

BODY SAFETY AUSTRALIA: SUBMISSION TO SENATE INQUIRY INTO CURRENT AND PROPOSED SEXUAL CONSENT LAWS IN AUSTRALIA

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THE © **CONSENT CONTINUUM**



OVERVIEW

Body Safety Australia (BSA) strongly supports the Federal government's interest in a national understanding of affirmative consent. As one of Australia's leading providers of consent education we see significant benefit in developing a nationally consistent definition and the associated benefits of improving public understanding and acceptance of affirmative consent as a minimum acceptable standard. We also recognise that consent education needs to provide a framework that goes beyond this minimum standard and provides a positive aspirational definition of consent grounded in ethics, empathy, and respect. To that end, we have included (above) one of our most effective teaching tools – The Consent Continuum ©.

OUR RECOMMENDATIONS

BSA recommends that the Commonwealth provides:

1. Funding to ensure that all teachers have access to quality professional development programs.
2. Funding for expert external providers to deliver content to support capacity building teachers or where school leadership believes there could be a risk of harm to students without specialised expert, inclusive, age-appropriate, trauma-informed delivery.
3. The development of a national register of accredited external providers to ensure all schools can access safe, trustworthy, knowledgeable consent educators for professional development or class program delivery.
4. Funding for evidence-based parent/carer and community-based education to support consent classes delivered in schools.
5. Consider developing a teaching speciality stream for consent, respectful relationships, inclusion and diversity stream teachers and educators for secondary school, similar to the specialties of maths, science, art, and history.
6. That affirmative consent and respectful relationships become a mandatory subject for pre-service teachers.



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ABOUT BODY SAFETY AUSTRALIA

Body Safety Australia (BSA) is one of Australia's leading expert organisations in delivering education programs for the prevention of childhood sexual abuse and gender-based violence.

BSA was founded in 2015 and has delivered childhood sexual abuse prevention, consent, respectful relationships, diversity, and body image education programs to nearly 75,000 children, young people, teachers, educators, parents and carers in schools and preschools around Australia.

BSA works with government, education and violence prevention peak bodies, and universities to ensure that our evidence-based programs align with curriculum and legislation and are trauma-informed, best practice, culturally sensitive, and inclusive of all children and young people in Australia.

BODY SAFETY AUSTRALIA'S SUBMISSION

BSA is grateful for the opportunity to provide input to the Senate Inquiry into current and proposed sexual consent laws in Australia.

BSA notes the breadth of the Inquiry's terms of reference and, while we are broadly supportive of all efforts to improve the national understanding of affirmative consent, we are primarily focusing our submission on point F - impact of consent laws on consent education.

We would however, like to make one contribution to point C - any benefits of national harmonisation. Our experience in working with young people and their ability to connect across jurisdictions via digital technology means different legal definitions and applications of consent can contribute to confusion and, in the case of sexual assault, significant distress.

We also note, however, that harmonisation needs to ensure that jurisdictions with hard-won and strong definitions of affirmative consent must not be required to dilute such definitions in the interests of a nationally consistent definition. As we will outline in the remainder of our submission, strong affirmative consent legislation provides a foundation for effective consent education.

Relevant questions from the Discussion Paper

How can sexual consent culture be changed?

Consent culture is the internal and external expression of understanding consent in individual, communities, social groups, and institutions. 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. According to the most recent data from the ABS¹, over 31,000 sexual assaults were reported to police in 2021. Other research² by the ABS suggests only 13% of sexual assaults are reported to police, which means the actual occurrences could be as many as almost 240,000 sexual assaults in Australia every year. To put that in perspective, if we started seating sexual assault survivors in the MCG at the beginning of every year, it would be full by May. We would fill it again by October, and it would be almost half full again by the end of the year.

The health and psychological costs of these staggering numbers are immeasurable, and the national economic cost is estimated to be in the billions³.

Cultural change of any kind requires a long-term, whole-of-community approach. Focusing education on children and young people in schools is vitally important, but truly effective consent education in the young requires support and validation from adults to ensure the lessons learned at school are not unlearned outside the classroom.

While there is some evidence that young people find it easier to change their attitudes and beliefs, it is a myth that older people are less able or willing to make attitudinal change⁴. Education on affirmative consent for adults via schools, workplaces, media, social media, and public debate is essential to making sure consent education in schools achieves cultural change.

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

What topics should be covered by consent education in schools?

¹ Australian Bureau of Statistics. (2021). Recorded Crime - Victims. ABS.
<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2021>

² Australian Bureau of Statistics. (2016). Personal Safety, Australia. ABS.
<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>

³ KPMG. (2016) The cost of violence against women and their children in Australia. Department of Social Services.

⁴ Tyler, Tom & Schuller, Regina. (1991). Aging and Attitude Change. Journal of personality and social psychology. 61. 689-97. 10.1037/0022-3514.61.5.689.

The key concept in quality consent education programs is taking the definition of consent beyond the limiting yes-no binary, which can meet the legal definition of consent and still be unwanted, exploitative, or confused.

Consent defined as “both people actively want to share touch”⁵ reframes consent as a mutual and ongoing understanding that both people give thought and care for their sexual partner’s feelings.

Consent education is not about giving people tools to maintain a plausible defence to a rape charge. It’s about teaching an empathic approach to sex as a positive, pleasurable experience that only occurs when both people can communicate without fear, pressure, entitlement, or resentment.

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.

Best practice consent education takes a strengths-based, intersectional approach. It is actively inclusive of and draws on the knowledges of Aboriginal and Torres Strait Islander people, migrants and refugees, LGBTIQ+ people and people with a disability.

⁵ Body Safety Australia, *The Consent Continuum*, 2017

When and how should this education be delivered?

BSA supports the inclusion of consent and respectful relationships education in the national curriculum from foundation to Year 10. We recognise the logistical and academic challenges involved in imposing additional curriculum to the already very demanding senior years. We submit, however, that young people aged between 15 and 19 the most likely age-group for both victims and offenders in sexual assault⁶. 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 research⁷ shows will often follow sexual assault provide a strong argument for intensifying, rather than removing consent education in the senior years of schooling.

As outlined below, the current national curriculum places consent education in the Health and Physical Education (HPE) modules. We strongly support the provision of expert professional development and ongoing support for HPE teachers in the short term. In the long term, we suggest the Commonwealth considers supporting the development of a teaching speciality for consent education, along with allied topics such as respectful relationships, inclusion and diversity, sex and sexuality education, where teachers receive the specialised training and education that will provide them with the skills and knowledge they can share with their students with a culturally safe, age-appropriate, trauma-informed, and evidence-based approach.

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

In addition to supporting schools to deliver quality consent education by mandating it in the curriculum, the Commonwealth needs to recognise the pressure placed on teachers and school leaders and the complex nature of teaching affirmative consent. Expecting current teaching staff to quickly acquire the specialist knowledge required to teach affirmative consent places an unrealistic and unreasonable burden on already overstretched teaching staff.

In order to safely teach 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.

⁶ Australian Institute of Health and Welfare 2020. Sexual assault in Australia. Cat. no. FDV 5. Canberra: AIHW.

⁷ Townsend, N., Loxton, D., Egan, N., Barnes, I., Byrnes, E., & Forder, P. (2022). 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 14/2022). ANROWS.

Teachers will have to do all of this if they are survivors of sexual or domestic violence themselves (statistically, some ninety-thousand Australian teachers have likely had experience of such violence). 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. And very few of them will receive additional training to help them manage all these complexities. In some cases, this could lead to consent education doing more harm than good⁸.

The Commonwealth has a strong role to play here. BSA recommends:

1. Funding to ensure that all teachers have access to quality professional development programs.
2. Funding for expert external providers to deliver content to support capacity building teachers or where school leadership believes there could be a risk of harm to students without specialised expert, inclusive, age-appropriate, trauma-informed delivery.
3. The development of a national register of accredited external providers to ensure all schools can access safe, trustworthy, knowledgeable consent educators for professional development or class program delivery.
4. Funding for evidence-based parent/carer and community-based education to support consent classes delivered in schools.
5. The Commonwealth and State Government give consideration to developing a teaching speciality stream for consent, respectful relationships, inclusion and diversity stream teachers and educators for secondary school, similar to the specialties of maths, science, art, and history.
6. That affirmative consent and respectful relationships become a mandatory subject for pre-service teachers.

⁸ ABC News, (2022) Experts say schools should have a 'proactive approach' to consent education after ACT students walk out of lesson. <https://www.abc.net.au/news/2022-08-29/consent-education-mandatory-australia/101375564>

The impact of consent laws on consent education

Given the above responses to the relevant questions in the Discussion Paper, BSA submits that a strong and clear definition of affirmative consent legislated in all jurisdictions can aid the complex task of teaching consent in schools, as well as in the broader community.

High quality consent education has always taken an affirmative consent approach. As outlined above, BSA teaches beyond the legal definition of consent, which is the minimum standard for healthy sexual interaction. Quality consent education also includes ethical, practical, social, family, technological, and empathetic aspects that are not the purview of the criminal code.

We recognise, however, our efforts to teach this approach would be strongly supported by a nationally accepted standard of affirmative consent formalised in a consistent, legislated definition of consent.

In our extensive experience of teaching consent, preparation for backlash in the classroom, from parents and even occasionally from teachers is essential. 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”.

A significant factor in backlash from students is influence from overseas, where women’s rights are being eroded and polarisation of gender politics gives prominence to influencers such as Andrew Tate. 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.

Legislated definitions of affirmative consent and an associated public education campaign would support and enhance parent education programs run by, and with schools in conjunction with the consent modules in the national curriculum. In our experience, myths expressed in the backlash examples above can be debunked by giving children, young people, parents, and teachers positive and comprehensive definitions and explanations of affirmative consent.