



THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Inquiry into current and proposed sexual consent laws in Australia Discussion paper

Background

Sexual assault is a topic that has recently gained heightened national and international prominence. The ‘me too’ movement founded in the United States went global in 2017 when the #MeToo hashtag went viral. Since then, more survivors having been coming forward to reveal their experiences with sexual assault and the justice system.¹

In Australia, victim-survivors and survivor-advocates have long campaigned for stronger protections, including through legislative changes and improved sexual consent education.

In 2018, Saxon Mullins described her 2013 experience of sexual assault and the resulting five-year criminal proceedings that ultimately resulted in the acquittal of the perpetrator.² Community concern over this outcome catalysed the reform of sexual consent law in New South Wales.

From 2018–2020, the [#LetHerSpeak](#) campaign successfully challenged victim gag-laws in Tasmania, the Northern Territory and Victoria, enabling 17 survivors—such as Grace Tame—to tell their stories without risk of prosecution.

In 2021, the [Teach Us Consent](#) movement called for more holistic and earlier consent education in Australia. In 2022, the federal and state education ministers agreed to add consent-based education to the Australian school curriculum.

Later in 2022, the federal and state attorneys-general endorsed the [Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-27](#). This plan prioritises ‘strengthening legal frameworks to ensure victim-survivors have improved justice outcomes and protections, wherever necessary and appropriate, across Australia’.

¹ Global Fund for Women, ‘[Me Too’. Global Movement](#)’ (accessed 31 January 2023).

² Australian Broadcasting Corporation, ‘[I am that girl](#)’, *Four Corners* (accessed 31 January 2023).

Senate inquiry

On 29 November 2022, the Senate referred the following terms of reference to the Legal and Constitutional Affairs References Committee for inquiry and report by 30 June 2023:

- 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

Recent reform of sexual consent laws

As a result of high-profile, publicly reported cases, several law reform bodies throughout Australia have recently examined the sexual consent laws in their jurisdictions.

The committee encourages intending submitters to consider these reviews and their outcomes, as well as any additional materials, in developing your submissions.

State and territory reviews of sexual consent laws, as at 31 January 2023

| | Key legislation | 'Consent' | Reviewed |
|------------|--------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Queensland | Criminal Code Act 1899 | Sch 1, s. 348 | Queensland Law Reform Commission Review of consent laws and the excuse of mistake of fact Government response |
| NSW | Crimes Act 1900 | s. 61HI | NSW Law Reform Commission Consent in relation to sexual offences Government response |
| Victoria | Crimes Act 1958 | s. 36A and s. 36AA | Victorian Law Reform Commission Improving the Justice System Response to Sexual Offences Government response |
| SA | Criminal Law Consolidation Act 1935 | s. 46 | |
| WA | Criminal Code Act Compilation Act 1913 | ss. 319(2) | Law Reform Commission of Western Australia Sexual Offences (ongoing) |
| Tasmania | Criminal Code Act 1924 | Sch 1, s. 2A | Tasmania Law Reform Institute Consensual Assault Government response (ongoing) |
| ACT | Crimes Act 1900 | s. 50B and s. 67 | Sexual Assault Prevention and Response Reform Program, Steering Committee Listen. Take action to prevent, believe and heal Government response |
| NT | Criminal Code Act 1983 | s. 192 | |

As a result of these reviews, the criminal statutes or codes in some states and territories have been amended. The amendments include removal of the presumption that sexual consent exists in the absence of a contrary indication. Instead, consent now requires some form of active and affirmative communication, a standard that is expressed differently across the jurisdictions.

Views on ‘affirmative consent laws’

Proponents argue that affirmative consent laws provide stronger protection and support for victim-survivors:

- the laws shift the focus from the communication and behaviour of the victim-survivors to that of the perpetrators; and
- the laws explicitly provide a non-exhaustive list of circumstances in which a person does not consent to sexual relations.

However, concerns have been expressed about the affirmative consent laws, including that the reforms were not necessary (as legislation already provided for affirmative consent); do not go far enough (see, for example, the [Rape and Sexual Assault Research Advocacy](#) view of the Queensland Government’s law reform) or create inconsistencies across jurisdictions due to the multiple legislative frameworks.

Sexual consent education

Some states and territories have introduced new jury directions to enable judges to address common misconceptions about consent and sexual assault. Sexual consent advocates have long argued that there is a much broader need for consent education, including within educational settings.³

In 2022, the Australian Curriculum was revised to require the teaching of consent education to all school students from Foundation-Year 10.⁴ At the tertiary level, Universities Australia spearheaded the [Respect. Now. Always.](#) initiative, and individual universities have developed specific resources focussing on consent education.⁵ For this sector, results from the [2021 National Student Safety Survey](#) suggest that further work may be required.

Outside of educational settings, public and private organisations offer consent education training and resources.⁶ In recent years, there have also been a number of social media campaigns, such as the NSW Government’s [Make No Doubt](#) campaign and the United Kingdom, Thames Valley Police ‘[Tea and Consent](#)’ viral YouTube clip. One organisation has

³ See, for example: UNSW, ‘[Explainer: the reform of sexual consent laws in NSW](#)’ (accessed 31 January 2023).

⁴ Australian Curriculum, [The Australian Curriculum](#) (accessed 31 January 2023).

⁵ See, for example: Monash University, ‘[How to ask for consent](#)’; University of Melbourne, ‘[Consent Matters](#)’ (both accessed 31 January 2023).

⁶ See, for example: Consent Labs, ‘[Be part of the movement to change the culture around sexual consent](#)’, Australian Research Centre, ‘[The Practical Guide to Love, Sex and Relationships](#)’; Our Watch, ‘[Respect and Equality in Tertiary Education](#)’ (all accessed 31 January 2023).

initiated a campaign for the Australian Classification Board to introduce a new classification to call out '[lack of consent](#)'.

Sexual consent laws and the justice system

Advocates argue that affirmative consent laws will improve the reporting rates for sexual assaults and conviction rates. Nationally, almost nine in 10 incidents of sexual assault are not reported to the police.⁷ For those cases that are reported, state-based studies show that there is a high rate of attrition of sexual offences across the criminal justice system.⁸

Some legal experts warn that consent laws are not responsible for the high attrition rates and changing the legal definition of consent will not impact the conviction rates.⁹ Instead, these experts suggest that there needs to be more emphasis on changing societal attitudes, particularly in respect of rape myths and victim-blaming attitudes.¹⁰

Questions for intending submitters

The committee acknowledges the sensitivities and complexities involved in an open discussion about Australia's sexual consent laws. The committee would like to hear from a broad range of submitters, including victim-survivors, advocates, individuals in the community, legal experts, academics and government, who have reflected on the issues involved.

This paper is not intended to be prescriptive and submissions may go beyond the issues raised provided they are relevant to the [terms of reference](#). As overarching considerations, you might wish to consider some or all of the following questions:

- What similarities or inconsistencies are there in sexual consent laws across Australian jurisdictions? Should these laws be harmonised? If so, or if not, why?
- Are there best practice models for sexual consent laws? If so, what are they and how could they be incorporated into Australian law, if not already there?
- Is there a disconnect between the law and its practical operation?
- Should police officers, judicial officers and first responders receive specialised training in relation to responding to allegations of sexual assault?
- How could victim-survivors' experience of the criminal justice system be improved? For example, should there be a specialist court or court list for sexual assault matters? Should there be restrictions on the reporting of criminal proceedings for alleged sexual assaults?
- How can sexual consent culture be changed? What topics should be covered by consent education in schools? When and how should this education be delivered?

⁷ Australian Institute of Health and Welfare, '[Sexual assault in Australia](#)' (accessed 31 January 2023).

⁸ See, for example: Crime Statistics Agency (Vic), '[High 'drop-off' rate of sexual offences through the justice system revealed](#)'; BOSCAR (NSW), '[The progress of sexual offences through the NSW Criminal Justice System, 2019](#)' (both accessed 31 January 2023).

⁹ Professor Simon Bronitt, '[Consent laws aren't the reason for low sexual assault conviction rates](#)' (accessed 31 January 2023).

¹⁰ M. Otlowski, '[Preliminary Submission 45 to NSW Law Reform Commission](#)' (accessed 31 January 2023).

- What is or should be the Commonwealth's role with respect to sexual consent laws?

How to make a submission

Submissions can be made through our online system at www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission or by email to legcon.sen@aph.gov.au.

If you wish to have your submission received in confidence, or to not have your name published alongside your submission, then please make this request when you provide your submission.

If you would like more information about making a submission, please visit www.aph.gov.au/Parliamentary_Business/Committees/Senate/Making_a_submission or you can contact the secretariat on 02 6277 3560.