*, Melbourne, 26 July 2023, p. 7.

⁷⁶ Women’s Legal Services Australia, *Submission 52*, pp. 14–15. Also see: Ms Jarmira Borwick-Parker, Family and Domestic Violence Specialist, and Member, Australian Services Union, *Committee Hansard*, Sydney, 27 July 2023, p. 48, whose evidence illustrated some of these issues.

⁷⁷ Dr Kirsty Duncanson and Dr Emma Henderson, *Submission 5*, p. [4].

- 3.75 According to Dr Duncanson and Dr Henderson’s research, rape myth beliefs are extensively held by barristers and used either deliberately or subconsciously at trial:

...we found evidence of widely held rape myth acceptance and the extensive use of rape myths at trials. Many of the barristers we interviewed struggled to accurately define ‘rape myth’ or explain what might constitute a rape myth. Most barrister participants articulated rape myths during the interviews without awareness that they were doing so. Several described implementing rape myths as [a] strategy during trials and several reported witnessing rape myths used by other barristers during trials...We found that none of the barristers we interviewed had received training, specialised education or professional development designed to counter rape myths.⁷⁸

- 3.76 In addition to the barrister interview research, Dr Duncanson and Dr Henderson surveyed criminal law teaching staff at all 32 accredited law schools across Australia. This research found that the amount of teaching time dedicated to sexual offences has declined over the past 20 years. The same has occurred for critical content in recent years:

Our findings indicate that knowledge about sexual offences held by most graduates of Australian law schools is reliant on self-directed learning... Generally, it appears that students are not adequately supported to learn about sexual violence or critiques of sexual offence law that might counter rape myth belief. Additionally, the capacity of teaching staff to develop curriculum that might support safe (non-triggering) learning about sexual offences and sexual violence is limited by time constraints, workload issues and research focused bench marking. This means that Australian law graduates are provided with minimal knowledge about sexual offences and sexual violence during their law school education. This enables students to graduate and pursue work as barristers with unchallenged, commonly held rape myths [beliefs].⁷⁹

- 3.77 Ms Gabrielle Bashir SC, Member of the National Criminal Law Committee of the Law Council, advised that there are laws and rules that apply to members of the legal profession during the cross-examination of witnesses:

There is a national uniform law that applies to lawyers and there are Barristers’ Rules that apply to all lawyers. The paramount duty is to the court. There is certainly a duty to the client, but the paramount duty is to the court. There are also rules there that do apply to when particular matters can be put to a witness...Then there is the Evidence Act, which applies in both New South Wales and Victoria....There are prohibitions there on harassing, bullying, intimidatory, and humiliating questions.⁸⁰

⁷⁸ Dr Kirsty Duncanson and Dr Emma Henderson, *Submission 5*, p. [4].

⁷⁹ Dr Kirsty Duncanson and Dr Emma Henderson, *Submission 5*, p. [5].

⁸⁰ Ms Gabrielle Bashir SC, Member, National Criminal Law Committee, Law Council of Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 6 and p. 11, where Ms Bashir noted that the bar associations provide some continuing professional development in this area. Also see: Mr Richard Wilson SC, Co-Chair, National Criminal Law Committee, Law Council of Australia, *Committee*

3.78 Mr Michael Stanton, President of Liberty Victoria acknowledged that there are ‘really troubling examples of cross-examination’. However, he maintained that there has been a cultural shift within the profession, driven by the judiciary:

I can safely say that in front of many, if not most, judges in the County Court of Victoria, if one was to engage in that kind of belittling victim-blaming cross-examination it would be shut down in a heartbeat...There has been a real focus on trying to stamp that out. There is now improved training in relation to barristers who appear in these matters.⁸¹

3.79 Law Council President Mr Luke Murphy advised that, over the past five years, the peak body has undertaken some initiatives to increase sexual violence awareness within the profession. In addition, the Law Council has recently commenced discussions on the review of the current framework around continuing professional education.⁸²

3.80 In relation to the judiciary, WLSA’s Ms Freidin said ‘there’s not a lot of public information about what training is given to judges’.⁸³ Dr Quilter suggested that the Judicial Commission might offer suitable training but it would depend upon the focus and speakers for each conference.⁸⁴

Australian government response

3.81 Stakeholders expressed views about how governments should support and encourage people working in law enforcement and the criminal justice systems, to develop and implement specialist knowledge and skills around sexual offending and victim-survivors.

3.82 The Australian government’s response in a number of key areas is discussed in the following sections.

Justice sector education and training package

3.83 The AGD advised that the Australian government has committed \$12.6 million over five years from 2022–23 for the delivery of ‘family, domestic and sexual

Hansard, Sydney, 27 July 2023, pp. 6–7, who said that ‘lawyers don’t just do what their clients ask them to do’. In contrast, see: Dr Kirsty Duncanson, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 74 in whose research study, barristers reported using rape myths on instruction from their clients.

⁸¹ Mr Michael Stanton, President, Liberty Victoria, *Committee Hansard*, Melbourne, 26 July 2023, p. 36.

⁸² Mr Luke Murphy, President, Law Council of Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 10.

⁸³ Ms Lara Freidin, Executive Officer, Women’s Legal Services Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 33.

⁸⁴ Dr Julia Quilter, private capacity, *Committee Hansard*, Sydney, 27 July 2023, p. 20.

violence education and training for frontline workers, health professionals and the justice sector'.⁸⁵

3.84 The justice sector will be provided with an education and training package that will include:

- a foundational education resource on sexual assault myths and misconceptions;
- a judicial officer training package on sexual assault myths, misconceptions and drivers; and
- a national conference for the judiciary on the nature and impacts of sexual assault.⁸⁶

3.85 The AGD submitted:

By equipping key members of the workforce in the justice system with a better understanding of the experiences of victims and survivors and how to adopt trauma-informed practice, these activities aim to bolster the criminal justice system's capability to respond to sexual violence, protect victims and survivors from the risk of further trauma, and improve offender accountability.⁸⁷

Law enforcement national training package

3.86 In relation to law enforcement, the Australian government is providing \$4.1 million over four years from 2022–23, to enhance responses to family, domestic and sexual violence through the development and delivery of a national training package. The package will include training on culturally safe policing responses and embedding trauma-informed models of response to minimise re-traumatisation when engaging with victim-survivors.⁸⁸

3.87 At 2023–24 Budget Estimates, a departmental representative advised that the AGD is currently scoping out the four-year measure:

We'll be doing a procurement process to identify a provider to work with us to develop the training. We're also consulting and working closely with state and territory police, and there will be, ultimately, consultation with the sector and the public.⁸⁹

⁸⁵ AGD, *Submission 38*, p. 12.

⁸⁶ AGD, *Submission 38*, p. 12.

⁸⁷ AGD, *Submission 38*, p. 12.

⁸⁸ AGD, *Submission 38*, p. 13.

⁸⁹ Ms Samantha Byng, Assistant Secretary, Family Safety Branch, Children and Families Division, AGD, Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Hansard*, 24 May 2023, p. 62.

3.88 AGD noted also that the recently formed Police Ministers Council has now met twice and agreed to a standing agenda item on domestic, family and sexual violence.⁹⁰

Specialist legal services for victim-survivors

3.89 The Australian government has committed \$8.4 million over three years from 2023–24 to pilot a new legal service model, which aims to provide victim-survivors with greater access to specialised and trauma-informed legal services, to support their recovery and engagement with the criminal justice system.⁹¹

3.90 The AGD advised that the pilot model might involve co-locating legal services with other support services, such as health and counselling services. However, the pilot is still in the design phase:

The design and operation of the service model (including service providers) and pilot locations will be determined following consultations with states and territories, victim and survivor advocates, and legal service providers. A public consultation process is expected to commence in March 2023.⁹²

Alternative reporting mechanisms

3.91 The AGD advised that, under the SCAG Work Plan Priority 3 (see Chapter 1), the Australian government has provided \$2.1 million to conduct a scoping study on alternative reporting mechanisms for sexual assault:

This scoping study will explore alternative reporting mechanisms for victims and survivors who may not wish to engage directly with police or formal criminal justice processes, and will seek to identify best practice models that empower victims and survivors. The study is expected to be finalised by mid-2024.⁹³

3.92 At the 2023–24 Budget Estimates, the AGD advised that the scoping study will examine ‘what the Commonwealth can do in this space, so looking at best practice approaches and examining the existing models that are already operating across Australia’. Departmental officers noted that there are a couple

⁹⁰ AGD, answer to question on notice, public hearing, Canberra, 25 July 2023 (received 16 August 2023).

⁹¹ AGD, *Submission 38*, p. 13.

⁹² AGD, *Submission 38*, p. 13.

⁹³ AGD, *Submission 38*, p. 15. Also see: AGD, *The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault, 2022|2027*, 2022, p. 7 (bold in the original), www.ag.gov.au/system/files/2022-08/MAG-work-plan-strengthen-criminal-justice-responses-to-sexual-assault-2022-2027.pdf (accessed 1 September 2023).

of models to examine, following which a report will be provided to government.⁹⁴

Australian Law Reform Commission review of criminal justice responses

3.93 On 1 May 2023, the Attorney-General, the Hon Mark Dreyfus KC MP, announced that the Australian government is investing \$14.7 million to strengthen criminal justice responses to sexual assault, and prevent further harm to victim-survivors. He stated:

Seeking justice should not add to the trauma experienced by victims and survivors. Nor should they be forced to navigate different legal processes and face different justice outcomes based on which state or territory they live in...We must give victims and survivors confidence that the justice system will deliver equitable and consistent outcomes, while minimising the risk of re-traumatisation through the justice process.⁹⁵

3.94 The \$14.7 million funding will be divided between two initiatives:

- \$6.5 million will be invested over four years to work with the states and territories to strengthen and harmonise sexual assault and consent laws, and improve criminal justice responses for victim-survivors; and
- \$8.2 million will be made available through to 2026–27 to design, deliver and evaluate multiple small-scale trials of primary prevention and early intervention concepts for the prevention of sexual harm and violence.⁹⁶

3.95 The first initiative—to strengthen and harmonise certain criminal laws—comprises a number of measures:

- establishment of an Australian Law Reform Commission (ALRC) review into justice responses to sexual violence, with a focus on law reform proposals to strengthen sexual assault laws, and improve the outcomes and experiences of victim-survivors in the justice system;
- hosting of a ministerial-level roundtable on addressing sexual violence, bringing together victim-survivors, the service and advocacy sectors, other experts and state and territory ministers to drive nationwide, cross-sector collaboration and inform the terms of the ALRC review;

⁹⁴ Ms Julie Zezovska, Assistant Secretary, Criminal Justice Reform Taskforce, First Nations and Justice Policy Division, AGD, Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Hansard*, 24 May 2023, p. 64.

⁹⁵ The Hon Mark Dreyfus KC MP, Attorney-General, ‘\$14.7 million to strengthen sexual assault laws and prevent harm’, *Media Release*, 1 May 2023, <https://ministers.ag.gov.au/media-centre/147-million-strengthen-sexual-assault-laws-and-prevent-harm-01-05-2023> (accessed 1 September 2023). Note: the \$14.7 million funding commitment is in addition to the measures proposed in the October 2022-23 Federal Budget.

⁹⁶ The Hon Mark Dreyfus KC MP, Attorney-General, ‘\$14.7 million to strengthen sexual assault laws and prevent harm’, *Media Release*, 1 May 2023.

- convening of an Expert Advisory Group to support the ALRC review and advise government on implementation of its recommendations, ensuring the voices of victim-survivors are centred in justice responses to sexual violence; and
- driving nationwide efforts to strengthen criminal justice responses to sexual assault, including implementing the Standing Council of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027 (see Chapter 1).⁹⁷

3.96 AGD representatives informed the Senate Legal and Constitutional Affairs Legislation Committee that the ministerial-level roundtable is expected to convene in the second half of 2023. The ALRC would then be tasked with a 12-month inquiry (to commence later in 2023).⁹⁸

⁹⁷ The Hon Mark Dreyfus KC MP, Attorney-General, ‘\$14.7 million to strengthen sexual assault laws and prevent harm’, *Media Release*, 1 May 2023. Also see: Ms Julie Zezovska, Assistant Secretary, Criminal Justice Reform Taskforce, First Nations and Justice Policy Division, AGD, Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Hansard*, 24 May 2023, pp. 63–64, for further details on the status of the pilot trials.

⁹⁸ Ms Tamsyn Harvey, Deputy Secretary, Justice and Communities Group, and Ms Julie Zezovska, Assistant Secretary, Criminal Justice Reform Taskforce, First Nations and Justice Policy Division, AGD, Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Hansard*, 24 May 2023, p. 63.

Chapter 4

Education and awareness

4.1 Every four years, Australia's National Research Organisation for Women's Safety (ANROWS) undertakes the *National Community Attitudes towards Violence against Women Survey* (NCAS). This survey provides insight into how people understand violence against women, their attitudes towards it and whether there has been change over time.¹

4.2 In the 2021 NCAS, ANROWS reported that harmful myths and stereotypes about violence against women persist, with women still being blamed for causing their own victimisation or for lying about their experiences, for example:

34% of respondents agreed that it is common for sexual assault accusations to be used as a way of getting back at men

24% of respondents agreed that a lot of times, women who say they were raped had led the man on and had regrets.²

4.3 Multiple submitters and witnesses referenced the NCAS findings, arguing that Australia's sexual consent culture remains problematic. Body Safety Australia explained that this culture is the internal and external expression of the understanding of consent:

It is much more than a legal definition, it is embedded in healthcare, education, economics, politics, media, policing, employment, recreation, raising children, family life, and every social interaction. The evidence shows Australia's consent culture is not healthy.³

4.4 Body Safety Australia supported cultural change through a sustained whole-of-community approach. Its submission emphasised that, while consent education must begin at school, it must be supported and validated by adults outside the classroom, to ensure that the lessons learned at school are not 'unlearned outside the classroom':

We can help and support children and young people to develop a positive and healthy consent culture, but we cannot place the burden of such a large

¹ Australia's National Research Organisation for Women's Safety, 'National Community Attitudes towards Violence against Women Survey (NCAS)', www.anrows.org.au/research-program/ncas/ (accessed 1 September 2023). Also see: Ms Padma Raman, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, *Committee Hansard*, Canberra, 25 July 2023, p. 35, who noted that attitudes toward sexual violence are changing albeit slowly.

² Australia's National Research Organisation for Women's Safety, 'NCAS 21 Quick Guide Key Messages', pp. 3–4, <https://ncas.au/> (accessed 1 September 2023).

³ Body Safety Australia, *Submission 29*, p. 4.

and relatively rapid cultural shift solely on such young shoulders. Everyone must participate.⁴

4.5 This chapter examines consent education in:

- primary and secondary schools;
- tertiary education settings; and
- the Australian community.

Consent education in primary and secondary schools

4.6 In 2022, La Trobe University published its 7th *National Survey of Secondary Students and Sexual Health* (SSASH), which explores the sexual health and well-being of school-age young people (14 to 18 years) in Australia:

More than half (60.6%) the young people surveyed reported that they had sexual experience or were currently sexually active (defined as having experienced oral, vaginal or anal sex)... Young women were more likely than young men or trans and non-binary people to report that they were sexually active.

...

The average age at which young people first experienced sex was approximately 15 years, but this differed with different sexual practices. The average age was:

- 13.6 years for viewing pornography
- 14.6 years for deep kissing
- 15.2 years for oral sex
- 15.3 years for vaginal sex
- 15.6 years for anal sex⁵

4.7 SSASH also asked young people about their experiences of unwanted sex. SSASH reported:

Over one in three young people indicated that they had experienced unwanted sex during their life (39.5% of those who had experienced sex).

Trans and non-binary young people (55.4%) and young women (44.5%) were more likely to report that they had experienced unwanted sex than young men (21.3%). LGBTQ+ young people (48.2%) were more likely to report that they had experienced unwanted sex than heterosexual young people (33.8%).

...

⁴ Body Safety Australia, *Submission 29*, p. 4. Also see: Association of Heads of Independent Schools of Australia, *Submission 6*, pp. 2–3; Ms Tosca Looby, Creative Director, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, Canberra, 25 July 2023, p. 5, who said that ‘cultural change [would] lead to so many other changes’.

⁵ La Trobe University, *7th National Survey of Secondary Students and Sexual Health*, 2022, pp. 10-11, www.latrobe.edu.au/arcshs/work/national-survey-of-secondary-students-and-sexual-health-2022 (accessed 1 September 2023).

For 60.1% of young people who had experienced unwanted sex, this occurred for the first time in the context of an intimate relationship. One in five young people (20.7%) had experienced unwanted sex in the context of a familial or friendship relationship, while 9.9% had experienced unwanted sex that was perpetrated by someone known to them but not a friend or family member.⁶

4.8 In response to the survey, young people wrote:

...consent involves verbal communication, physical indicators of consent, sharing of sexual images and messages, or a combination of these factors. Young people wrote that verbal communication includes genuine and confident agreement to have sex. Physical indicators of consent were numerous and included flirting, facial expressions, being affectionate, kissing and other sexual activities, removing clothes, going somewhere private, picking up a condom or touching. Young people described consent as an ongoing process with either partner able to stop at any time.⁷

4.9 SSASH reported that over 95 per cent of respondents considered Relationships and Sexuality Education (RSE) to be an important part of the school curriculum, with 93 per cent having received RSE at school. However, only 24.8 per cent of the respondents found their most recent RSE class to be very or extremely relevant to them.⁸

4.10 Specifically, in relation to consent:

While some students felt that consent was addressed, it was more common for students to include consent as one of the topics they felt was inadequately addressed. Some students also felt that issues of sexual assault, or where to seek help following sexual assault, should have been included in the curriculum.⁹

4.11 Ms Angelique Wan, Chief Executive Officer and Co-Founder of Consent Labs, remarked that this had also been her experience and also that of her Co-Founder, Dr Joyce Yu:

[RSE] felt not relevant or in touch with what we were living through as young people. It was often delivered in a very victim blaming or fear based manner and did not address conversations around intersectionality or consent.¹⁰

4.12 Voices of Influence Australia agreed that there are several ways in which the curriculum must be 'strengthened', such as by including or addressing:

⁶ La Trobe University, *7th National Survey of Secondary Students and Sexual Health*, 2022, p. 14.

⁷ La Trobe University, *7th National Survey of Secondary Students and Sexual Health*, 2022, p. 14.

⁸ La Trobe University, *7th National Survey of Secondary Students and Sexual Health*, 2022, p. 15.

⁹ La Trobe University, *7th National Survey of Secondary Students and Sexual Health*, 2022, p. 95.

¹⁰ Ms Angelique Wan, Chief Executive Officer and Co-Founder, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, p. 10. Also see: Ms Taylah Spirovski, Chief Executive Officer, Voices of Influence Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 18.

a sex-positive approach; scenarios which undermine women's equality (for example, pornography); and emerging issues where consent has been violated/sexual violence has been perpetrated (for example, the increased prevalence of stealthing and image-based abuse (dubbed 'revenge porn')) (also see 'Content of consent education' below).¹¹

- 4.13 Women With Disabilities Australia (WWDA) highlighted that the curriculum is also not addressing the specific needs of all children and young people. In particular, WWDA voiced concerns about the need for accessible and appropriate education for young women and girls with disability:

...targeted education is needed for young women and girls with disability who are more likely to experience sexual and reproductive coercion than almost any other group and are significantly more likely to experience coercion in the context of decisions around reproductive health issues such as menstrual management, contraception, abortion and sterilisation. While changing legislation may impact how consent is taught in schools, it will have no bearing on the safety, sexual and reproductive health and rights of women and girls with disability if the education around it is not made accessible to and tailored to meet the specific experiences of the disabled community.¹²

Children and young people's current understanding

- 4.14 As indicated in the SSASH, several submitters and witnesses agreed that children and young people do not have a good understanding of consent and sexual assault.¹³ The Youth Affairs Council of South Australia submitted:

...today in Australia young people lack an understanding of consent and can continue to hold misinformed views on sexual assault. Young people are experiencing a stage in life where expressions, values and understandings can be impacted by exposure to violence against women and attitudes that support it.¹⁴

¹¹ Voices of Influence Australia, *Submission 34*, p. [16]. Also see: Women's Legal Services Australia, *Submission 52*, p. 17.

¹² Women With Disability Australia, *Submission 36*, p. 9. Also see: Ms Caitlyn Allen, Deputy-Director, Legal and Political Affairs Committee, Voices of Influence Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 22, who commented similarly in respect of the LGBTIQ+ community; Ms Catherine McAlpine, Chief Executive Officer, Inclusion Australia, *Committee Hansard*, Melbourne, 23 July 2023, p. 57, who noted that additional scaffolding might be required for people with intellectual disability.

¹³ See, for example: One Woman Project, *Submission 37*, p. [3], which identified consent and intoxication, consent in relationships, and affirmative consent as areas in which there is a high level of misunderstanding; Legal Aid NSW, *Submission 75*, p. 18; Ms Abigail Gregorio, Founder, WA Consent, *Committee Hansard*, Sydney, 27 July 2023, p. 23.

¹⁴ Youth Affairs Council of South Australia, *Submission 7*, p. 1. Note: the submission noted that, from 2009 to 2017, the National Community Attitudes towards Violence against Women Survey revealed 'no significant improvement in understandings regarding consent among young people': p. 2.

- 4.15 Some stakeholders commented specifically on the role of pornography in shaping children and young people's views about relationships and sex.¹⁵ The Australian Christian Lobby (ACL) argued that exposure and access to pornography is 'particularly damaging to a healthy understanding of sexual consent'.¹⁶
- 4.16 The ACL's submission referenced research conducted by Bravehearts, a child protection not-for-profit organisation, which commented on the long-term impacts of pornography, as follows:
- It can influence [children, pre-teens and teenagers'] sexual lifestyles, practices and attitudes and decrease their concern around unsafe or unprotected sex. It can also impact on their wellbeing, relationships and their sexual and psychological development...Alarmingly, some evidence exists proving that viewing pornography has the potential to increase the likelihood of a young individual committing a sexual crime.¹⁷
- 4.17 La Trobe University and the Australian Research Centre in Sex, Health and Society highlighted that pornography is 'not designed to educate on sexual communication and consent'. They noted, however, that many young people are disenfranchised from school and, for these young people, pornography may be a source of information about sex and relationships.¹⁸
- 4.18 At the Canberra public hearing, witnesses noted the multiple mental and sexual health benefits resulting from comprehensive RSE.¹⁹ Consent Labs' representative Ms Wan provided the following example:
- ...international and local research...has been done around, more broadly, comprehensive sexuality and relationships education, of which consent is a part. That research continues to demonstrate that these conversations should be had in an age-appropriate manner and that these conversations can start from as young as kindergarten and go on as a young person goes on to high school and then university. Of course, they can continue past formal education institutions. This form of education is incredibly important

¹⁵ See, for example: Association of Heads of Independent Schools of Australia, *Submission 6*, p. 1.

¹⁶ Australian Christian Lobby, *Submission 10*, p. 7.

¹⁷ Bravehearts, *An Overview of Research on the Impact that Viewing Pornography has on Children, Pre-Teens and Teenagers*, July 2017, p.4, <https://bravehearts.org.au/wp-content/uploads/2018/01/Research-Report-Overview-of-research-into-the-effects-of-viewing-pornography-on-children....pdf> (accessed 1 September 2023).

¹⁸ La Trobe University and the Australian Research Centre in Sex, Health and Society, *Submission 11*, p. 7. Also see: MacKillop Family Services and the University of Melbourne, *Submission 31*, p. 1, which noted that young people in residential care do not receive RSE; Legal Aid NSW, *Submission 75*, p. 18, which observed that 'many young people may not engage in [consent] lessons due to truanting, suspension/expulsion or illness'.

¹⁹ See, for example: Ms Jess Hill, Presenter and Consultant Producer, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, Canberra, 25 July 2023, p. 6; Ms Katherine Berney, Director, National Women's Safety Alliance, *Committee Hansard*, Canberra, 25 July 2023, p. 12.

because research has demonstrated that it delays the initiation of sexual intercourse. It reduces risk taking. It increases the use of contraceptive methods. Beyond just improvements in sexual health realms, it also demonstrates a reduction in gender-based violence. It increases gender equity and it increases capacity for building healthier relationships.²⁰

Australian curriculum

- 4.19 In 2019, the Australian Institute of Health and Welfare (AIHW) reported that one in five women (16 per cent) and one in nine men (11 per cent) have experienced physical or sexual abuse before the age of 15.²¹
- 4.20 In 2021, Ms Chanel Contos, then a graduate student, posted an Instagram poll, asking her followers if they or someone close to them had been sexually assaulted by someone when they were at school. Within 24 hours, she received nearly 300 responses, with 73 per cent of responders saying ‘yes’.²²
- 4.21 As followers continued to respond in the affirmative, the Instagram poll morphed into a petition, calling for more holistic and earlier consent education in the Australian curriculum, and a platform where people could share anonymous testimonies of sexual assault (teachusconsent.com).²³
- 4.22 On 1 April 2022, the Education Ministers Meeting, comprising federal, state and territory education ministers, endorsed updates to the Australian Curriculum (Version 8.4).²⁴ These updates included ‘strengthening the explicit teaching of consent and respectful relationships from F–10 in age-appropriate ways’.²⁵

²⁰ Ms Angelique Wan, Chief Executive Officer and Co-Founder, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, p. 12.

²¹ Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story, In brief*, 2019, p. 3, www.aihw.gov.au/getmedia/b180312b-27de-4cd9-b43e-16109e52f3d4/aihw-fdv4-FDSV-in-Australia-2019_in-brief.pdf.aspx?inline=true (accessed 1 September 2023).

²² B. Burns, ‘In February, Chanel started an Instagram poll about sexual assault. This is what’s happened since’, *Mamamia*, 13 September 2021, www.mamamia.com.au/chanel-contos-petition/ (accessed 1 September 2023). Also see: Ms Abigail Gregorio, Founder, WA Consent, *Committee Hansard*, Sydney, 27 July 2023, pp. 21–22, who started a campaign for intoxication to be legislated as a vitiating factor for consent in Western Australia.

²³ Teach.Us.Consent, www.teachusconsent.com/ (accessed 24 March 2023). Also see: N. Bonyhady, ‘Australian of the Year Tame reveals abuse exposed her to more violent relationships’, *Sydney Morning Herald*, 2 September 2021, who called for the earliest possible conversations with children about respectful behaviour and consent.

²⁴ Attorney-General’s Department (AGD), *Submission 38*, p. 12.

²⁵ Australian Curriculum, Assessment and Reporting Authority, ‘What’s changed in the new Australian Curriculum’, <https://v9.australiancurriculum.edu.au/resources/stories/curriculum-changes> (accessed 1 September 2023). Note: the changes are implemented in the Health and Physical Education learning area. Also see: AGD, *Submission 38*, p. 12.

- 4.23 Submitters and witnesses welcomed the education ministers' decision to mandate holistic and age-appropriate consent education in all Australian schools.²⁶ The National Women's Safety Alliance and Teach Us Consent considered that 'by educating the next generation about sexual consent...we can prevent normalised sexual violence, and demolish rape culture'.²⁷
- 4.24 However, it was argued that there will be challenges in the delivery of consent education. La Trobe University and the Australian Research Centre in Sex, Health and Society submitted, for example, that there is 'no national strategy or framework for the development, implementation, and delivery of school-based [RSE], including consent education'.²⁸

Respectful relationships education

- 4.25 Our Watch, a national leader in the primary prevention of violence against women and their children, submitted:

Respectful relationships education [RRE] is the holistic approach to school-based, primary prevention of gender-based violence, which includes teaching and learning about healthy relationships, gender, power and control in relationships and consent education.²⁹

- 4.26 Our Watch explained that RRE is not just what is delivered in a classroom but requires a whole-of-school approach to ensure that policies, school culture and teaching practices support students and staff, and promote positive messages about respect and equality:

A whole of school approach ensures a culture among both staff and students where gender stereotypes are challenged, gender-based discrimination is unacceptable, and gender equality is actively promoted, modelled and embedded across the entire school, not only in the curriculum. This is also true of consent education within schools. The messages that young people receive from adults around them influence their attitudes and behaviours. This is why it is important for school staff to consistently role-model consent and positive behaviours, to challenge gender stereotypes and

²⁶ See, for example: We Are Womxn, *Submission 24*, p. 2; Voices of Influence Australia, *Submission 34*, p. [14]; Australia's National Research Organisation for Women's Safety, *Submission 69*, p. 8; Legal Aid NSW, *Submission 75*, p. 17; Mr Kevin Bates, Federal Secretary, Australian Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 66.

²⁷ National Women's Safety Alliance and Teach Us Consent, *Submission 32*, p. 4.

²⁸ La Trobe University and the Australian Research Centre in Sex, Health and Society, *Submission 11*, p. 6. Note: the submission noted that, previously, there have been problems with the consistent application of mandatory relationships and sexuality education. Also see: Sexual Health Victoria, *Submission 19*, p. 2.

²⁹ Our Watch, *Submission 55*, p. 4.

victim-blaming messages about sexual relationships, and to respond sensitively and appropriately to disclosures of sexual violence.³⁰

4.27 In evidence, Ms Patty Kinnersly, Chief Executive Officer of Our Watch, said:

Put simply, the understanding of consent is an outcome of comprehensive respectful relationships education. We cannot teach consent without also addressing the societal context in which discussions about consent take place. A whole-of-school approach is one of the most promising primary prevention strategies in preventing gender-based violence, including sexual violence. Comprehensive respectful relationships education—or RRE, as it is often called—provides an opportunity to reach young people early in their development and shape their attitudes, beliefs and behaviour around gender equality, respect and consent.³¹

4.28 As part of a whole-of-school approach, Ms Jess Hill, Presenter and Consultant Producer for Northern Pictures and the Special Broadcasting Service, also called on schools to implement a code of conduct for the handling of sexual assault disclosures where the victim-survivor and perpetrator attend the same school:

We had many years of failures on bullying that led to suicides of young people. We've had many failures already in terms of schools responding to sexual assault between students. We need to have harmonisation or even just have some kind of code of conduct started and then harmonised between states as to what happens when the reports are made which are going to result from the consent education.³²

Professional learning strategy

4.29 Ms Kinnersly stated:

Fundamental to successful implementation of consent and respectful relationships education is the development of a professional learning strategy that supports teaching staff to develop their own knowledge and confidence in the delivery of relevant curricula. This should be situated within a broader professional learning strategy on respectful relationships education and primary prevention of violence against women.³³

³⁰ Our Watch, *Submission 55*, p. 7. Also see: Ms Taylah Spirovski, Chief Executive Officer, Voices of Influence Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 18; Mr Kevin Bates, Federal Secretary, Australian Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 66.

³¹ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 46.

³² Ms Jess Hill, Presenter and Consultant Producer, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, Canberra, 25 July 2023, p. 5.

³³ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, pp. 46–47. Also see: La Trobe University and the Australian Research Centre in Sex, Health and Society, *Submission 11*, p. 7; Legal Aid NSW, *Submission 75*, p. 18; Ms Angelique Wan, Chief Executive Officer and Co-Founder, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, p. 13.

- 4.30 Body Safety Australia outlined the types of learning that teachers would need to acquire in order to safely deliver consent education:

...teachers will need a deep understanding of all the complexities of gender equity, queer inclusivity, racial and cultural sensitivities, online spaces, new technological dangers, grooming behaviours, domestic violence, managing disclosures of rape and family violence, responding to young people coming out to them, and all manner of other emotional issues that are not part of the training for teaching health and physical education. Teachers will have to do all of this if they are survivors of sexual or domestic violence themselves...They will even have to do it if they are perpetrators of violence. They will have to do it if they hold misogynistic or queerphobic views, as inevitably some of them will.³⁴

- 4.31 Body Safety Australia considered that teachers would require specialised training and education to manage all of the complexities involved. However, it queried whether many teachers would receive this additional training, calling for funding to enable access to quality professional development programs. Its submission warned that a lack of training could lead to consent education doing more harm than good.³⁵

- 4.32 The National Women's Safety Alliance and Teach Us Consent suggested that there should be a 'national qualification program to build the workforce of Respect and Consent Educators'. In addition:

...we would like to pick back up on discussions that Teach Us Consent had with the previous Australian Government and the Department of Education around the Initial Teacher Education Curriculum, and how this nation-wide minimum teacher qualification standard can be utilised to train teachers in how to promote healthy and respectful attitudes and how to address problematic ones.³⁶

- 4.33 Ms Heather Clarke, Board Member and Secretary of the National Association of Services Against Sexual Violence, proposed that schools should have dedicated lead teachers:

...sexual violence is a massive issue. A lack of understanding about consent and how to negotiate respectful relationships for young people is also a very big issue. We need to invest in a reasonable and meaningful way and give schools a specialist position. Every other learning area, such as maths, English and science, has a key learning coordinator. We think respectful

³⁴ Body Safety Australia, *Submission 29*, pp. 6–7. Also see: Inclusion Australia, *Submission 39*, pp. 1 and 3–4, which highlighted the specific pedagogical needs of people with intellectual disability; Women's Legal Services Australia, *Submission 52*, p. 17, which argued that culturally safe and appropriate consent education must be led by the relevant communities.

³⁵ Body Safety Australia, *Submission 29*, p. 7.

³⁶ National Women's Safety Alliance and Teach Us Consent, *Submission 32*, p. 12.

relationships is significant enough that it needs one as well. We think there would be teachers who are interested in specialist training.³⁷

Near-to-peer and third party delivery of consent education

4.34 At the Canberra public hearing, some witnesses suggested that, rather than having teachers deliver RRE, it would be more effective to have young people teaching young people. Ms Wan said:

Consent Labs uses a near-to-peer facilitator model in which our facilitators themselves are young people. They are generally around the 20- to 25-year-old age group, so near to high school students or peer to peer in a university setting. We have anecdotally found that to be incredibly successful in conveying our messages around consent, communication and respectful relationships. You are able to garner a level of relatability. We immediately overcome the barriers...around feeling that content was not relevant or relatable...At Consent Labs, we've anecdotally found the near-to-peer model to be incredibly successful as a mode of delivery.³⁸

4.35 Ms Contos gave evidence that young people actually prefer to get education from an external provider, due to the 'awkwardness around these sorts of conversations'. However, she argued there is still a need to train teachers due to the need for consistent messaging:

It is very powerful to have these conversations from someone who is consistently in your life who can bring it up throughout multiple classes throughout the term...[T]here is an initial teacher education curriculum which specifies what teachers at university need to learn in order to be qualified as a teacher in Australia. Embedding respectful relationships education or how to deal with disclosures of sexual assault or how to ensure that at least minimum harmful behaviours are not being perpetuated through teaching and through behaviour correction would be quite game changing in making this consistent across the country.³⁹

4.36 Ms Kinnersly agreed that teachers have a pivotal role in the delivery of RRE: 'most of the work needs to be led by the educators who students are seeing across the course of the year and in their education'. Her colleague, Ms Genevieve Sheppard, Senior Policy Adviser, agreed:

...teachers are best placed to deliver this. They have the relationships with the students. They're probably more likely to receive the disclosure. Also students, and other people with expertise have spoken about this, won't

³⁷ Ms Heather Clarke, Board Member and Secretary, National Association of Services Against Sexual Violence, *Committee Hansard*, Canberra, 25 July 2023, p. 32.

³⁸ Ms Angelique Wan, Consent Labs, Chief Executive Officer and Co-Founder, *Committee Hansard*, Canberra, 25 July 2023, p. 13. Also see: Ms Katherine Berney, Director, National Women's Safety Alliance, *Committee Hansard*, Canberra, 25 July 2023, p. 13.

³⁹ Ms Chanel C. Contos, Founder and Chief Executive Officer, Teach Us Consent, *Committee Hansard*, Canberra, 25 July 2023, p. 14. Also see: Mr Kevin Bates, Federal Secretary, Australian Education Union, *Committee Hansard*, 27 July 2023, p. 70, who said that students expect teachers to deliver quality respectful relationships education.

often come out and make an open disclosure. There might be hints along the way. That's why we need teachers to be doing this work. The other reason we need teachers to be the ones doing this work is that, when we think about the curriculum, we're often thinking about the [Health and Physical Education, HPE] curriculum where relationship sits. If we are thinking about it in that space, that means that only the health and [Physical Education] teachers are getting access to this information and can then teach that to the students. That's problematic in a number of ways in that it loads the HPE teacher with an area. Also, it's not taught through the classroom teacher, who has the ability to reinforce all those messages in the classroom.⁴⁰

- 4.37 Some stakeholders argued that their expertise is critical to informing and delivering consent education in schools. Sexual Assault Services Victoria submitted that the expertise of sexual assault (SA) services is typically under-recognised and under-resourced in prevention work, even though these services are a natural fit for the delivery of consent education:

They have strong links to schools and a long history of delivering primary prevention education focused on consent. Further, services' deep understanding of the context and types of sexual violence commonly used by and against young people, and their ability to recognise trends in sexual violence, places SA services as unique experts in prevention efforts.⁴¹

- 4.38 Ms Ashleigh Newnham, Director of Advocacy and Development at South-East Monash Legal Services, similarly argued that there is a role also for community legal services:

Resourcing schools to partner with community legal centres is an effective model for allowing schools to access the legal expertise they need when developing this content and delivering this legal education.⁴²

- 4.39 Mr Kevin Bates, Federal Secretary of the Australian Education Union (AEU), stated that the union would not support abrogating the delivery of RSE to third party providers, which is not to say that there would be no role for content experts:

...the role of teachers in making decisions about the delivery of that education is critical. Teachers are the pedagogical experts. We want to be able to make decisions about how to deliver content to the students that we teach but also acknowledge that there are content experts out there...They should be making decisions about the content to ensure that it meets the expectations of the community and, indeed, the legislature in respect of

⁴⁰ Ms Genevieve Sheppard, Senior Policy Adviser, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 48. Also see: Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 48.

⁴¹ Sexual Assault Services Victoria, *Submission 27*, p. 16.

⁴² Ms Ashleigh Newnham, Director, Advocacy and Development, South-East Monash Legal Services, *Committee Hansard*, Melbourne, 26 July 2023, p. 28.

these matters, and then teachers are empowered to deliver the content in a way that's appropriate for the students they teach.⁴³

- 4.40 Similarly, the Federation of Community Legal Services (Victoria) and South-East Monash Legal Service emphasised the need to develop evidence-based consent education with subject-matter experts 'based on best practice internationally and adapted to meet local community needs'.⁴⁴

Challenges to delivery of consistent consent education

- 4.41 Some submitters and witnesses raised concerns in relation to other factors that might impede the delivery of consistent consent education. Consent Labs' Ms Wan stated that there is a difference between independent and public schools, with the former being better resourced to deliver best practice consent education:

...there absolutely is an inconsistency between the types of education institutions in terms of the resources available to them...The independent schools by far and large are able to come closer to best practice implementation of this education than public schools. By that, I mean they are more likely to be able to implement a year 7 to 12 program, to be able to implement a full and comprehensive educator, professional learning workshop, as well as engage with parents and carers.⁴⁵

- 4.42 Body Safety Australia identified the crowded Australian curriculum as an issue but emphasised the importance of finding time to deliver consent education in the senior years:

...young people aged between 15 and 19 is the most likely age group for both victims and offenders in sexual assault. This is the time when they are most in need of supportive, empathic, trauma-informed, and high-quality consent education. The psychological, mental health, long-term physical health, economic security, and disrupted relationships that research shows will often follow sexual assault provide a strong argument for intensifying, rather than removing consent education in the senior years of schooling.⁴⁶

- 4.43 In response, Mr Bates from the AEU said:

...there are other things that could be jettisoned from a teacher's workload that are of less importance than respectful relationships education...[W]e'd

⁴³ Mr Kevin Bates, Federal Secretary, Australian Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 69.

⁴⁴ Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 15. Also see: Women's Legal Services Australia, *Submission 52*, p. 17.

⁴⁵ Ms Angelique Wan, Chief Executive Officer and Co-Founder, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, p. 14. Also see: Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 51, who commented that resourcing, training and personal discomfort might also be contributing to a lack of consistency in the delivery of consent education.

⁴⁶ Body Safety Australia, *Submission 29*, p. 5.

like to see a broader conversation about what else might be removed from the education program to make space for respectful relationships.⁴⁷

Resistance to RRE

4.44 Another challenge in the delivery of RSE is the ‘pushback’ or resistance that schools sometimes encounter from students, parents, staff or their communities. Body Safety Australia referenced the ‘backlash’ that it has experienced from parents and, occasionally, teachers:

Backlash we have heard frequently includes anger or fear from parents that “my son will suffer rape claims unless he gets a signed contract” and “my son is too afraid to even date because he’s afraid of raping someone because it’s just too complex these days”. Examples of backlash from teachers includes “I’m not going to teach my students that all boys are rapists” and “why can’t we just teach the girls to get better at saying no”.⁴⁸

4.45 Body Safety Australia also referenced the ‘backlash’ from students who have been influenced by events overseas where women’s rights are being eroded and by the polarisation of gender politics:

Most young people in Australia habitually consume social media produced overseas and young people’s attitudes have never been so strongly impacted by global commentators. In our professional experience these attitudes are expressed daily in the classroom, often from adolescent boys who need support to understand that the values expressed by the likes of Andrew Tate are substantially different to the values learned in their own homes and communities. The reach and influence of these commentators makes it even more important to engage positively with all young people, but especially boys and young men, so their understanding of affirmative consent is empowering and will enable them to find happiness in safe, loving relationships as young people and as adults.⁴⁹

4.46 The AEU acknowledged that there is a challenge and responsibility for each public school to consult and negotiate with its community, to help it to understand the reasons for RRE, the content that’s covered in RRE, and to talk to them about the sorts of decisions that professional educators make in the delivery of age-appropriate RRE at all levels.⁵⁰

4.47 At the public hearings, several witnesses commented on *Welcome to Sex*, an age-appropriate introductory guide to sex and sexuality for teenagers, authored by Dr Melissa Kang and Ms Yumi Stynes. This book was recently

⁴⁷ Mr Kevin Bates, Federal Secretary, Australian Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 68.

⁴⁸ Body Safety Australia, *Submission 29*, p. 8.

⁴⁹ Body Safety Australia, *Submission 29*, p. 8.

⁵⁰ Mr Kevin Bates, Federal Secretary, Australian Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 69.

removed from the shelves at Big W stores after a backlash from conservative campaigners.⁵¹

- 4.48 Ms Hill considered the 'furore' interesting, stating that 'it shows how little adults know about the sex lives and sex education of young Australians'. Adding to the earlier discussion (see 'Children and young people's current understanding'), she noted the influence of pornography in shaping young men's attitudes to sex:

Almost half of Australians between the ages of nine and 16 years old are being regularly exposed to porn. The material they are viewing is increasingly violent, sexist and racist because literally that's the way you keep getting clicks...The sorts of messages transmitted in violent porn are not just violence, sexism and misogyny; it is that women who are choked, gagged and assaulted actually secretly like what is happening to them. Even though they protest, in the end they look grateful. It is hard to overstate just how damaging that is as a cultural education for young boys and men.⁵²

- 4.49 Ms Contos from Teach Us Consent agreed that young people are learning about sex from pornography:

A phrase I always use is that is basically like learning how to drive a car by watching Formula One. It's extremely unsafe. It's extremely dangerous. It's mainly young women who are being subjected to metaphorical car crashes.⁵³

- 4.50 Ms Contos cautioned against omitting the subject of pornography from RRE:

We're not taking into account enough how much pornography is shaping the sexual landscape of young people and distorting their understanding of consent. We can have laws, we can have conversations in classrooms and we can have all these things, but the reality is the amount of hours that young Australians spend watching violent and misogynistic depictions of explicit sex will counteract all of that. So porn literacy needs to be included in how we go forward.⁵⁴

- 4.51 Ms Taylah Spirovski, Chief Executive Officer of Voices of Influence Australia, agreed that emerging trends and practices must be addressed:

Right now, breaches of consent occur in an online context with revenge porn, which perhaps wasn't something able to be done with a Nokia brick. Separate to that, there are things like deep-fake porn where computer

⁵¹ C. Kelly and J. Taylor, 'Big W removes sex education book from shelves after staff members abused', *The Guardian*, 19 July 2023, www.theguardian.com/australia-news/2023/jul/19/yumi-stynes-welcome-to-sex-education-book-big-w-removes-bans (accessed 1 September 2023).

⁵² Ms Jess Hill, Presenter and Consultant Producer, Northern Pictures and Special Broadcasting Service, *Committee Hansard*, Canberra, 25 July 2023, p. 5. Also see: pp. 6 and 7.

⁵³ Ms Chanel C. Contos, Founder and Chief Executive Officer, Teach Us Consent, *Committee Hansard*, Canberra, 25 July 2023, p. 12.

⁵⁴ Ms Chanel C. Contos, Founder and Chief Executive Officer, Teach Us Consent, *Committee Hansard*, Canberra, 25 July 2023, p. 10.

technology is used to map the faces of celebrities, in many instances, or private citizens or whoever it may be onto explicit sexual material.⁵⁵

- 4.52 Ms Kinnersly speculated that perhaps the backlash is attributable to people genuinely not understanding what comprises age-appropriate content.⁵⁶ Legal Aid NSW explained what this content would look like in a primary to high school continuum:

...in primary school consent can be taught with a focus on friendships, respectful relationships and body autonomy. By high school, consent education could shift to focus on romantic relationships, gendered stereotypes, coercion and power imbalances. High school sexual consent education should also cover the legal definition of sexual consent...and the offences associated with non-consensual sexual activity, as well as ethical issues, interpreting verbal and non-verbal communication and negotiation around sex.⁵⁷

- 4.53 Similarly, Ms Sheppard from Our Watch explained:

The age appropriateness comes from the experts within that space. We also talk about it being scaffolded: we build a concept and then we build on it and build on it. The explicit teaching has also been shown to be a really protective factor for young people. We need to give them the skills to be able to speak to and articulate what's happening for them, and to understand it. We build it. Yes, in years 11 and 12, we're talking about gender-based violence and the impacts of gender norms on intimate partner relationships. That's not for five-year-olds; that's for year 11 and 12 students. It's about that explicit teaching in those age-appropriate but scaffolded ways.⁵⁸

- 4.54 Her colleague, Ms Kinnersly, reiterated that age-appropriate and scaffolded information better prepares young people for relationships and to identify non-consensual interactions:

What we know is that if young people have age-appropriate and scaffolded information shared with them, from when they're very small through to adulthood, they are more likely to be critical of what is important in a relationship, particularly when they're older. They're more likely to understand and challenge when things are not right. They have better skills themselves to know what consent is and when to challenge consent.⁵⁹

⁵⁵ Ms Taylah Spirovski, Chief Executive Officer, Voices of Influence Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 18. Also see: p. 19, where Ms Spirovski noted that digital technology can also be used by young people as a tool to increase the reporting of sexual assaults.

⁵⁶ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 50.

⁵⁷ Legal Aid NSW, *Submission 75*, p. 17. Also see: eSafety Commissioner, *Submission 12*, p. 1.

⁵⁸ Ms Genevieve Sheppard, Senior Policy Adviser, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 49

⁵⁹ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 50.

4.55 As discussed at paragraph 4.7, according to the SSASH, more than one in three young people have experienced unwanted sex. The average age at which young people had first experienced unwanted sex was 14.9 years. When asked about their most recent experience of unwanted sex:

- 65.2% reported that they had experienced verbal pressure
- 40.7% agreed to have sex because they were worried about negative outcomes of not having sex
- 31.9% were physically forced to have sex
- 28.0% reported that they were too drunk or high at the time to consent to sex.⁶⁰

Content of consent education

4.56 Many submitters and witnesses argued that all stakeholders, including children and young people, victim-survivors, sexual violence specialists, teachers and schools, must have a role in the design of the consent curriculum.⁶¹ The National Catholic Education Commission emphasised, for example, that, in its schools, the involvement of school authorities and communities, ensures that core content is underpinned by the Catholic faith and practice:

...sexual consent education is only one part of a broader education that [needs] to be focused on building respectful relationships and family life...To focus on consent alone is to fall short of the full expression of Catholic moral teaching...In Catholic schools, human sexuality, and its part in God's plan for humanity, is not reduced to solely matters of sexual consent.⁶²

4.57 Multiple stakeholders agreed that consent education encompasses more than just the legal definition or subject of consent.⁶³ Our Watch outlined what an evidence-based curriculum would encompass:

...the evidence tells us that the primary focus of consent education should be on building students' understanding of the fundamental principles of bodily autonomy, mutual respect, social and self-awareness, communication, enthusiasm and willingness, rather than only on explaining the legal framework.⁶⁴

⁶⁰ La Trobe University, *7th National Survey of Secondary Students and Sexual Health*, 2022, p. 14.

⁶¹ See, for example: Tasmanian Aboriginal Legal Service, *Submission 9*, p. 1; eSafety Commissioner, *Submission 12*, pp. 1–2; Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 15; Ms Angelique Wan, Chief Executive Officer and Co-Founder, Consent Labs, *Committee Hansard*, Canberra, 25 July 2023, p. 10.

⁶² National Catholic Education Commission, *Submission 8*, pp. 3–4.

⁶³ See, for example: We Are Womxn, *Submission 24*, p. 2.

⁶⁴ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 46. Also see: Sexual Assault Services Victoria, *Submission 27*, p. 15.

4.58 Women’s Legal Services Australia (WLSA) submitted that the consent curriculum must include the drivers of gender-based violence, respectful relationships, and ethical sexual practice. WLSA argued that ‘addressing gender stereotypes, male entitlement, rape myths and victim-blaming attitudes is...critical’,⁶⁵ a view with which Body Safety Australia agreed:

Debunking the gender and societal myths that often diminish young people’s ability to communicate freely is an essential component of consent education. This includes myths about:

- Boys and young men “proving their manhood” by displays of rampant sexual desire or frequent sexual encounters, which can often place substantial and unfair pressure on boys and young men.
- Girls and young women being the moral gatekeepers of sex, which can pressure them into feeling shame for natural sexual feelings or displaying rebellion by simulating sexual sophistication.
- LGBTIQ+ young people being either promiscuous and sexually adventurous, or irrelevant in any discussion of consent, which can cause significant harm and heightened perception of exclusion and othering.

Consent education needs to explain the history of such myths, demonstrate relatable examples of how they are expressed in young people’s everyday lives, and provide practical tools for overcoming internal and external pressures created and supported by these myths.⁶⁶

4.59 Dr Rachael Burgin, Chief Executive Officer of Rape and Sexual Assault Research and Advocacy, stated educational standards should have a ‘higher bar’ than the legal standard:

The criminal law is the lowest common denominator. We're dealing with people who have sexually assaulted another person. We need to look at something more rigorous. We need to look at a comprehensive relationships and sexuality program that doesn't just take into consideration what is a legal definition of consent and make sure you align with that but what a good, healthy, mutual sex life looks like for young people. How can we make sure that everybody is not only there and participating but is there and enjoying themselves and wants to be there? They are not coerced. There is no social pressure. They are not forced. They don't feel scared to say no. They are not worried that if they say no they will get called a prude and if they say yes, they are a slut. Those attitudes are really fundamental. The law doesn't do that. I'm not sure that it's capable of it.⁶⁷

⁶⁵ Women’s Legal Services Australia, *Submission 52*, p. 17.

⁶⁶ Body Safety Australia, *Submission 29*, p. 5. Note: Body Safety Australia noted the importance of having an inclusive and intersectional approach to consent education.

⁶⁷ Dr Rachael Burgin, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy, *Committee Hansard*, Canberra, 25 July 2023, p. 20. Also see: Grace Tame Foundation, *Submission 66*, p. 3, which indicated that teaching children from a young age about positive relationships will achieve what the law cannot.

4.60 End Rape on Campus Australia (EROC) concurred:

What's required – both within the education sector and Australian society more broadly – is holistic relationship and sexuality education programs that are applicable to diverse experiences and cover more than what the law says is the minimum requirement for consent. While it's important that the legal definitions of sexual assault and consent are covered, prevention education programs will continue to be ineffective if they do not also cover topics such as sexual ethics and sexual pleasure, the gendered nature of sexual violence, the root causes of gender inequality, rape myths and bystander intervention. These programs must be trauma informed and they must account for the experiences of members of the LGBTQIA+ community, people with disabilities, Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse communities.⁶⁸

4.61 Specifically in relation to sexual consent laws, Body Safety Australia confirmed its support for the teaching of the affirmative consent standard: 'high quality consent education has always taken an affirmative consent approach'.⁶⁹ Similarly, Consent Labs advised that it has always taught 'what is now recognised as the gold standard of consent education, encouraging students to go beyond their legal obligations and seek affirmative consent'.⁷⁰

Role of the Australian government

4.62 The Attorney-General's Department (AGD) acknowledged that the Australian government has a national leadership role in education. However:

...state and territory curriculum authorities and school authorities are responsible for implementing the Australian Curriculum in their schools. They do this in line with system and jurisdictional policies and requirements. The revised Australian Curriculum is being implemented by states and territories according to their own timelines from 2023 onwards.⁷¹

Funding for consent education

4.63 In the October 2022–23 Federal Budget, the Australian government provided \$27.6 billion to support state and territory education services, including \$26.8 billion in Quality Schools funding and \$787.3 million through National Partnership payments (NPP).⁷²

⁶⁸ End Rape On Campus Australia, *Submission 21*, p. [6].

⁶⁹ Body Safety Australia, *Submission 29*, p. 8.

⁷⁰ Consent Labs, *Submission 30*, p. 5.

⁷¹ AGD, *Submission 38*, p. 12.

⁷² Commonwealth of Australia, *Federal Financial Relations, Budget Paper No. 3, 2022–23*, p. 37, https://archive.budget.gov.au/2022-23-october/bp3/download/bp3_202223.pdf (accessed 1 September 2023).

4.64 One NPP is for the Consent and Respectful Relationships Education measure:

The Government will provide \$65.3 million over 4 years from 2022–23 (and \$18.2 million over 2 years from 2026–27) to invest in respectful relationships education to help prevent gender-based violence and keep children safe.⁷³

4.65 The AGD advised that the majority of this funding (\$77.6 million) will be provided to the state, territory and non-government school systems for services that support the delivery of RRE:

Implementation of this measure will be delivered in partnership with states, territories and non-government school sectors and informed and guided by:

- a national [RRE] expert working group
- a rapid review into current delivery approaches in jurisdictions and schools to identify best practice, areas for improvement and gaps
- development of a national framework or guide to provide assurance to school communities that they are delivering and receiving high-quality, evidence based, and age-appropriate [RRE] programs.⁷⁴

4.66 Our Watch’s Ms Kinnersly chairs the expert working group and she provided an update on implementation of the Consent and Respectful Relationships Education measure, concluding:

The timelines are snappy. The evidence review will be done in the next month or so, the criteria will be developed, and the objective is that the states and territories will be applying for that funding by the end of the year.⁷⁵

4.67 At the Canberra public hearing, the Department of Education advised that the first grant round is expected to commence in September 2023, with the delivery of consent education from 2024.⁷⁶

Funding for a consent survey

4.68 In the March 2022–23 Federal Budget, the Australian government committed \$5 million over two years from 2022–23 to the Australian Human Rights

⁷³ Commonwealth of Australia, *Budget Measures: Budget Paper No. 2, 2022–23*, p. 91, https://archive.budget.gov.au/2022-23-october/bp2/download/bp2_2022-23.pdf (accessed 1 September 2023). Also see: Our Watch, answer to question on notice, public hearing, Melbourne, 26 July 2023 (received 16 August 2023), p. 2, which described Victoria’s funding commitments for implementations.

⁷⁴ AGD, *Submission 38*, pp. 11–12.

⁷⁵ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, p. 51.

⁷⁶ Ms Rachel O’Connor, Assistant Secretary, Student Engagement and Wellbeing Branch, Department of Education, *Committee Hansard*, Canberra, 25 July 2023, p. 55. Also see: Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, Melbourne, 26 July 2023, pp. 50–51.

Commission (AHRC), to undertake a survey of secondary school-age students on attitudes towards consent (the National Consent Survey).⁷⁷

4.69 The AGD advised that the National Consent Survey will measure and seek to understand:

- secondary students' experiences of, and attitudes towards, consent education at school
- awareness and understanding of concepts related to consent and sexual harassment
- the experiences of children and young people of secondary school age of sexual harassment, in order to establish a point in time understanding of these issues and to inform improvements to the national curriculum and development of [RRE] policy.⁷⁸

4.70 In November 2022, the AHRC informed the Legal and Constitutional Affairs Legislation Committee that it was 'waiting on a grant agreement from the Department of Education', which was expected to commence in 2024.⁷⁹

Consent education in tertiary education settings

4.71 Ms Catriona Jackson, Chief Executive Officer of Universities Australia (UA), the peak body for the university sector, advised that UA takes its responsibility to address sexual harm 'very seriously' and 'we have not shied away from confronting this issue'.⁸⁰

4.72 Ms Jackson noted UA's *Respect. Now. Always.* initiative, which commenced in 2016 with a view to preventing sexual violence in university communities, and improving how universities respond to and support students who have been affected by that violence.⁸¹

4.73 As part of the initiative, UA commissioned two nationwide surveys on university students' experiences with sexual violence. The first survey reported in 2017 and the second survey in 2021.

4.74 In 2017, the AHRC published its survey report titled *Change the course, National Report on Sexual Assault and Sexual Harassment at Australian Universities*

⁷⁷ Commonwealth of Australia, *Budget Measures: Budget Paper No. 2, 2022–23*, p. 67, https://archive.budget.gov.au/2022-23/bp2/download/bp2_2022-23.pdf (accessed 1 September 2023)

⁷⁸ AGD, *Submission 38*, p. 11.

⁷⁹ Ms Anne Hollands, National Children's Commissioner, Australian Human Rights Commission, Senate Legal and Constitutional Affairs Legislation Committee, *2022–23 Budget Estimates (October)*, 7 November 2022, p. 115.

⁸⁰ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 30.

⁸¹ See: www.universitiesaustralia.edu.au/project/respect-now-always/ (accessed 1 September 2023).

(the *Change the Course* report), which revealed that 1.6 per cent of university students had been sexually assaulted in a university setting on at least one occasion in 2015–2016. Over 85 per cent of these students did not make a formal report or complaint to their university.⁸²

- 4.75 Four years later, the Social Research Centre reported its survey findings on the scale and nature of university student experiences of sexual harassment and sexual assault. The 2021 *National Student Safety Survey* (NSSS) reported that one in 20 students (4.5 per cent) had been sexually assaulted since starting university. Only 5.6 per cent of students made a formal complaint to the university.⁸³
- 4.76 UA has not decided whether to commission a third survey, although Ms Jackson advised the matter has been discussed with its members.⁸⁴ Subsequently, UA suggested that there will be a third survey in 2024.⁸⁵

Staff and student perspectives

- 4.77 Staff and student representative bodies questioned the university sector's commitment to ensuring safety and support for people on campus. The National Tertiary Education Union (NTEU) submitted that sexual consent is an ongoing issue in higher education settings.⁸⁶
- 4.78 The National Union of Students (NUS) commented that the release of the NSSS made the public aware of 'the shocking rates of sexual assault & sexual harm being inflicted on some of the most vulnerable groups in our society'.⁸⁷
- 4.79 Ms Bailey Riley, President of the NUS, remarked that survey findings from 2017 to 2021 are similar, revealing that universities are failing to protect students:

Our universities are not getting safer and the universities themselves are doing very little to make students safe. Earlier this week, we read the news

⁸² Australian Human Rights Commission, *Change the course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*, 2017, pp.4, 7 and 9, https://humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf (accessed 1 September 2023).

⁸³ Social Research Centre, *National Student Safety Survey*, Universities Australia, 2022, National Snapshot, https://assets.websitefiles.com/61c2583e4730c0d5b054b8ab/623ba530bc6676dfcdb1d5dc_2021%20NSSS%20National%20Report.pdf (accessed 1 September 2023).

⁸⁴ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 34.

⁸⁵ Universities Australia, answers to questions on notice, public hearing, Sydney, 27 July 2023 (received 17 August 2023), p. 2.

⁸⁶ National Tertiary Education Union, *Submission 44*, p. [3]. Also see: Dr Alison Barnes, National President, National Tertiary Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 67, who described how employment insecurity and hierarchies affect the raising of concerns.

⁸⁷ National Union of Students, *Submission 35*, p. 2.

that Universities Australia has dropped a consent education scheme because a few vice-chancellors thought it was too risque...It is abundantly clear to the National Union of Students that universities, and in particular Universities Australia, cannot be trusted to protect students in this space.⁸⁸

4.80 Dr Allison Henry, a legal and research expert on sexual violence, agreed that 'substantive progress...[has] stalled, in part, due to an overreliance on the self-regulating university sector to lead the reform effort and deficiencies in [the Tertiary Education Quality and Standards Agency, TEQSA] regulatory approach'.⁸⁹

4.81 Ms Sharna Bremner, Founder and Director of EROC, contended that the 2021 survey findings do not paint an accurate picture of what is actually happening on campuses throughout Australia:

...the National Student Safety Survey was done at a time when the majority of students were actually not on campus and in those communities because of the pandemic and related lockdowns. We would expect the figures that came out of that survey would likely be much higher now that students have arrived back on campus full time.⁹⁰

4.82 Ms Riley agreed with this assessment:

I very much...expect that [survey] would be worse if done again today. What the NUS hears on the ground at campuses across the country, at every women's collective, from every student union and from every student is that there is not enough being done and also that there is a complete lack of education and knowledge of how to work through these processes on campus for a student. Reporting and even something as simple as accessing a consent module varies from campus to campus and the structures are not in place at this point in time.⁹¹

Consent training modules

4.83 The NUS advised that there are clear differences in how universities provide RRE to students. Ms Riley said: 'some are approaching it with much more care and there's a want for change...and then there are some just doing the bare minimum'.⁹²

⁸⁸ Ms Bailey Riley, President, National Union of Students, *Committee Hansard*, Sydney, 27 July 2023, p. 54.

⁸⁹ Dr Allison Henry, *Submission 77*, p. 2.

⁹⁰ Ms Sharna Bremner, Founder and Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 54.

⁹¹ Ms Bailey Riley, President, National Union of Students, *Committee Hansard*, Sydney, 27 July 2023, p. 54.

⁹² Ms Bailey Riley, President, National Union of Students, *Committee Hansard*, Sydney, 27 July 2023, p. 55. Also see: Ms Caitlyn Allen, Deputy-Director, Legal and Political Affairs Committee, Voices of Influence Australia, *Committee Hansard*, Melbourne, 26 July 2023, p. 21; Professor Sharon Pickering, Deputy Vice-Chancellor (Education) and Senior Vice-President, Monash University, and

- 4.84 The NUS and EROC supported mandatory consent training modules in universities, as a preventative measure. EROC noted, however, that these modules have been the subject of ongoing criticisms, including one-off programs, programs that have not been rigorously and systematically evaluated, and programs that are not appropriately targeted towards their audience.⁹³
- 4.85 EROC highlighted particularly the lack of alternate options for students who may be distressed or retraumatised by the content of the consent training module. In some instances, students were being threatened with academic sanctions, if they did not complete the module.⁹⁴
- 4.86 UA's Ms Jackson was not aware of such instances, however, Dr Mary Russell, Acting Chief Executive Officer of the TEQSA, decried such a practice:
- We recognise and understand at a deeper level than we used to as a regulator that, for students having to move through formal procedures, particularly those that require them to be exposed again or tell their stories again, that can be deeply traumatising. We would expect that, for all vulnerable groups, higher education providers, universities and others should put in place programs and responses that, not only deal with the general, but also deal with the specific needs, concerns, and issues of those students. That would include trauma that might arise from a standard form of consent training as well as other measures.⁹⁵
- 4.87 In addition to content concerns, Ms Bremner advised that only six of UA's 39 members currently require compulsory prevention education modules:
- ...when we say 'compulsory', it seems to be a little bit limited in that it's compulsory for select groups, not for all students...[R]arely is there a whole-population approach, which is what we need.⁹⁶
- 4.88 WA Consent representative Ms Abigail Gregorio provided the following assessment of the consent education she received when starting university:

Group of Eight, *Committee Hansard*, Sydney, 27 July 2023, p. 32, for a description of one university's prevention efforts; Dr Terri MacDonald, Director, Policy and Research, National Tertiary Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 70, who said that some universities are stripping protections from industrial agreements.

⁹³ End Rape on Campus Australia, *Submission 21*, p. [4]. Also see: National Union of Students, *Submission 35*, p. 2.

⁹⁴ End Rape on Campus Australia, *Submission 21*, p. [4].

⁹⁵ Dr Mary Russell, Acting Chief Executive Officer of the Tertiary Education Quality and Standards Agency, *Committee Hansard*, Sydney, 27 July 2023, p. 40. Also see: Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 39.

⁹⁶ Ms Sharna Bremner, Founder and Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 58.

There were some introductory modules that you had to complete online; they were very quick, but they did touch on subjects briefly. There were also some posters in bathroom stalls. Some of the residences in similar places had some form of education, but I am not sure I could say that it was sufficient.⁹⁷

Funding for a tertiary campaign

- 4.89 The Department of Social Services (DSS) advised that the 2019–20 Federal Budget committed funding for UA to develop ‘a campaign specifically around raising awareness of sexual assault on campus’.⁹⁸
- 4.90 According to Ms Jackson, the DSS awarded UA a grant in 2021 and UA proceeded to develop and test the materials, through a series of stakeholder consultations, focus group testing, concept revisions and a final round of concept testing.⁹⁹
- 4.91 In answer to a question on notice, the DSS provided a copy of the materials delivered by Quantum Market Research to UA. In particular, the *Headline Findings From Concept Testing*, dated September 2021, states:
- The primary elements required from any successful campaign are addressed by both concepts. Both concepts successfully communicate the overarching message concerning the importance of respect in sexual relationships, are broadly attention grabbing, interesting and comprehensible.¹⁰⁰
- 4.92 In November 2021, Our Watch, a member of the campaign’s expert advisory group, was informed that ‘the campaign was placed on hold for review’.¹⁰¹ About the same time, UA verbally advised the DSS of the Vice-Chancellors’ views on the campaign.¹⁰²
- 4.93 The DSS also provided a copy of the *Concept Testing Round 2, Topline findings*, dated June 2022, which presented findings on the two concepts that had been then been revised:

⁹⁷ Ms Abigail Gregorio, Founder, WA Consent, *Committee Hansard*, Sydney, 27 July 2023, p. 25.

⁹⁸ Ms Greta Doherty, Group Manager, Women’s Safety, Department of Social Services, *Committee Hansard*, Canberra, 25 July 2023, p. 50.

⁹⁹ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 31. Also see: p. 36, where Ms Jackson noted sexual violence prevention expertise was used in development of the material.

¹⁰⁰ Department of Social Services, answer to question on notice, public hearing, Canberra, 25 July 2023 (received 31 August 2023), Question 2, p. 37.

¹⁰¹ Our Watch, answer to question on notice, public hearing, Melbourne, 26 July 2023 (received 16 August 2023), p. 2.

¹⁰² Department of Social Services, answer to question on notice, public hearing, Canberra, 25 July 2023 (received 31 August 2023), Question 1, p. 2.

In principle, both [these] campaign directions have the potential to achieve the communication objectives...Both campaigns have their merits. However, the merits of Concept Q are more conducive to promoting a journey from engagement to attitudinal and ultimately behaviour change.¹⁰³

4.94 In June 2022, UA advised the DSS that ‘the campaign as developed was not viable to be rolled out’.¹⁰⁴ Ms Jackson explained:

...neither of the two concepts tested would reliably drive attitudinal or behavioural change. A broad, homogenous campaign for the entire sector would be unlikely to have the cut-through required to be effective in shifting behaviours and attitudes regarding consent and respectful relationships... One of the big challenges for us is working across a sector that has 1.4 million students in it...Producing useful and compelling materials that can change attitudes across the entire breadth of students studying in the bush, students studying in the city and students of different religious and ethnic backgrounds is a challenging task.¹⁰⁵

4.95 The DSS and UA then decided:

...to move from a campaign targeting students to a good practice guide, which is focused on empowering and supporting prevention practitioners within universities to develop prevention work on campus.¹⁰⁶

4.96 The DSS advised that UA had proposed to cancel the contract but the department ‘wanted to work with what we had to make sure that we could develop and deliver a different product that still contributes to prevention efforts on campuses’.¹⁰⁷

4.97 Ms Jackson gave evidence that, in developing the good practice guide:

¹⁰³ Department of Social Services, answer to question on notice, public hearing, Canberra, 25 July 2023 (received 31 August 2023), Question 2, p. 58.

¹⁰⁴ Ms Greta Doherty, Group Manager, Women’s Safety, Department of Social Services, *Committee Hansard*, Canberra, 25 July 2023, p. 50.

¹⁰⁵ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, pp. 31 and 35. Also see: Universities Australia, answer to question on notice, public hearing, Sydney, 27 July 2023 (received 4 September 2023), p. 1.

¹⁰⁶ Ms Greta Doherty, Group Manager, Women’s Safety, Department of Social Services, *Committee Hansard*, Canberra, 25 July 2023, p. 50. Note: Ms Doherty added that the original funding agreement was sufficiently broad to accommodate the change. Also see: Department of Social Services, answer to question on notice, public hearing, Canberra, 25 July 2023 (received 31 August 2023), Question 3, p. 1.

¹⁰⁷ Ms Greta Doherty, Group Manager, Women’s Safety, Department of Social Services, *Committee Hansard*, Canberra, 25 July 2023, p. 51, where the departmental officer noted that the government would not have been able to recoup the grant due to third party expenses. Also see: p. 52; Department of Social Services, answer to question on notice, public hearing, Canberra, 25 July 2023 (received 31 August 2023), Question 1, p. 4, which outlined three options put to Universities Australia.

UA convened a working group of leading experts in the field of prevention of sexual harm from across 10 universities. Over 2,000 students were consulted during the development of the guide and their feedback has played a central role in shaping the final product.¹⁰⁸

4.98 The Primary Prevention of Sexual Harm in the University Sector—Good Practice Guide was launched in mid-July 2023.¹⁰⁹ Ms Jackson advised:

Our universities, my 39 members across the entire country, have a strong understanding of the unique demographics of their campuses and their students, which is why they are best placed to continue building on the extensive work undertaken to date. This guide will help to foster and bolster those ongoing efforts to address sexual harm in university settings...I'm very proud of the work that UA and my member institutions have done to try to reduce sexual harm. This doesn't mean that we've done everything right, but it does mean that we are determined to continue our efforts.¹¹⁰

4.99 Ms Jackson acknowledged that UA drew on Our Watch's 'best-in-class theoretical information' but asserted that 'our guide is fundamentally different' in that it is 'a really practical, hands-on resource':

What the hands-on practitioners in our sector were telling us was that they really needed examples. They needed examples of what was being done, what was working in other universities, so that they could adapt them to their circumstances. We have provided a really detailed, very practical, very hands-on guide that builds on the very good work done by Our Watch but is not in any sense identical to it.¹¹¹

4.100 EROC suggested that the guidelines are 'a lovely piece of work' with some useful case studies but 'the bulk of the material is nothing new'. The NUS agreed, adding:

It's a bit worrying that's where \$1.5 million goes, to basically recreate an old document and give it in a new light as opposed to having anything new or relevant in it to the times we're living in. Especially after the National Student Safety Survey came out, I think it just shows how University Australia has a complete lack of any will at all to engage with students in

¹⁰⁸ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 31. Also see: pp. 33 and 36–37, where Ms Jackson conceded that the National Union of Students were not consulted in development of the best practice guide.

¹⁰⁹ See: www.universitiesaustralia.edu.au/policy-submissions/safety-wellbeing/good-practice-guide/ (accessed 26 August 2023).

¹¹⁰ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 31.

¹¹¹ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 37.

this sector and also to actually change anything or bring anything new to consent education or sexual assault or violence on campus.¹¹²

Reporting sexual assaults

4.101 EROC typically supports students after they have reported a sexual assault to their university. Ms Bremner outlined the common features of students' experiences, as follows:

A really common theme among the students we've supported over the last eight-nine years now is, 'My rape was bad, but the way my university responded was worse.' We hear very often the effects of re-traumatisation once students have reported. They feel incredibly unsupported, even if they can find where to report in the first place...

When they are reporting, we are still seeing extensive delays in responses by universities, oftentimes of up to three, four or five months, sometimes even longer. Students might file a complaint with a department and not get a reply or an acknowledgement for weeks or days...

Once that process starts, students are still finding that simple requests for extensions, because they're dealing with trauma, are being denied or that they have to provide material from a psychologist proving the functional impact of the trauma on them and their ability to complete their studies, which then requires them to get documentation from a psychologist...

If they make it through all of that, if they get to a point where they file a complaint and the university decides to look into it, they're then told that they can't tell anyone they filed a complaint. They have to keep it to themselves or they can tell one other person, which obviously limits the amount of support they can get. It limits their ability to share that information with their tutors and with their professors to get that academic assistance.

Then if they somehow manage to still forge ahead and get through all of it they're often told they can't get an outcome to their complaint because of privacy reasons. They can go through a process that takes sometimes six months or more to not know what happened, to not know if the person who assaulted them has been allowed to remain on campus until they maybe walk into the library and that person is sitting there.¹¹³

4.102 Ms Nina Funnell, Director at EROC, argued that universities need to act in a trauma informed manner:

...we can do simple things to help students stay engaged with their education, such as allowing them to move tutorials so they don't have to sit with the offender; allowing them to have flexibility in their timetabling and their exams; not making them disclose afresh to every single one of their

¹¹² Ms Bailey Riley, President, National Union of Students, *Committee Hansard*, Sydney, 27 July 2023, p. 59. Also see: Ms Sharna Bremner, Founder and Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 59.

¹¹³ Ms Sharna Bremner, Founder and Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 56.

lecturers and every single one of their tutors; not having to produce medical documentation over and over again; and also allowing them to move bedrooms in residences so they don't have to sleep in the room where the rape happened...If we make these changes and we act in a trauma informed way...the differences that can have for that student in terms of their likelihood of staying engaged with their education, seeing it through to completion and going on to have better life outcomes are immense.¹¹⁴

4.103 Ms Jackson advised that, in 2016, 'one of the first things we did was to roll out training for staff and students across the whole range of university campuses so they could appropriately deal with [a] first disclosure'.¹¹⁵

4.104 However, the NTEU's Dr Barnes indicated that, regardless of training, services are simply inadequate to support students who have been sexually assaulted on campus:

In my experience of teaching large first-year units for many years you would often have students come to see you who suffered fairly traumatic events. I am not trained in how to provide support. But even finding ways to provide students with access to those support services is very difficult. Universities are bureaucratic and things are difficult to access. Those support services are appallingly under-resourced, and it leaves both staff and students in very difficult positions where things are not accessible or accessible in a timely or sometimes appropriate fashion.¹¹⁶

4.105 Dr Barnes added:

Students and staff can't access the support they need because the support is simply not there. It's ticking a box as opposed to often providing real support...I think it's a fundamental problem. Universities can have all of the great policies in the world, but unless they put their money where their mouth is, the policies are essentially not worth the paper upon which they're written.¹¹⁷

4.106 Ms Gregorio's experience illustrated this point:

[After being assaulted] despite being provided with some form of response, some kind of sounding board, by some services at the university, the most

¹¹⁴ Ms Nina Funnell, Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 57. Also see: End Rape on Campus Australia, answer to question on notice, public hearing, Sydney, 27 July 2023 (received 15 August 2023), pp. 2–6, which described trauma informed measures that could be implemented by universities to better support victim-survivors.

¹¹⁵ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 34.

¹¹⁶ Dr Alison Barnes, National President, National Tertiary Education Union, *Committee Hansard*, Sydney, 27 July 2023, pp. 67–68. Also see: Ms Sharna Bremner, Founder and Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 60, who commented that university staff often demonstrate reliance on rape myths when responding to disclosures or reports.

¹¹⁷ Dr Alison Barnes, National President, National Tertiary Education Union, *Committee Hansard*, Sydney, 27 July 2023, pp. 67–68.

support I ever got was from a tutor who was doing it from the kindness of his own heart.¹¹⁸

Tracking and oversight

4.107 From EROC's perspective, a third survey on university students' experiences of sexual violence is important as a means of tracking what is actually happening at universities:

A big problem that we see across the sector as a whole is a lack of transparency. We don't see anybody reporting or monitoring properly what universities are doing in response to the reports they're receiving. We don't see universities publicly reporting their annual prevalence data across-the-board in a consistent manner, and we think that without a survey right now we actually don't have any ability to keep an eye on what's going on.¹¹⁹

4.108 NUS's Ms Bailey agreed that transparency is a problem:

It's...extremely difficult to see what universities are doing unless you speak to every individual university because...they don't publish it. They don't really talk about what they're actually doing. It's very clear that universities themselves are not held to any standard, not held to any level of accountability, because they can just do what they want and say, 'Yes, we've done something', but never point to any information or actual data. Students on campus as well are very aware of this.¹²⁰

4.109 Ms Funnell referred to an FOI request made by Channel 7 in 2017, where the broadcaster sought information from all 39 public universities on the number and outcome of sexual assault complaints. She described some universities' responses as 'highly obstructive':

We eventually found out that across the 39 universities there had been approximately 565 sexual assault and harassment complaints. Of those 565 formal complaints...that had resulted in six expulsions in total. Some of the other punishments, including in incidents where people had actually admitted guilt, were things like a \$55 fine. That was at a university where the cost of a parking ticket was more than a \$55 fine for an offender...In others, there were things like people who had admitted committing a sexual offence and their punishment was to write an apology letter not to the victim but to the university.¹²¹

¹¹⁸ Ms Abigail Gregorio, Founder, WA Consent, *Committee Hansard*, Sydney, 27 July 2023, p. 25.

¹¹⁹ Ms Sharna Bremner, Founder and Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 55. Also see: Ms Nina Funnell, Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 56, who noted that many students make disclosures that are not reports captured in data.

¹²⁰ Ms Bailey Riley, President, National Union of Students, *Committee Hansard*, Sydney, 27 July 2023, p. 55.

¹²¹ Ms Nina Funnell, Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 61.

4.110 In late 2017, the AHRC wrote to Australia's 39 Vice-Chancellors, requesting information about any actions undertaken in response to the *Change the Course* report.¹²² Ms Jackson agreed that there were 800 actions identified by the AHRC, however, she was unaware of who, other than the university concerned, would now be tracking these actions.¹²³

4.111 Dr Henry questioned the number of actions noted above, as well as its attribution to the AHRC: 'none of [the AHRC materials] refer to 800 initiatives, though [a] 47-page document includes a long list of self-reported actions taken by universities following *Change the Course*'.¹²⁴

4.112 In addition, Dr Henry reported that, while some universities and residential colleges proactively report their efforts and management of sexual violence, they are in the minority:

...most have not been forthcoming, and assessing whether universities and colleges have actually delivered on their commitments can be incredibly difficult. My research indicates, for example, that less than a quarter of Australia's universities have collated and published information on their websites about sexual violence reports and disclosures or subsequent disciplinary actions.¹²⁵

4.113 Dr Henry continued:

Universities have claimed that they have overhauled their approach to campus sexual violence but there are currently no measures in place to ensure that universities are implementing the changes that they have committed to, or to assess whether measures that have been adopted are good practice and are constructively contributing to student safety and wellbeing. While TEQSA, relying on self-reporting by universities, superficially compiled some of this information about universities following the *Change the Course* report, there have been no effective and systemic oversight efforts of universities since mid-2020.¹²⁶

¹²² See: <https://humanrights.gov.au/our-work/sex-discrimination/audit-2017> (accessed 1 September 2023).

¹²³ Ms Catriona Jackson, Chief Executive Officer, Universities Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 35.

¹²⁴ Dr Allison Henry, *Submission 77*, p. 8. For examples of self-reported actions, see: University of Queensland, response to adverse comment at a public hearing, Sydney, 27 July 2023 (received 28 August 2023), Annexure 2, pp. 17–20; University of Sydney, *Annual Report on Sexual Misconduct*, 2022, pp. 6–14.

¹²⁵ Dr Allison Henry, *Submission 77*, p. 3. Also see: University of Sydney, *Annual Report on Sexual Misconduct*, 2022, which is an inaugural report on incidents of sexual misconduct, including 21 reports of sexual assault.

¹²⁶ Dr Allison Henry, *Submission 77*, p. 3.

Taskforce

4.114 In July 2023, the Department of Education released the *Australian Universities Accord, Interim Report* in which the Review Panel recognised:

Despite the best efforts of many institutions to address them, systemic issues persist across the higher education sector...suggesting governance arrangements could be improved. Sexual assault and harassment on campus is affecting the wellbeing of students and staff, and their ability to succeed.¹²⁷

4.115 The Minister for Education, the Hon Jason Clare MP, has announced that the Australian government will work with state and territory governments, through the National Cabinet, to improve university governance.¹²⁸

4.116 While some witnesses welcomed this announcement, EROC called for more immediate action, primarily through the establishment of a taskforce:

We have been advocating for a taskforce at a federal level to address how universities have been preventing and responding to sexual violence...[W]hat we've seen is that the regulator is not regulating on this issue. The higher education standards do require that universities foster a safe learning environment...[T]hat not happening, even where TEQSA can apply sanctions where they can actually do things. End Rape on Campus, on behalf of a number of students, actually filed complaints with TEQSA about their experiences....Our experiences with TEQSA over several years were so bad that we had to stop recommending that as an option to students, because we found that TEQSA's processes were so harmful without any outcome that it would be incredibly unethical of our organisation to keep recommending that as an option.¹²⁹

4.117 Dr Henry submitted that many stakeholders whom she had interviewed considered TEQSA a poor choice as the agency appointed to oversee the university sector's response to the *Change the Course* report. In particular, Dr Henry agreed with EROC that the regulator does not effectively enforce the Threshold Standards (the basic requirements for registration as a higher education provider), which include issues relating to Wellbeing and Safety (Standard 2.3), and Student Grievances and Complaints (Standard 2.4):

...between September 2017 and 30 November 2022 TEQSA has undertaken more than 60 individual assessments of universities' sexual violence policies and procedures...TEQSA has not judged a single university to be

¹²⁷ *Australian Universities Accord, Interim Report*, 2023, p. 129, www.education.gov.au/australian-universities-accord/resources/accord-interim-report (accessed 1 September 2023).

¹²⁸ The Hon Jason Clare MP, 'Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023', *Speech*, 3 August 2023, <https://ministers.education.gov.au/clare/higher-education-support-amendment-response-australian-universities-accord-interim-report> (accessed 1 September 2023). Note: the Review Panel recommended the re-establishment of a Tertiary Education Commission: see p. 7.

¹²⁹ Ms Sharna Bremner, Founder and Director, End Rape on Campus Australia, *Committee Hansard*, Sydney, 27 July 2023, p. 58.

non-compliant with the Threshold Standards regarding Wellbeing and Safety, even on the four occasions when universities had themselves notified TEQSA in relation to a matter of concern around their handling of sexual assault or sexual harassment. The strongest sanction applied by TEQSA in relation to sexual violence in the past five years has been monitoring and annual reporting of several universities.¹³⁰

Community education and awareness

4.118 As discussed throughout this report, stakeholders called for an holistic approach to addressing sexual violence throughout Australia. Many argued that consent education in primary and secondary schools, and in tertiary education settings, would not fully address the scourge of sexual violence. In addition, they called for community education and awareness to combat the entrenched culture towards sex and consent.¹³¹

4.119 Sexual Assault Services Victoria expressed its view that the lack of understanding of consent by many Australians, as illustrated in the NCAS, highlights the need for increased community awareness and education:

Such campaigns must be designed by experts and members of diverse communities, including children and young people. Resources must also be accessible and available in plain English and multiple languages to ensure broadest reach within the community. As experts in prevention, response, education, and training, SA services are uniquely placed to design, develop and deliver a community education and awareness campaign.¹³²

4.120 The Federation of Community Legal Services (Victoria) and South-East Monash Legal Service submitted:

There should be comprehensive and evidence-based community education about gender-based violence, respectful relationships and sexual consent (including consent laws) which challenges common misconceptions about sexual violence. This involves using mass media, community-level strategies and peers and leaders to champion positive messages.¹³³

4.121 ANROWS pointed out that public service campaigns have been successful in improving the community's understanding of the nature and prevalence of violence against women, and increasing the rejection of attitudes that condone

¹³⁰ Dr Allison Henry, *Submission 77*, pp. 10–11.

¹³¹ See, for example: Tasmanian Aboriginal Legal Service, *Submission 9*, p. 1, which called for targeted programs for men; Children by Choice, *Submission 14*, p. 6; Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 11

¹³² Sexual Assault Services Victoria, *Submission 27*, p. 14. Also see: National Association of Services Against Sexual Violence, *Submission 23*, p. 6; Australia's National Research Organisation for Women's Safety, *Submission 69*, p. 7.

¹³³ Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 12. Also see: Youth Affairs Council of South Australia, *Submission 7*, p. 4.

violence and gender inequality (for example, the ‘Stop It At The Start’ campaign).¹³⁴

4.122 As discussed in Chapter 3, rape myths and misconceptions affect beliefs and attitudes about victim-survivors, sexual assault and related prosecutions. The Victorian Law Reform Commission has previously identified the benefits in correcting such beliefs and attitudes:

A society that understands sexual violence is better able to support people who experience it. It creates an environment where they can speak up and seek justice. We know that if victim survivors receive a supportive response when they first disclose sexual violence, they are more likely to take the next step to seek support or report to police.

If the community has a good understanding of sexual violence, that will also improve the justice system’s response to sexual offences. Jurors in sexual offence trials and people involved in criminal and other justice processes are all members of the community.¹³⁵

Funding for a consent campaign

4.123 Some submitters urged the Australian government to invest in community education and awareness, to improve Australians’ understanding of sexual violence. The Federation of Community Legal Services (Victoria) and South-East Monash Legal Service argued:

It is imperative that the Commonwealth Government works with State and Territory Governments to ensure that community education about sexual violence is ongoing and well-resourced.¹³⁶

4.124 The Youth Affairs Council of South Australia added:

...without significant investment in prevention the problematic views held by society and individuals regarding consent and sexual assault will continue to affect the criminal justice system and the prevalence of sexual violence in Australia.¹³⁷

4.125 In 2021, the DSS commissioned consultancy firm Kantar Public to undertake research to inform the development of a public consent campaign.¹³⁸ Its research

¹³⁴ Australia’s National Research Organisation for Women’s Safety, *Submission 69*, pp. 7–8.

¹³⁵ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences*, September 2021, p. 37.

¹³⁶ Federation of Community Legal Services (Victoria) and South-East Monash Legal Service, *Submission 74*, p. 12. Also see: Legal Aid NSW, *Submission 75*, p. 14.

¹³⁷ Youth Affairs Council of South Australia, *Submission 7*, p. 4.

¹³⁸ Department of Social Services, answer to question on notice, DSS SQ22-000165, Senate Community Affairs Budget Estimates 2022–23, 19 April 2022 (received 31 May 2022).

report found that, while sexual consent is ‘on the radar’, it is not well understood:

- 4.126 Sexual violence and consent are not ‘new’ issues, however, over the last five years the topics of domestic violence and sexual consent have increased in their societal prominence. Seven in ten (70%) Australian adults believe the way people broadly think and talk about sexual consent is different now compared to a few years ago.

However, aside from recognising things have generally changed, many are unable to identify the changes and perceive a considerable ‘grey area’ in the way consent is defined, can struggle to identify and empathise with the experience of non-consensual activity, and can default to victim blaming because of the lack of clarity relating to accountability.

As a result, half (48%) of Australians are in a state of ‘flux’ when it comes to sexual consent – they are conflicted in their understanding of the problem, have low confidence in their ability to define it, and perceive high risks of getting involved. Positively, however, this state of flux is met by equal desire for clarity and leadership on the conversation – three quarters (77%) agree the topic is personally important and 86% agree adults should talk to young people more about it.¹³⁹

- 4.127 The AGD advised that the Australian government is providing \$40 million over five years to develop a new campaign about consent and respectful relationships, to help keep young people safe from sexual violence (the National Consent Campaign):

The campaign aims to reduce the incidence of sexual violence by targeting adult influencers of young people, and encouraging them to have a conversation about consent. It will include a mix of national mass media advertising and public relations activities for mainstream, First Nations and [culturally and linguistically diverse] audiences.¹⁴⁰

- 4.128 The National Consent Campaign is currently in the development stage, with the 2023–24 Federal Budget committing \$12.1 million over four years to develop and distribute social media resources for young people on consent with advice from an expert advisory group (Teach Us Consent), and to support community-led sexual violence prevention pilots.¹⁴¹

¹³⁹ Kantar Public, ‘Reducing Sexual Violence, research informing the development of a national campaign’, Department of Social Services, February 2022, p.1, www.dss.gov.au/sites/default/files/documents/03_2022/reducing-sexual-violence-research-informing-development-national-campaign-february-2022.pdf (accessed 1 September 2023).

¹⁴⁰ AGD, *Submission 38*, p. 11. Also see: Senator the Hon Anne Ruston, Minister for Women’s Safety, ‘Record boost to prevention and consent initiatives’, *Media Release*, 6 March 2022, <https://formerministers.dss.gov.au/19505/record-boost-to-prevention-and-consent-initiatives/> (accessed 1 September 2023).

¹⁴¹ Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2023–24*, p. 89.

4.129 The AGD advised that the campaign is necessary to complement existing initiatives that directly target young people and to improve community awareness and understanding of the issue.¹⁴²

¹⁴² AGD, *Submission 38*, p. 11.

Chapter 5

Conclusions and recommendations

- 5.1 Before setting out its findings, the Legal and Constitutional Affairs References Committee (the committee) wishes to again acknowledge those who have experienced and survived sexual assault. To victim-survivors, the committee deeply regrets what has happened to you, and the barriers you have faced in seeking justice. To those individuals who courageously shared their experiences and views with the committee, thank you.
- 5.2 Sexual violence is a national crisis. It is a crisis that disproportionately affects women and young people. It is a crisis the true extent of which we do not know, given how few incidences of sexual violence are reported, and fewer still brought before the courts. However, based on the disturbing results of detailed research and the testimony of victim-survivors, it is a crisis which requires action across the whole of Australian society. The scale of human tragedy is unacceptable. Every Australian has a responsibility to understand the true extent of the crisis and to do everything within their domain to address the issue. Victim-survivors deserve nothing less.
- 5.3 The terms of reference for this inquiry specifically asked the committee to consider the legal framework and consent education in Australia, but it is clear—as stated above—that lasting, transformative change requires a whole-of-society response.

Victim-survivors' agency

- 5.4 Agency can be broadly defined as the ability of an individual to actively and independently make their own choices, to shape their own life, to control their behaviours and actions. Sexual violence is a denial of that agency. In undertaking this inquiry, the committee was cognisant of this and sought to ensure that the voices of victim-survivors were heard.
- 5.5 Evidence to this inquiry, described elsewhere in this report, demonstrated that it is all too common for victim-survivors to be re-traumatised by the responses to their assault, exacerbating the trespass on their agency and causing further damage. The responses of some universities to students that have disclosed allegations of sexual violence are notable, albeit shocking, examples.
- 5.6 The committee is firmly of the view that the agency of victim-survivors must be acknowledged and respected at all levels; it must be central to all reforms.

Recommendation 1

5.7 The committee recommends that, in all responses to sexual violence, governments and non-government organisations ensure that the agency of victim-survivors is paramount, actively respected and upheld.

Australia's sexual consent laws

5.8 In recent years, Australian state and territory governments have considered the legal definition of sexual consent, which has led to actual or proposed legislative changes in most jurisdictions.

5.9 In general, there is a level of consistency in the definition of sexual consent based on a communicative consent standard, with some variation in related provisions. One of these variations is the introduction of an affirmative consent standard.

5.10 The committee heard, and recognises, that an affirmative consent standard aims to address legal and practical challenges that have been experienced by victim-survivors who seek redress through the criminal justice system, by shifting the focus from the victim-survivor and what they did to communicate a lack of consent to the alleged perpetrator and what they did to ascertain consent.

5.11 The committee heard divergent views with respect to the drafting of criminal law provisions which seek to reflect the affirmative consent model. The issues raised are detailed in Chapter 2 of the report.

The consent standard: communicative or affirmative?

5.12 The implementation of affirmative consent models in Australian jurisdictions is a relatively recent reform, and the impact of that change in those jurisdictions is not yet fully understood. The committee cannot point to any empirical evidence about the impacts of implementing an affirmative consent standard or the practical outcomes arising from particular provisions which have been adopted by a state or territory.

5.13 Given several jurisdictions have legislated different provisions seeking to implement an affirmative consent standard, the committee is of the opinion that it would be beneficial for those states and territory to monitor and evaluate the impact of the standard so that evidence can inform the process of reform across the country. In particular, the committee considers it important that the effect of an affirmative consent standard is assessed by the collection and examination of data on:

- the disclosure and reporting of sexual assaults;
- the number and nature of alleged sexual assaults investigated by police;
- the laying of charges;
- matters being brought to trial; and
- conviction rates.

- 5.14 There should also be a qualitative assessment undertaken with respect to the impact of the reforms, including consideration of the issues raised by several witnesses and submitters. This includes the matters raised by the Law Council of Australia regarding the need to ensure that any reforms uphold fundamental legal principles.
- 5.15 Close consultation with and feedback from victim-survivors about their experiences of the justice system in jurisdictions with an affirmative consent model should be an express design element, involving victim-survivors who wish to be a part of the evaluation.
- 5.16 As discussed below, it is noted that the Attorney-General has referred the issue of criminal law responses to sexual violence to the Australian Law Reform Commission (ALRC). It is suggested that states and territories work with the ALRC in relation to the framework for evaluation of the standard.

Recommendation 2

- 5.17 The committee recommends that Australian jurisdictions that have recently legislated an affirmative consent model, design and implement a framework for the evaluation of that standard, with outcomes to be reported to the Standing Council of Attorneys-General and the Australian Law Reform Commission, to inform all Australian governments about the impacts of an affirmative consent model in sexual consent laws and to assist the Australian Law Reform Commission in conducting its review process (referred to below).**

Recommendation 3

- 5.18 The committee recommends that state and territory evaluations of the impact of affirmative consent models is an annual standing item on the agenda of the Standing Council of Attorneys-General.**
- 5.19 The committee notes that Recommendations 2 and 3, as well as other recommendations in this chapter, will require coordination between governments and non-government bodies. To give effect to the critical changes required, the committee strongly urges all stakeholders to take into consideration how they can best deliver the cohesive reform required to address sexual offending in Australia.

Consistency in sexual consent laws

- 5.20 The committee heard that inconsistency amongst definitions of sexual violence and consent is a significant contributor to the difficulties encountered by victim-survivors. For example, one obstacle is the lack of knowledge and understanding about whether certain sexual activities are a criminal act and vitiating factors. The committee accepts that this is partly due to a lack of consistency between jurisdictions in the detailed provisions relating to the definition of sexual consent.

- 5.21 In this regard, the committee highlights especially the examples of intoxication and ‘stealthing’ as vitiating factors for consent¹ and the role of intoxication in the code jurisdictions’ mistake of fact defences.²
- 5.22 The committee considers that sexual violence is a crime without borders and all Australians should be able to refer to clear and consistent legislation, to understand when a sexual crime has been committed. In addition, clear and consistent legislation sets a strong legal and behavioural standard.
- 5.23 Accordingly, in the committee’s view, Australia’s criminal law frameworks should adopt a unified approach to sexual consent laws.
- 5.24 The committee acknowledges that governments have previously attempted to harmonise Australia’s criminal law frameworks with the Model Criminal Code project. This recognition of the benefits of harmonisation might have been ambitious but it was not misplaced.
- 5.25 The committee considers that consistency through the use of a communicative consent standard, and recent attempts to better reflect modern community standards, demonstrates a willingness to enact legislation that prevents and addresses the prevalence of sexual violence nationally.
- 5.26 The Law Council of Australia rightly noted that the national harmonisation of sexual consent laws would be difficult to achieve but that the inherent challenges are not ‘insurmountable’. In the committee’s view, the difficulty in achieving a necessary and worthwhile outcome is no reason to resist reform.
- 5.27 During the inquiry, the Attorney-General, the Hon Mark Dreyfus KC MP, announced Commonwealth government funding for measures to strengthen and harmonise sexual assault and consent laws in Australia.³
- 5.28 The committee understands that one of these measures will be an ALRC inquiry into criminal justice responses to sexual violence, with a focus on law reform proposals to strengthen sexual assault laws, and to improve the outcomes for and experiences of victims and survivors in the justice system.⁴ The committee wholeheartedly supports such an inquiry.

¹ See: Law Council of Australia, *Submission 73*, Attachment 1, Column 4 (Circumstances where consent is vitiated).

² See: Law Council of Australia, *Submission 73*, Attachment 1, Column 5 (Knowledge about consent).

³ The Hon Mark Dreyfus KC MP, Attorney-General, ‘\$14.7 million to strengthen sexual assault laws and prevent harm’, *Media Release*, 1 May 2023, <https://ministers.ag.gov.au/media-centre/147-million-strengthen-sexual-assault-laws-and-prevent-harm-01-05-2023> (accessed 1 September 2023).

⁴ The Hon Mark Dreyfus KC MP, Attorney-General, ‘\$14.7 million to strengthen sexual assault laws and prevent harm’, *Media Release*, 1 May 2023, <https://ministers.ag.gov.au/media-centre/147-million-strengthen-sexual-assault-laws-and-prevent-harm-01-05-2023> (accessed 1 September 2023).

Recommendation 4

5.29 The committee recommends that the Australian Law Reform Commission includes an affirmative consent standard in any proposal to harmonise Australia's sexual consent laws and taking into account the evidence of the operation of recently adopted affirmative consent laws.

Recommendation 5

5.30 The committee recommends that the Commonwealth government responds to recommendations made by the Australian Law Reform Commission, within six months of the Commission presenting its report.

The evidence base

5.31 Throughout the inquiry, and as reflected in this report, the committee received information about previous, current and contemplated surveys, studies and research. The committee recommends that the Commonwealth government provides ongoing funding for research into the prevalence of sexual violence in Australia and the impact of responses to it, including through regular surveys of students and young people projects. This information forms an evidence base to support knowledge, understanding and policy at all levels and across jurisdictions.

5.32 There are disturbing statistics in relation to the prevalence of sexual violence, particularly amongst young people and students. When confronted with this evidence, policy makers and the justice system must use it as a guide to where greater efforts must be directed and more effective strategies implemented.

5.33 The committee considers that the data gathered through these surveys and studies are essential to our understanding of sexual violence in Australia and critical to assessing the consequences of reform. The committee commends those bodies whose work has contributed and continues to contribute to our knowledge in this area.

5.34 The committee strongly believes that such research should be undertaken on a regular consistent basis to inform policy responses and to track the effectiveness of reforms, including those relating to education programs.

5.35 The committee further acknowledges that there are a number of specific research projects in relation to the handling of sexual assault cases by the justice system and victim-survivors' courtroom experiences, such as the impact of rape myths and misconceptions (see below). These projects provide valuable insight into the responses of systems and actors within those systems to sexual violence, victim-survivors and alleged perpetrators.

Recommendation 6

5.36 The committee recommends that the Commonwealth government provides ongoing funding for research into the prevalence of sexual violence in Australia and the impact of responses to it, including through regular surveys of students (including those living in university residences) and young people.

Supporting victim-survivors in the criminal justice system

5.37 Approximately 87 per cent of victim-survivors do not report having been sexually assaulted. The majority of complaints do not lead to criminal charges. Only a fraction of sexual offence trials results in a conviction. Sentencing outcomes do not match the expectations of those who have been assaulted.

5.38 The committee heard that, in addition to these realities, the criminal justice process is significantly re-traumatising victim-survivors, in some instances more so than the offence itself. Overwhelmingly, the committee was told that victim-survivors have little hope of achieving justice through the criminal court process. When the deep and sustained trauma of sexual assault is considered in this context, it is difficult to conclude that our justice system is serving victim-survivors as it should.

5.39 As an example, the committee heard that an accused can access a victim-survivor's counselling notes. The committee queries what probative value there is in sharing the deeply personal impacts of a sexual crime with a perpetrator? Moreover, the committee is concerned that the risk of access to a victim-survivor's counselling notes may dissuade victim-survivors from seeking the counselling they need.

5.40 Victim-survivors deserve to be supported by the system that purports to protect them and to hold perpetrators accountable, including by not leading evidence that might effectively put them on trial and by providing them with sufficient information to make informed decisions about the reporting and prosecution of a complaint. This information for victim-survivors should specifically include guidance about what the committee heard is the most difficult part of a prosecution: the giving of evidence-in-chief and cross-examination.

5.41 Victim-survivors themselves told the committee that it often came as a shock that they were 'mere' witnesses to their own sexual assault, and that this was not always made apparent to them in their limited dealings with prosecutors.

5.42 Not only should victim-survivors be provided with information about the supports available to them and the legal process; they also ought to be provided with or have access to specialist legal assistance, to assist them to better understand and navigate legal processes in a way that respects their agency and supports their interests, including recovery and healing.

Recommendation 7

5.43 The committee recommends that state and territory governments, in collaboration with relevant stakeholders, develop and deliver materials to provide people who report sexual assaults with appropriate guidance and information, including:

- an explanation of how a complaint will be investigated;
- an explanation of how the criminal justice system operates;
- the purpose of giving evidence-in-chief and cross examination;
- the level of detail required for evidential purposes; and
- the obligation on the accused's legal representative to challenge evidence.

5.44 The committee heard that the Commonwealth government is piloting a new legal service model that aims to provide victim-survivors with greater access to specialised and trauma-informed legal services as they consider, enter and/or navigate the criminal justice system (see Chapter 3). The committee considers that the appropriate and broad-ranging delivery of legal services would provide much needed support to victim-survivors.

Recommendation 8

5.45 The committee recommends that the Commonwealth government assess the success of pilot projects for specialised and trauma-informed legal services and, if successful, fund an expansion of the provision of such services for the benefit of victim-survivors.

Alternative approaches to the traditional criminal court process

5.46 The committee supports alternative approaches to the traditional criminal court process, provided these are effective alternatives with clear outcomes and the process respects the agency of victim-survivors as detailed in Recommendation 1.

5.47 The committee heard that one such alternative could be restorative justice options. The committee understands this this may be a controversial suggestion; however, the committee accepts that it could offer some victim-survivors the redress and justice that they are seeking. The choice of whether to utilise restorative justice *must* be that of the victim-survivor. It is also essential that the implementation and use of restorative justice mechanisms does not come at the expense of genuine reform of the criminal justice system.

5.48 Consistent with its views on having an evidence-base for reform, the committee considers that the Commonwealth government should investigate the impact of restorative justice approaches to sexual offences, both nationally and internationally.

- 5.49 Some stakeholders suggested that specialist sexual violence courts might also provide a sensitive and trauma-informed alternative to the traditional court process.
- 5.50 The committee is aware that New Zealand has piloted a sexual violence court, which could offer some insight into whether such a pilot should be conducted in Australia.⁵
- 5.51 The committee further notes that the Australasian Institute of Judicial Administration (AIJA) will shortly complete a literature review of ‘specialist approaches to managing sexual assault proceedings’.⁶ If this review identifies a best practice model, then consideration should be given to a pilot project, possibly in Queensland where specialist domestic and family violence courts have been successfully trialled.

Recommendation 9

- 5.52 The committee recommends that the state and territory governments consider establishing a restorative justice pilot program and a specialist sexual violence court pilot for sexual offending, to explore more sensitive and trauma-informed approaches to sexual violence in the criminal justice system.**

Rape myths and misconceptions

- 5.53 Throughout the inquiry, stakeholders raised the issue and impacts of rape myths and misconceptions.
- 5.54 According to the 2021 *National Community Attitudes towards Violence against Women Survey*, rape myths and misconceptions continue to persist in Australian society. The committee heard that this contributes to the prevalence of sexual violence and the ways in which some members of the community, police, legal practitioners and judicial officers respond to sexual assault.
- 5.55 Based on information presented to the inquiry, the committee concludes that there is a highly problematic consent culture in Australia that must be addressed through concerted and ongoing efforts at all levels.

Law enforcement – education and training

- 5.56 Stakeholders emphasised that police officers must be provided with specialist education and training, to recognise rape myths and misconceptions, and to respond to victim-survivors in a sensitive and trauma-informed manner.

⁵ See: Gravitas Research and Strategy Limited, *Evaluation of the sexual Violence Court Pilot*, Ministry of Justice (NZ), June 2019, www.districtcourts.govt.nz/reportspublicationsandstatistics/publications/sexual-violence-court-pilot-evaluation-report/#SVR1 (accessed 1 September 2023).

⁶ Attorney-General’s Department, *Submission 38*, p. 15.

- 5.57 The committee recognises that this training would help to ensure that victim-survivors are responded to and advised appropriately at what is often their first contact with the criminal justice system. This first encounter and how well (or how badly) it is handled has a significant impact on whether complainants continue to pursue an allegation of sexual violence through the criminal justice system.
- 5.58 In 2022, the Commonwealth government committed funding for the development and delivery of a national training package. The committee notes that this measure will not extend past 2026 and encourages the government to think creatively about longer-term measures that will enable state and territory law enforcement agencies to embed culturally appropriate and trauma-informed responses to sexual offences.

Recommendation 10

- 5.59 The committee recommends that the Commonwealth government, through the Police Ministers Council, develops principles to guide ongoing specialist education and training to state and territory law enforcement officers, to ensure culturally appropriate and trauma-informed responses to victim-survivors of sexual assault.**

Legal practitioners – education, training and professional practice rules

- 5.60 Victim-survivor advocates and specialist frontline workers described the harmful impacts of sexual offence trials on victim-survivors. The committee heard that it is common for some legal practitioners to intentionally or unintentionally deploy rape myths and misconceptions during the course of a trial.
- 5.61 The Law Council of Australia sought to assure the committee that the situation is being addressed through continuing legal education. Having heard the evidence of other legal experts, while a cultural shift is underway, the committee considers there is clearly a long way to go.
- 5.62 In the committee's view, legal practitioners have a particular duty—including as part of their paramount duty to the court—to act with integrity and not to invoke rape myths and misconceptions which are known—or should be known by those who practise the law—to have no factual or legal basis. This is particularly true for those practitioners who have acquired specialist accreditation in the criminal law.
- 5.63 The committee strongly urges the Law Council of Australia and its members to give this matter deliberate consideration, including, for example, the option of strengthening practice rules or sanctions, or mandatory relevant education and training as a requirement for the awarding of criminal law specialist accreditation.

Judicial officers – education and training

- 5.64 Stakeholders made little comment about the education and training of judicial officers, although there is a perception that more is required for the conduct of sexual offence trials.
- 5.65 Last financial year, the Commonwealth government committed funding for a justice sector education and training package. The committee welcomes this measure.
- 5.66 The committee suggests to the AIJA that it should publish online the papers for the national conference that will be funded by the measure, to increase the transparency of judicial officers' efforts to acquire culturally sensitive and trauma-informed education and training.
- 5.67 The committee is also aware of the *National Domestic and Family Violence Bench Book*, which has recently been updated to capture coercive control. There is no specific section on sexual violence, although many of the issues relevant to victim-survivors' courtroom experiences are covered within the context of domestic and family violence (DFV) (see 'Fair hearing and safety').⁷
- 5.68 Consistent with its view that sexual violence can be quite distinct from and separate to DFV, the committee considers that there should be a *National Sexual Violence Bench Book* or, at a minimum, a section within the existing bench book, to recognise the gravity of sexual offences, to assist judicial officers within the courtroom, and to facilitate a consistent approach across state and territory jurisdictions.

Recommendation 11

- 5.69 The committee recommends that the Attorney-General's Department, in collaboration with the Australian Institute of Judicial Administration and other relevant stakeholders, develops and delivers a National Sexual Violence Bench Book, to assist judicial officers to recognise and respond to sexual violence in a culturally appropriate and trauma-informed manner. This resource should specifically address rape myths and misconceptions.**

Jury directions

- 5.70 Stakeholders reflected on the availability and scope of jury directions, which are used throughout Australia to clarify the law and to challenge rape myths and misconceptions. The committee heard that the directions vary from state-to-state and that research supports these directions being given before and throughout sexual offence trials, to contemporaneously 'correct' evidence.

⁷ *National Domestic and Family Violence Bench Book*, 2023, <https://aija.org.au/publications/national-domestic-and-family-violence-bench-book/> (accessed 1 September 2023).

- 5.71 The committee understands that jury directions are not always used proactively, meaning that rape myths and misconceptions can be introduced into evidence. This can affect jury deliberations but also has devastating impacts on victim-survivors who are then 'put on trial', with details of their personal lives publicly examined and critiqued.
- 5.72 The committee considers that, where jurisdictions have established frameworks for the authorisation of jury directions, these frameworks should explicitly require a direction to be given contemporaneously with evidence that raises a rape myth or misconception.

Recommendation 12

- 5.73 The committee recommends that the Australian Law Reform Commission considers whether model jury directions should be developed as part of any initiative to harmonise Australia's sexual consent laws. This model should include express requirements as to the timing and circumstances in which jury directions must be given.**

Education and awareness

- 5.74 A recurrent theme throughout the inquiry was the need for an holistic response to sexual violence in Australia. While law reform and reforms in the criminal justice system are an important part of this response, attitudinal and behavioural changes are also required throughout the community.
- 5.75 As demonstrated in the 2021 *National Community Attitudes towards Violence against Women Survey* (NCAS), false and damaging myths and stereotypes about violence against women persist.
- 5.76 Based on information received from education experts, the committee considers that Australia should seek to effect a critical cultural change through a sustained whole-of-community approach.
- 5.77 This cultural change must begin with age-appropriate and comprehensive respectful relationships education (RRE) in primary and high schools, and continue in an appropriate manner throughout higher education settings.
- 5.78 The broader Australian community must also be provided with and have access to information that helps every Australian understand consent and sexual violence, and be equipped to identify and respond appropriately to sexual violence. In addition, it is important that Australian families understand and appreciate the scale of the current issue and the risk it poses to young people.

Australian schools

- 5.79 The 7th *National Survey of Secondary Students and Sexual Health* revealed that a significant proportion of secondary students have been or are sexually active, yet less than one quarter considered their RRE to have been very relevant.

- 5.80 The committee heard that the curriculum has significant content deficiencies and does not address the needs of all children and young people. Consequently, among other things, there is a poor understanding of sexual consent and sexual violence.
- 5.81 In this context, the committee welcomes the transition from Australian Curriculum 8.4 to Australian Curriculum 9.0, which will strengthen the explicit teaching of consent and respectful relationships from F–10 in age-appropriate ways.⁸
- 5.82 Education experts advised that comprehensive RRE should be taught in Australian schools, as it provides an opportunity to shape children and young people’s attitudes, beliefs and behaviour around gender equality, respect and consent at an early developmental stage.
- 5.83 The committee heard that successful implementation of RRE will require a professional learning strategy that enables teachers to deliver the new and complex curriculum. There are various options to support teachers to acquire knowledge in this area and to leverage the expertise of third-party providers and also of other young people.
- 5.84 In the committee’s view, the successful delivery of comprehensive RRE will require relevant education for all professional and support staff within schools, with a higher degree of professional learning for teachers who are responsible for delivery of the new curriculum. Given the complexities of the new curriculum, there is merit in the idea of a lead teacher to coordinate delivery and provide extra assistance to the teaching staff when required.

Recommendation 13

- 5.85 **The committee recommends that the Commonwealth government, through the Education Ministers Meeting and in consultation with relevant stakeholders, develops a strategy and delivers funding (in conjunction with the states and territories) for upskilling the education workforce, to achieve the consistent and effective delivery of comprehensive Respectful Relationships Education in Australian schools. This should include consideration of mandatory education in the Initial Teacher Education Curriculum.**
- 5.86 In 2022, the Commonwealth government committed over \$77 million to state, territory and non-government school systems for services that support the delivery of RRE. The committee suggests that, while this investment might be sufficient to kick-start implementation of the new curriculum, in the long-term

⁸ Australian Curriculum, Assessment and Reporting Authority, ‘What’s changed in the new Australian Curriculum’, <https://v9.australiancurriculum.edu.au/resources/stories/curriculum-changes> (accessed 1 September 2023).

governments will need to examine whether additional funding is required for continued implementation, including upskilling of the education workforce.

Recommendation 14

- 5.87 The committee recommends that the Commonwealth government considers ongoing funding as a National Partnership Payment, to sufficiently resource those elements of Australian Curriculum 9.0 that provide for Respectful Relationships Education, including through a strategic investment in workforce development. Particular consideration should be given to addressing long-standing concerns about under-funding in public schools and the need to additionally resource specialist third-party providers.**
- 5.88 The committee acknowledges that the Commonwealth government's Consent and Respectful Relationships measure is currently being implemented and urges the expert working group to take into consideration the findings and recommendations in this report.

Tertiary education settings

- 5.89 According to two creditable surveys—the *Change the course, National Report on Sexual Assault and Sexual Harassment at Australian Universities* (the *Change the Course* report) and the *National Student Safety Survey* (NSSS)—sexual violence on campus is as prevalent in tertiary education settings as it is in the community, if not more so.
- 5.90 Some stakeholders expressed a view that the university sector pays 'lip service' to the persistent issue of sexual violence on campus. The committee acknowledges that this is partially a corollary of entrenched cultural and societal attitudes and beliefs.
- 5.91 The committee also acknowledges that, through the *Respect. Now. Always.* and subsequent initiatives, the university sector has attempted to respond to sexual violence affecting both staff and students.
- 5.92 However, despite these efforts, the committee heard that the university sector's commitment has, at best, waned and, at worst, stalled. Preventative measures and support services are inconsistently delivered at Australian universities. Some universities appear to be approaching consent education and reducing sexual violence within their community proactively and with genuine commitment. Others appear to find the issue too confronting or difficult; their responses might be generously described as inadequate but are, in some cases, outright damaging and deeply troubling. The committee finds such approaches by certain Australian universities utterly unacceptable.

Current prevalence data

- 5.93 The committee acknowledges that the 2021 NSSS was based on limited responses and that staff and students are far from satisfied with the current responses to sexual violence on campus.
- 5.94 The limitations were due to fewer students being on campus during the COVID-19 pandemic but also as the tens of thousands of 17-years-old students were deemed not 'age-appropriate' for inclusion in the survey sample. This is despite 15 to 19-years-old young people being the most likely age group for both victims and offenders in sexual assault.
- 5.95 The committee considers that the university sector must commit to another NSSS, to more accurately gauge the extent of sexual violence on campus and to determine the safety and support needs of staff and students, particularly those who are at higher risk.
- 5.96 Noting the deficiencies in the 2021 NASS, the committee recommends that the next NSSS be conducted no later than 2025 and preferably earlier, with survey findings published for the benefit of all stakeholders in the university sector as well as the broader Australian community.

Recommendation 15

- 5.97 The committee recommends that Universities Australia conducts a second National Student Safety Survey, with survey results made publicly available no later 2025, and commits to conducting a national student safety survey on an ongoing basis every three years, to provide all stakeholders with up-to-date and accurate information about sexual violence on campus. This survey should encompass students of all ages on campus, including 17-year-old students who are at no less risk of sexual harm by virtue of not yet being 18.**

Personal experiences

- 5.98 Information provided to the committee—including at public hearings and an *in camera* hearing—presented a deeply disturbing picture of universities' responses to sexual assault on campus.
- 5.99 The committee was appalled to hear students' personal experiences, indicating that—similar to victim-survivors' experiences within the criminal justice system—universities, with few exceptions, are re-traumatising students by failing to provide readily accessible, timely and appropriate support.
- 5.100 Students on campus are typically young people, many of whom are living away from home for the first time, often in residential accommodation and some of whom are from culturally and linguistically diverse (CALD) backgrounds.
- 5.101 In the committee's view, students in tertiary education settings are a particularly vulnerable cohort, for the reasons stated above. There is a particular obligation and duty of care—if not legal, then certainly moral—for universities to provide

proper sexual violence protection and responses to people who have experienced sexual violence while on campus or within the university community.

- 5.102 On this point, the committee especially acknowledges evidence from End Rape on Campus Australia that there are many simple ways in which universities could act in a trauma-informed manner.
- 5.103 For example, the committee suggests that, at a very minimum, common decency demands that victim-survivors are not forced into study or living arrangements that place them in close proximity to their perpetrator.
- 5.104 It is totally without surprise that universities' responses to sexual assault contribute to low reporting rates and increasing demand for specialist student support services. University students who have experienced sexual violence are being significantly re-traumatised and, in some instances, are unable to continue their higher education, as a consequence of their treatment by their university. The committee cannot over-emphasise how troubled it is by these outcomes, nor over-state how disappointed it is in the university sector's overall response.
- 5.105 It is a searing indictment of Australia's university sector and the regulator, the Tertiary Education Quality and Standards Agency (TEQSA), that dedicated and courageous advocates for university students who have suffered from sexual violence on campus should hold the view that the process of making complaints and how universities and the regulator deal with such complaints is causing great trauma to the victims of sexual violence. In the strongest terms, this committee says that is a shameful state of affairs. It is unacceptable.

Consent awareness campaign

- 5.106 In 2019, the Commonwealth government committed specific funding to Universities Australia, to develop 'a campaign specifically around raising awareness of sexual assault on campus'.⁹
- 5.107 A consent awareness campaign—presumably similar to the proposed National Consent Campaign (see below)—aimed directly at students and staff is an essential, and would have been a welcome measure.
- 5.108 The committee understands that, from November 2021 to June 2022, Australian universities represented by Universities Australia considered two different campaign proposals: the first comprising four concepts and the second two revised concepts. All six concepts were rejected on the basis that they were 'unlikely to have the cut-through required to be effective in shifting behaviours

⁹ Ms Greta Doherty, Group Manager, Women's Safety, Department of Social Services, *Committee Hansard*, Canberra, 25 July 2023, p. 50.

and attitudes'.¹⁰ Based on the evidence received and commented upon below, the committee does not understand how this view was arrived at by the universities.

5.109 The committee notes that one of the revised concepts in the second campaign proposal was 'conducive to promoting a journey from engagement to attitudinal and ultimately behaviour change'.¹¹

5.110 The committee considers that Commonwealth government funding produced a consent awareness campaign that consistently communicated key messages about respectful relationships and consent that was supported by students in focus-group testing. The committee reiterates that the final concept tested was assessed to be an effective way of engaging the target audience, leading to behaviour change: the desired outcome. Why wasn't this adopted? It is inexplicable.

5.111 For reasons which are considered inadequate by this committee, the university sector sought to terminate the funding contract and did not proceed with an education and information campaign. During the hearings, witnesses highlighted reports that some Vice-Chancellors had blocked the proposed consent education content on the basis of it being too 'risqué'.¹² Universities Australia declined to confirm or deny this. To its credit the Department of Social Services salvaged what it could so that at least some product could be delivered. However, this ramshackle process and inferior result should be an embarrassment to the university sector; especially given the serious nature of the problem.

5.112 In these circumstances, the committee considers that Australian taxpayers' money has not been well spent and, more regrettably, an opportunity to provide engaging, informative and effective material to students and staff about respectful relationships and consent has been entirely missed. All universities should reflect on this. This is not just a matter for Universities Australia as the peak body, the responsibility primarily falls on each university and their senior leadership teams.

¹⁰ Universities Australia, answer to question on notice, public hearing, Sydney, 27 July 2023 (received 4 September 2023), p. 1.

¹¹ Department of Social Services, answer to question on notice, public hearing, Canberra, 25 July 2023 (received 31 August 2023), Question 2, p. 58.

¹² Ms Bailey Riley, President, National Union of Students, *Committee Hansard*, Sydney, 27 July 2023, p. 54; Dr Alison Barnes, National President, National Tertiary Education Union, *Committee Hansard*, Sydney, 27 July 2023, p. 64.

Effective oversight

- 5.113 In 2017, the Australian Human Rights Commission obtained information from Australian universities, to identify actions undertaken by them following the release of the *Change the Course* report. Six years later, the committee heard that while some universities have been proactively reporting their progress, the great majority have not been subject to any scrutiny.
- 5.114 Stakeholders suggested that a large part of the problem is the lack of effective oversight of the university sector, with TEQSA ill-equipped and failing to effectively enforce Tertiary Education Threshold Standards 2.3 and 2.4 (the Threshold Standards).
- 5.115 Some stakeholders remarked that universities are not being effectively oversighted by TEQSA, with little, if any, enforcement of the Threshold Standards. Student representative bodies commented that the regulator’s action—or inaction—is actually so harmful to victim-survivors that it would be immoral to consider TEQSA as an avenue for redress.
- 5.116 The committee welcomes the Commonwealth government’s announcement that Australian governments will be working towards improving universities’ governance. In particular, the committee understands that a working group will be convened to advise the education ministers on actions that could be taken to improve student and staff safety on campus.¹³
- 5.117 The committee recognises that concerns in this area have long been identified and, in the years of inaction, numerous students have been irreparably, needlessly and inexcusably harmed, including (shamefully) through the response of universities in particular cases.
- 5.118 Given the evidence, the committee lacks confidence that the university sector (as a whole) will respond appropriately to the crisis without strong intervention. This is a regrettable conclusion that the committee does not come to lightly. The time for ‘working groups’ has passed. In the committee’s view, a taskforce with effective powers should be immediately established to ensure accountability in the university sector.

Recommendation 16

- 5.119 The committee recommends that the Commonwealth government implements an independent taskforce with strong powers, to oversight universities’ policies and practices to prevent and respond to sexual violence**

¹³ The Hon Jason Clare MP, ‘Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023’, *Speech*, 3 August 2023, <https://ministers.education.gov.au/clare/higher-education-support-amendment-response-australian-universities-accord-interim-report> (accessed 1 September 2023). Note: the Review Panel recommended the re-establishment of a Tertiary Education Commission: see p. 7.

on campus and in residences. The committee recommends that the taskforce provides:

- **an effective and accessible complaints process;**
- **meaningful accountability for both universities and residences if standards are not met; and**
- **transparency around which institutions are providing appropriate and effective responses and prevention initiatives.**

5.120 The committee heard that the universities' failure to respond meaningfully to sexual assault on campus has been exacerbated by the regulator. Although TEQSA has received dozens of complaints since the *Change the Course* report was published, the regulator has continually failed to exercise the full breadth of its powers to hold universities accountable for their woeful responses.

Recommendation 17

5.121 The committee recommends that the Commonwealth government commissions an independent review of the Tertiary Education Quality and Standards Agency's response to sexual violence on university campuses.

The broader Australian community

5.122 The committee welcomes the Commonwealth government's funding commitment toward a consent and respectful relationships campaign (the National Consent Campaign). The committee acknowledges that this campaign aims to keep young people safe from sexual violence and will have the additional benefit of broadly educating the community in relation to gendered sexual violence, including rape myths and misconceptions.

Concluding comment

5.123 This inquiry has shone a light on sexual violence in modern Australia. At times, it has been uncomfortable and deeply disturbing, which the committee acknowledges cannot possibly compare to the real-life impacts of sexual violence.

5.124 The committee hopes that its findings and recommendations will assist policy and decision-makers to adopt more sensitive and trauma-informed approaches to victim-survivors, with a strong focus on agency, healing and justice.

5.125 The committee commends this report to the Senate.

Senator Paul Scarr

Chair

Liberal Senator for Queensland

Appendix 1

Submissions and Additional Information

Submissions

- 1 Dr Anthony Marinac
- 2 *Name Withheld*
- 3 Mr Jarryd Bartle
- 4 Queensland Sexual Assault Network
- 5 Dr Kirsty Duncanson and Dr Emma Henderson
- 6 Association of Heads of Independent Schools of Australia
- 7 Youth Affairs Council of South Australia
- 8 National Catholic Education Commission
- 9 Tasmanian Aboriginal Legal Service
- 10 Australian Christian Lobby
- 11 La Trobe University and the Australian Research Centre in Sex, Health and Society
- 12 eSafety Commissioner
- 13 Tasmanian Government
- 14 Children By Choice Association Incorporated
- 15 Northern Territory Law Reform Committee
- 16 No To Violence
- 17 Dr Julia Quilter and Dr Luke McNamara
- 18 Mr Billy Crawford
- 19 Sexual Health Victoria
- 20 NT Government
- 21 End Rape on Campus Australia
- 22 Centre for Women's Health Research and Australian Longitudinal Study on Women's Health
- 23 National Association of Services against Sexual Violence
- 24 We Are Womxn
- 25 Ms Annabella Dumas
- 26 UNSW Law Society Incorporated
- 27 Sexual Assault Services Victoria
- 28 Aboriginal Legal Service NSW/ACT
- 29 Body Safety Australia
- 30 Consent Labs
- 31 MacKillop Family Services and University of Melbourne
- 32 National Women's Safety Alliance and Teach Us Consent
- 33 Queensland Advocacy for Inclusion
- 34 Voices of Influence Australia
- 35 National Union of Students
- 36 Women With Disabilities Australia

- 37 One Woman Project
- 38 Attorney-General's Department
- 39 Inclusion Australia
- 40 Violet Co Legal & Consulting
- 41 JFA Purple Orange
- 42 Australian Education Union
- 43 Liberty Victoria
- 44 National Tertiary Education Union
- 45 Western NSW Community Legal Centre and Western Women's Legal Support Service
- 46 Ms Julia Cooper
- 47 Dr Natalia Antolak-Saper
- 48 Victorian Women Lawyers Association Inc
- 49 Mr Andrew Doherty
- 50 Full Stop Australia
- 51 Queensland Government
- 52 Women's Legal Services Australia
- 53 WESNET
- 54 National Foundation for Australian Women
- 55 Our Watch
- 56 Australian Federation of AIDS Organisations, HIV/AIDS Legal Centre, National Association of People with HIV Australia and Scarlet Alliance
- 57 ACT Youth Advisory Council
- 58 ACT Government
- 59 Confidential
- 60 Confidential
- 61 *Name Withheld*
- 62 *Name Withheld*
- 63 *Name Withheld*
- 64 *Name Withheld*
- 65 Ms Simone Watson and Associate Professor Helen Pringle
- 66 The Grace Tame Foundation
- 67 Victorian Government
- 68 Scarlet Alliance
- 69 Australia's National Research Organisation for Women's Safety
- 70 Dr Greg Byrne and Dr Steven Tudor
- 71 With You We Can
- 72 NSW Aboriginal Women's Advisory Network
- 73 Law Council of Australia
 - Attachment 1
- 74 Federation of Community Legal Services (Victoria) and South-East Monash Legal Service
- 75 Legal Aid NSW

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- 76 Mr Joe Stella
 - 77 Dr Allison Henry
 - 78 Celebrate Ageing Ltd
 - 79 Australian Institute of Criminology

Additional Information

- 1 National Association of Services Against Sexual Violence, 'Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault, Discussion Paper, March 2023', received 25 July 2023

Answer to Question on Notice

- 1 Rape and Sexual Assault Research and Advocacy, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 26 July 2023)
- 2 National Association of Services Against Sexual Violence, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 26 July 2023)
- 3 Sexual Assault Services Victoria, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 25 July 2023)
- 4 National Women's Safety Alliance, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 27 July 2023)
- 5 Full Stop Australia, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 27 July 2023)
- 6 Violet Co Legal & Consulting, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 27 July 2023)
- 7 No To Violence, answers to questions taken on notice at a public hearing in Melbourne, 26 July 2023 (received 14 August July 2023)
- 8 No To Violence, answers to questions taken on notice at a public hearing in Melbourne, 26 July 2023, Attachment (received 14 August 2023)
- 9 Liberty Victoria, answers to questions taken on notice at a public hearing in Melbourne, 26 July 2023 (received 16 August 2023)
- 10 Attorney-General's Department, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 16 August 2023)
- 11 End Rape on Campus Australia, answers to questions taken on notice at a public hearing in Sydney, 27 July 2023 (received 15 August 2023)
- 12 Our Watch, answers to questions taken on notice at a public hearing in Melbourne, 26 July 2023 (received 16 August 2023)
- 13 Universities Australia, answers to questions taken on notice at a public hearing in Sydney, 27 July 2023 (received 17 August 2023)
- 14 Department of Education, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 24 August 2023)

- 15 Department of Social Services, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 31 August 2023), Question 1
- 16 Department of Social Services, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 31 August 2023), Question 2
- 17 Department of Social Services, answers to questions taken on notice at a public hearing in Canberra, 25 July 2023 (received 31 August 2023), Question 3
- 18 Universities Australia, answers to questions taken on notice at a public hearing in Sydney, 27 July 2023 (received 4 September 2023)
- 19 End Rape on Campus Australia, answers to questions taken on notice at a public hearing in Sydney, 27 July 2023 (received 28 August 2023)
- 20 End Rape on Campus Australia, answers to questions taken on notice at an in-camera hearing in Brisbane, 22 August 2023 (received 28 August 2023)
- 21 Tertiary Education Quality and Standards Agency, answers to questions taken on notice at a public hearing in Sydney, 27 July 2023 (received 14 September 2023)

Media Releases

- 1 'Senate committee will consider current and proposed sexual consent laws in Australia'
- 2 'Updated: Senate committee will consider current and proposed sexual consent laws in Australia'

Tabled Documents

- 1 Opening statement provided by Ms Tosca Looby, at a public hearing 25 July 2023.

Appendix 2

Public Hearings

Tuesday, 25 July 2023

Main Committee Room

Parliament House

Canberra

- Ms Jess Hill, Presenter and Consultant Producer (via videoconference)
- Ms Tosca Looby, Creative Director, Northern Pictures and SBS

National Women's Safety Alliance

- Ms Katherine Berney, Director

Consent Labs

- Ms Angelique Wan, Chief Executive Officer and Co-Founder
- Ms Julia Cooper, Executive Director, Head of Legal Research

Teach Us Consent (via videoconference)

- Ms Chanel Contos, Founder and Chief Executive Officer

Rape & Sexual Assault Research & Advocacy

- Dr Rachael Burgin, Chief Executive Officer
- Ms Saxon Mullins, Director of Advocacy

National Association of Services against Sexual Violence (via videoconference)

- Ms Nicole Lambert, Chief Executive Officer
- Ms Angela Lynch, Secretariat, Queensland Sexual Assault Network
- Ms Heather Clarke, Secretary and Board Member

Sexual Assault Services Victoria (via videoconference)

- Ms Kathleen Maltzahn, Chief Executive Officer
- Dr Amy Webster, Policy, Advocacy & Research Manager

Full Stop Australia

- Ms Tara Hunter, A/g Chief Executive Officer
- Ms Emily Dale, Head of Advocacy

Australia's National Research Organisation for Women's Safety (via videoconference)

- Ms Padma Raman, Chief Executive Officer

Violet Co Legal & Consulting

- Ms Karen Iles, Director and Principal Solicitor

Attorney-General's Department

- Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy
- Ms Heidi Kiekebosh-Fitt, Acting Assistant Secretary, Criminal Justice Reform Taskforce
- Ms Julie Zezovska, Director, Responses to Sexual Assaults

Department of Social Services

- Ms Greta Doherty, Group Manager, Women's Safety
- Ms Lara Purdy, Branch Manager, Response and Behaviour Change

Department of Education

- Ms Rachel O'Connor, Assistant Secretary, Student Engagement & Wellbeing Branch
- Ms Dianne Braggett, Director, Respectful Relationships Education Team

Wednesday, 26 July 2023

Flinders Room

Mantra on Russell

222 Russell Street

Melbourne

No To Violence

- Ms Jacqui Watt, Chief Executive Officer
- Mr William Douglas, Acting Manager, Policy and Research

Mr Andrew Doherty, Private capacity

Voices of Influence Australia

- Ms Taylah Spirovski, Chief Executive Officer
- Ms Caitlyn Allen, Deputy-Director, Legal and Political Affairs Committee

Liberty Victoria

- Mr Michael Stanton, President
- Ms Isabelle Skaburskis, Executive member

Women's Legal Services Australia

- Ms Lara Freidin, Executive Officer

Wirringa Baiya Aboriginal Women's Legal Centre (NSW Aboriginal Women's Advisory Network) (via teleconference)

- Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Advisory Network
- Ms Dixie Link-Gordon, Program Coordinator, NSW Aboriginal Women's Advisory Network

Federation of Community Legal Services

- Ms Louisa Gibbs, Chief Executive Officer

South-East Monash Legal Service

- Ms Ashleigh Newham, Director of Advocacy and Development

Dr Natalia Antolak-Saper, Private capacity

Our Watch

- Ms Patty Kinnersly, Chief Executive Officer
- Ms Genevieve Sheppard, Senior Policy Advisor

Inclusion Australia

- Ms Catherine McAlpine, Chief Executive Officer

The Grace Tame Foundation (via teleconference)

- Mr Michael Bradley, Director

Thursday, 27 July 2023

Maple Room

Swissotel Sydney

68 Market Street

Sydney

Law Council of Australia

- Mr Luke Murphy, President
- Mr Richard Wilson SC, Co-Chair, National Criminal Law Committee
- Ms Gabrielle Bashir SC, Member, National Criminal Law Committee
- Mr Nathan MacDonald, Deputy Director of Policy

Dr Julia Quilter, Private capacity

WA Consent

- Ms Abigail Gregorio, Founder

Sexual Health Quarters (via teleconference)

- Ms Karen Molhuysen, Coordinator-Education and Development
- Ms Felicia O'Keefe, Educator

Tertiary Education Quality and Standards Agency

- Ms Adrienne Nieuwenhuis, Commissioner
- Dr Mary Russell, A/g Chief Executive Officer

Group of Eight (via teleconference)

- Professor Sharon Pickering, Deputy Vice-Chancellor (Education) and Senior Vice-President, Monash University

Universities Australia (via teleconference)

- Ms Catriona Jackson, Chief Executive Officer
- Dr Bianca Klettke, Senior Lecturer, Deakin University
- Ms Emma Lincoln, Director Governance and Assurance, Swinburne University of Technology

Queensland Sexual Assault Network (via teleconference)

- Ms Angela Lynch, Executive Officer, Secretariat

Australian Services Union

- Ms Julie Perkins, Chief Executive Officer, First National Hub (Griffith) and Chair, First Nations Women's FDV Program
- Ms Jarmira Borwick-Parker, Member and Family and Domestic Violence Specialist
- Ms Josephine Rechichi, FDV and Sexual Assault Counsellor, Jesuit Refugee Services Australia

National Union of Students

- Ms Bailey Riley, President

End Rape on Campus Australia

- Ms Sharna Bremner, Founder and Director
- Ms Nina Funnell, Director

National Tertiary Education Union (via teleconference)

- Dr Alison Barnes, National President
- Dr Terri MacDonald, Director, Policy and Research

Australian Education Union (via teleconference)

- Mr Kevin Bates, Federal Secretary
- Ms Emma Lowe, Federal Women's Officer

Dr Kirsty Duncanson, Private capacity