

# ANROWS

AUSTRALIA'S NATIONAL RESEARCH  
ORGANISATION FOR WOMEN'S SAFETY  
*to Reduce Violence against Women & their Children*

**Northern Territory Law Reform Committee**  
GPO Box 1535  
Darwin NT 0801

*By email:* Lawreformcommittee.DOJ@nt.gov.au

## **Re: Northern Territory Inquiry into consent for sexual offences**

Dear Aine Buckley,

ANROWS thanks the Northern Territory Law Reform Committee for the opportunity to respond to the Northern Territory Inquiry into consent for sexual offences.

ANROWS is an independent, non-profit company established as an initiative under Australia's *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan). Our primary function is to build the evidence base that supports ending violence against women and children in Australia. ANROWS is embedded in the National Plan architecture and will continue to deliver and develop this function across the next decade under the *National Plan to End Violence against Women and Children 2022–2032*. Every aspect of our work is motivated by the right of women and children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and children, and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

Primary funding for ANROWS is jointly provided by the Commonwealth and all state and territory governments of Australia. ANROWS is also, from time to time, directly commissioned to undertake work for an individual jurisdiction, and successfully tenders for research and evaluation work. ANROWS is registered as a harm prevention charity and deductible gift recipient, governed by the Australian Charities and Not-for-profit Commission (ACNC).

ANROWS is pleased to provide a submission that draws on our evidence base to respond to discussion questions 1A, 1B, 2A, 2B, 3A, 3B, 3C and 4. We would be very pleased to assist the Committee further, as required.

Yours sincerely



**Padma Raman PSM**  
Chief Executive Officer

3 July 2023

## Overall comments

ANROWS commends the Northern Territory Law Reform Committee's (NTLRC) focus on sexual offence law reform. This submission draws on our evidence base to highlight the benefits and challenges of an affirmative consent model, to suggest amendments to the definition of "harm", and to propose inclusions to jury directions to better support victims and survivors. ANROWS's submission responds to discussion questions 1A, 1B, 2A, 2B, 3A, 3B, 3C and 4.

ANROWS has previously made submissions to jurisdictional inquiries and reviews on consent laws and sexual offences in New South Wales (ANROWS, 2018, 2019a, 2019b) and Queensland (ANROWS, 2020), and at Commonwealth level (ANROWS, 2023). ANROWS welcomes the opportunity to make a submission to this Inquiry and would be pleased to assist the Committee further as required.

ANROWS also acknowledges that any law reform has the potential to create unintended consequences. With the Northern Territory currently experiencing the highest daily imprisonment rate of all Australian states and territories (Australian Bureau of Statistics [ABS], 2023a), the potential for overincarceration must be recognised. By accompanying law reform with broader reforms, services and education to prevent, respond to and recover from sexual violence, unintended consequences may be mitigated.

## Recommendations

**Recommendation 1:** Consider including affirmative consent as a core component of legislation on consent for sexual offences.

**Recommendation 2:** ANROWS supports the recognition of stealthing as a criminal offence. ANROWS suggests that the NTLRC could consider how the introduction of an affirmative consent model could allow for emerging forms of non-consensual behaviour, such as stealthing, to be addressed proactively rather than by individual criminalisation.

**Recommendation 3:** Consider removing outdated references to "gross indecency" in the *Criminal Code* (NT) and replacing these with contemporary and inclusive language.

**Recommendation 4:** Consider expanding the circumstances in which a person does not consent to include domestic and family violence and coercive control.

**Recommendation 5:** Consider expanding the definition of harm to include harm directed at pets or other animals; harm to the person's employment; economic or financial harm; reputational harm; sexual harassment; and harm to the person's family, cultural or community relationships.

**Recommendation 6:** Consider amending the law to provide that a person is reckless as to whether the other person consents to sexual activity if they do not take steps to ascertain whether the other person consents.

**Recommendation 7:** Consider how the defence of mistaken belief intersects with, contradicts and undermines the affirmative consent model.

**Recommendation 8:** Consider expanding jury directions in sexual offence cases to address:

- misconceptions of consent and mistrust of allegations
- the "stranger rape" myth
- how common it is for victims and survivors to either not report sexual violence, or to not report immediately
- the freeze response

- the impact of trauma on victims' and survivors' memory and presentation.

## Definitions

### A note on terminology

The definitions of “sexual violence”, “sexual assault”, “sexual harassment” and “intimate partner sexual violence” can vary between studies and surveys. The definitions below are those preferred by ANROWS and are used when referring to sexual violence and intimate partner sexual violence as concepts in this submission.

### Sexual violence

Sexual violence is defined as the intentional perpetration of sexual acts without consent (ANROWS, 2019c), capturing all forms of sexual assault and sexual harassment (Coumarelos et al., 2023). This definition of sexual violence refers to both criminal and non-criminal sexual activity perpetrated without consent to reflect that some emerging forms of sexual violence have not yet been addressed in legislation (Coumarelos et al., 2023).

### Intimate partner sexual violence

Intimate partner sexual violence (IPSV) is the intentional perpetration of sexual acts without consent in intimate partner relationships (ANROWS, 2019c). Intimate partner relationships include those with husbands, wives, partners, boyfriends, girlfriends, and dates, whether or not they live together (ANROWS, 2019c). IPSV is a tactic of domestic and family violence (DFV).

## Consent

### **Question 1A: What, if any, elements should be added to the Northern Territory definition of consent in the context of sexual assault?**

#### **The role of affirmative consent models**

Australians' understanding and attitudes towards sexual violence are still developing. ANROWS recently released the results of the 2021 National Community Attitudes towards Violence against Women Survey (NCAS), which highlighted a promising significant increase in attitudes that reject sexual violence by the Australian population (Coumarelos et al., 2023). There was also positive improvement in Australian's attitudes towards sexual assault and sexual harassment (Coumarelos et al., 2023). However, the NCAS also revealed that misconceptions and mistrust around women's experiences and reporting of sexual violence persist among Australians (Coumarelos et al., 2023). This included attitudes that objectify women and disregard their consent, that perpetuate myths and misconceptions about the nature and context of sexual assault, and that see sexual harassment as a compliment or not serious (Coumarelos et al., 2023).

Legislative change can serve as an important indicator of acceptable behaviours and as a mechanism to change enduring problematic attitudes towards and understandings of consent. Affirmative consent models are an example of legislative change to improve understanding of and responses to consent. An affirmative consent model requires individuals to explicitly communicate their consent and to take steps to confirm that the other person is consenting. Consent is an ongoing process, it must be present for every sexual act, and it can be withdrawn at any time. This is a shift from a “no means no” model of

consent whereby silence could be interpreted as consent. This is important, as victims and survivors may experience a “freeze” response in non-consensual situations and be unable to verbally or physically communicate that they are not consenting. Instead, focus is placed on the actions of the alleged perpetrator and the steps that they took to confirm consent. Embedding the features of an affirmative consent model into law can serve as a reference point for acceptable behaviour aimed at addressing enduring problematic attitudes towards consent.

The *National Plan to End Violence against Women and Children 2022–2032* (the National Plan) identifies the need for nationally consistent definitions to support shared understanding and consistent responses to gender-based violence (Department of Social Services [DSS], 2022). The government has announced the investment of \$6.5 million over four years in the 2023–24 Budget to work with states and territories to strengthen and harmonise sexual assault and consent laws and to improve criminal justice responses for victims and survivors (Attorney-General’s Department, 2023). ANROWS has expressed support for the introduction of nationally consistent affirmative consent models and sexual consent laws across all jurisdictions to help to ensure that victims and survivors across Australia have the same opportunities to seek help and to access services and the justice system (ANROWS, 2023). Affirmative consent models have recently been introduced in amendments to the New South Wales *Crimes Act 1900*, the ACT’s *Crimes Act 1900*, and the Victorian *Crimes Act 1958*.

### **The affirmative consent model addresses victim-blaming narratives**

The affirmative consent model and its focus on the actions of the perpetrator can counteract victim-blaming narratives. The results of the 2021 NCAS revealed that victim-blaming narratives persist among a minority of Australians:

- 10 per cent of respondents agreed that some women are so sexual in public that it is understandable that some men think they can touch women without permission (Coumarelos et al., 2023, p. 177).
- 10 per cent of respondents agreed that if a woman is raped while drunk or affected by drugs then she is at least partly responsible (Coumarelos et al., 2023, p. 173).
- 7 per cent of respondents agreed that if a woman meets up with a man from a mobile dating app then she is partly responsible if he forces sex on her (Coumarelos et al., 2023, p. 173).
- 21 per cent of respondents agreed that if a woman sends a naked picture to her partner then she is partly responsible if he shares it without her permission (Coumarelos et al., 2023, p. 177).

If an affirmative consent model was used to understand these situations, the actions of the perpetrator and their failure to take steps to confirm consent would be the focus rather than the victim’s and survivor’s behaviour.

Challenging victim-blaming narratives is critical as they have a significant impact on victims and survivors. Fear of not being believed is a key factor in whether women disclose sexual assault to their informal networks and through formal pathways such as police or authorities (see O’Donohue, 2019; Whiting et al., 2020). It is important that victims and survivors feel able to access support services, as women who experience sexual violence report worse physical and mental health than women who have never experienced sexual violence (Townsend et al., 2022). Repeated victimisation and unmet health needs are linked and may lead to victims and survivors experiencing complex trauma (see Salter et al., 2020).

Victim-blaming attitudes can also influence how victims and survivors are treated when they *do* report sexual violence. Myths and misunderstandings about sexual consent and sexual violence can undermine

police and legal perceptions about the credibility of sexual violence allegations (Coumarelos et al., 2023; Salter et al., 2020). In a study by Hegarty et al. (2022), a victim and survivor of sexual violence recounted being advised by police to withdraw sexual assault charges against her ex-partner because she had shared intimate texts while she was in a relationship with him. She recalled being told that “a barrister would rip me apart and the jury wouldn’t believe me” (research participant as quoted in Hegarty et al., 2022, p. 75). In a study by Salter et al. (2020), despite all women in the study being extensively victimised, “no woman reported that the full extent of her victimisation had been prosecuted in the criminal justice system” (p. 8). There was evidence of police acting to cool women’s complaints, even if they believed them, as part of an “attempt to protect the woman from further hardship and disappointment” (Salter et al., 2020, p. 100). It is important that victim-blaming attitudes do not function as barriers to help-seeking for these women both within and beyond the justice system.

### **The affirmative consent model could support community understanding of ongoing consent**

Community understanding of the need to seek consent for each sexual act is still developing. Results from the 2021 NCAS highlighted that some Australians do not recognise the need for ongoing consent, as 8 to 11 per cent of respondents agreed that a man was justified in perpetrating sexual assault if the woman had initiated kissing and then pushed him away (Coumarelos et al., 2023, p. 174). The results also indicated that Australians had gendered understandings of ongoing consent as less respondents (only 3%) agreed that sexual assault was justified if the *man* had been the one to initiate kissing (Coumarelos et al., 2023, p. 174). This discrepancy based on who initiated kissing reflects gendered victim-blaming attitudes that justify men’s non-consensual behaviours and position women as responsible for keeping themselves safe from men (Coumarelos et al., 2023). The NCAS results highlight the need for improved understanding of the importance of ongoing consent, which could be supported through the introduction of an affirmative consent model as an indicator of acceptable behaviours.

### **Opportunities for affirmative consent in the Northern Territory**

This inquiry into consent for sexual offences presents an opportunity to align Northern Territory legislative responses with best practice approaches in other jurisdictions. ANROWS suggests that the NTRLC could consider amending the definition of consent in the context of sexual assault to an affirmative consent model, reflecting that:

- consent involves ongoing and mutual communication and decision-making, and free and voluntary agreement
- individuals must take “reasonable steps” to ensure that the other person is consenting
- consent must be sought and agreed for each sexual act
- consent can be withdrawn at any time by words or conduct.

The introduction of an affirmative consent model should be underpinned by community education and awareness-building as well as training and capacity-building for actors within the legal system. As identified earlier in this submission, myths and misunderstandings about sexual consent and sexual violence can undermine police perceptions about the credibility of allegations (Coumarelos et al., 2023; Salter et al., 2020) and it is therefore important that police and legal professionals are supported to understand affirmative consent and to translate this into practice.

ANROWS recognises that the Northern Territory has mandatory reporting laws that require individuals to report domestic and family violence to police. If the NTRLC decides to recommend the introduction of an affirmative consent model, the potential impacts of interplay between mandatory reporting and the operation of an affirmative consent model would need to be considered.

**Recommendation 1:** Consider including affirmative consent as a core component of legislation on consent for sexual offences

### **Criminalisation of “stealthing”**

ANROWS supports the recognition of “stealthing” as a criminal offence in the Northern Territory. “Stealthing” refers to the practice of removing a condom without consent during sexual activity (ANROWS, 2020). Legislation to address stealthing is important as it sanctions the behaviour as non-consensual and therefore illegal. Victims and survivors are thereby supported to recognise the behaviour as non-consensual, to access services, and to pursue a response through the justice system if they choose. Stealthing has been recognised as a legislative gap in consent laws in many Australian jurisdictions (ANROWS, 2020). In recent years, many states and territories have responded to this gap by creating an offence of “stealthing” or by amending the definition of consent within their Crimes Act to add stealthing to the list of circumstances that negate consent (Parrott & Chesser, 2022). The latter approach has been proposed in the Northern Territory. ANROWS supports the inclusion of stealthing in legislation as non-consensual but suggests that the NTLRC could consider how the introduction of an affirmative consent model could reduce the need to continually introduce new items to the list of circumstances in which a person does not consent. For example, stealthing is criminalised by default under the affirmative consent model in the New South Wales *Crimes Act 1900*. This Act requires consent to be sought, communicated, voluntary, and obtained for each sexual activity. An affirmative consent model in the Northern Territory would allow for emerging forms of non-consensual behaviour to be recognised and responded to without waiting for legislative reform.

**Recommendation 2:** ANROWS supports the recognition of stealthing as a criminal offence. ANROWS suggests that the NTLRC could consider how the introduction of an affirmative consent model could allow for emerging forms of non-consensual behaviour, such as stealthing, to be addressed proactively rather than by individual criminalisation.

### **Remove references to “gross indecency”**

The NTLRC could consider making the language and terminology of the *Criminal Code Act 1983* (NT) simpler and more accessible. Our evidence shows changes of this nature are particularly important for parents who self-represent themselves in court (Wangmann et al., 2020). In particular, ANROWS suggests that the term “gross indecency” should be removed. The term has negative connotations for some Australians, as it was originally used both to criminalise homosexual men whose sexual activity did not qualify as sodomy, and for child sexual offences. This should be removed and replaced with contemporary terminology, such as “sexual activity”, which would cover sexual intercourse, sexual touching and sexual acts. This contemporary terminology also de-emphasises penetration and therefore makes the law more inclusive towards the ways that different people engage in sexual activity.

**Recommendation 3:** Consider removing outdated references to “gross indecency” in the *Criminal Code Act 1983* (NT) and replacing these with contemporary and inclusive plain English.

### **Amendments to jury directions**

ANROWS supports the proposed amendments to jury directions as outlined in the *Discussion Paper* (Northern Territory Law Reform Committee, 2023). These amendments would align with the affirmative consent model by highlighting that a person must actively consent and that consent to one sexual act does not constitute consent for others. ANROWS also suggests that additional jury directions would be beneficial, and these are outlined in this submission in response to Question 4.

## **Question 1B: Is the current definition of “harm” in the Northern Territory legislation sufficient? If not, how should it be changed?**

### **Expand the circumstances in which a person does not consent and the definition of harm**

ANROWS evidence suggests that the NTLRC should consider expanding the circumstances in which a person does not consent to include the presence of domestic and family violence (DFV) and/or coercive control. DFV and coercive control create a climate of fear within which consent arguably cannot be freely given (see Logan & Cole; McOrmond-Plummer, both cited in Cox, 2015). Sexual violence perpetrated within an intimate partner relationship can be repetitive and often forms part of a broader pattern of coercive control (Cox, 2015; Fredericton Sexual Assault Crisis Centre, cited in Backhouse & Toivonen, 2018). Some women may participate in sexual activity under duress in an attempt to protect others from violence (see *Liyana v The State of Western Australia*, 2017, cited in Tarrant et al., 2019). Research indicates that sexual violence is more likely to be perpetrated by someone known to the victim and survivor than by a stranger and this is most commonly an intimate partner (ABS, 2021). It is therefore important to ensure that consent laws recognise and respond to the prevalence and characteristics of IPSV by including DFV and coercive control as circumstances in which a person cannot consent.

ANROWS evidence also suggests that the definition of “harm” could be expanded to support legal actors to recognise and respond to sexual violence in the context of coercive control. Tactics used by perpetrators of coercive control are varied and tailored to the individual and the context of the relationship, and may appear innocuous to outsiders (Tarrant et al., 2019). The *Discussion Paper* notes that the definition of harm does not currently include economic or financial harm; reputational harm; harm to animals or items; harm to the person’s employment; sexual harassment; harm to the person’s family, cultural or community relationships; or a course of action amounting to coercive control (Northern Territory Law Reform Committee, 2023). ANROWS’s evidence base suggests that these harms should be included in the legislation. For example, ANROWS research confirms that cruelty and harm directed to pets and other animals can be used as a control tactic by perpetrators and can often indicate a risk of future or more severe violence (Toivonen & Backhouse, 2018). ANROWS research also highlights that sexual harassment and abuse in the workplace is a particular risk for international students whose employers may take advantage of their financial insecurity, risk of deportation, and lack of understanding of their rights (DSS, 2015; Lievore, 2003; Polkski, 2011, all as cited in Mitra-Kahn et al., 2016). ANROWS’s current 2021–24 Sexual Harassment Research Program also includes three projects on sexual harassment in the workplace, the findings of which will be available in 2024. ANROWS evidence indicates that the risk of social isolation or exclusion in a remote or small community could be used as a tactic of control by perpetrators of domestic and family violence, particularly against LGBTQ victims and survivors (Gray et al., 2020). Victims and survivors in this research reflected that disclosing experiences of domestic and family violence or leaving relationships where this is present risked isolating them from their “queer community” in their hometown (Gray et al., 2020, p. 54). All of these examples underscore the importance of an expanded definition of harm that addresses the many and varied ways perpetrators of violence cause negative impacts to victims and survivors.

**Recommendation 4:** Consider expanding the circumstances in which a person does not consent to include domestic and family violence and coercive control.

**Recommendation 5:** Consider expanding the definition of harm to include harm directed at pets or other animals; harm to the person’s employment; economic or financial harm; reputational harm; sexual harassment; and harm to the person’s family, cultural or community relationships.

## State of mind of the accused

### **Question 2A: Should the law provide that a person is reckless as to whether the other person consents to sexual activity if the person does not take any steps to ascertain whether the other person consents to engage in the sexual activity?**

ANROWS has outlined support in this submission for the introduction of an affirmative consent model. This model includes the requirement for a person to take steps to ascertain whether the other person consents to engage in sexual activity. As such, ANROWS suggests that the NTLRC should consider a change to the law to provide that a person is reckless as to whether the other person consents if they do not take steps to ascertain whether they consent.

**Recommendation 6:** Consider amending the law to provide that a person is reckless as to whether the other person consents to sexual activity if they do not take steps to ascertain whether the other person consents.

### **Question 2B: Should the law provide that for an accused person to raise a defence of mistaken belief that the other person was consenting to sexual activity, the accused person's belief must be not only honest but also reasonable?**

ANROWS evidence suggests that a defence of mistaken belief may have unintended consequences. This defence means that an accused person can argue that they reasonably, but mistakenly, believed that the victim and survivor was consenting to sexual activity. This undermines the principles and positive duty outlined in the affirmative consent model, which requires people to take active steps to ensure that the other person is providing clear and ongoing consent. This defence also perpetuates common rape myths, such as the idea that men cannot regulate their sex drives, that they may be so aroused that they do not recognise that a woman is not consenting, and that women say “no” when they mean “yes”. Findings from the 2021 NCAS indicate that these rape myths persist among a significant number of Australians. One in four respondents (25%) agreed that a sexually aroused man may be unaware that a woman does not want to have sex, and one in ten (10%) agreed that women say “no” when they mean “yes” (Coumarelos et al., 2023, p. 173). ANROWS suggests that a defence of mistaken belief may have unintended consequences given that many Australians still believe common rape myths and also have a legal avenue to avoid prosecution for non-consensual behaviours through this defence. ANROWS invites the NTLRC to consider how this defence of mistaken belief intersects with, contradicts and undermines the affirmative consent model and how it may perpetuate common rape myths.

**Recommendation 7:** Consider how the defence of mistaken belief intersects with, contradicts and undermines the affirmative consent model.



## Intoxication

**Question 3A: Is the current law in relation to self-induced intoxication adequate?**

**Question 3B: What should the law provide, if anything, about how self-induced intoxication may be taken into account when deciding whether a person acted under a mistaken belief that the other person was consenting?**

**Question 3C: What should the law provide, if anything, about how self-induced intoxication may be taken into account when deciding whether a person was reckless as to the lack of consent of the other person?**

ANROWS evidence suggests that provisions that excuse sexual violence due to self-induced intoxication of the alleged perpetrator may perpetuate gendered and victim-blaming narratives. The 2021 NCAS highlighted concerning attitudes about intoxication and sexual assault that revealed victim-blaming double-standards whereby men are seen as less responsible for perpetrating sexual assault when intoxicated but intoxicated women are seen as more responsible for their own victimisation. The 2021 NCAS indicated that 1 in 20 respondents (6%) agreed that an intoxicated man is less responsible for perpetrating sexual assault (Coumarelos et al., 2023, p. 173). In contrast, around 1 in 10 respondents (6 to 10%) agreed that if a woman is raped while drunk or affected by drugs, she is at least partly responsible (Coumarelos et al., 2023, p. 173). Legislation around self-induced intoxication and mistaken belief or recklessness is therefore likely to be interpreted and applied in a gendered context. It is important that the law does not reinforce these gendered victim-blaming double-standards.

## Jury directions

**Question 4: Should, and if so, how should jury directions in a sexual assault matter be modified to:**

- a. promote a trauma-informed approach by the jury;**
- b. steer the jury away from reliance on myths and stereotypes about sexual assault; and**
- c. ensure the accused receives a fair trial?**

### **Jury directions to address misconceptions around consent and sexual violence**

ANROWS evidence suggests that additional jury directions are needed to address misconceptions around consent and sexual violence more broadly. ANROWS research on community attitudes suggests that a concerning number of Australians view women's allegations of sexual assault with mistrust. Findings from the 2021 NCAS highlighted that 34 per cent of respondents thought that sexual assault allegations were commonly used to "get back at" men, while 24 per cent agreed that a lot of times women who say they were raped had led the man on and then had regrets (Coumarelos et al., 2023, p. 172). Furthermore, 14 per cent of respondents agreed that many sexual assault allegations made by women are false (Coumarelos et al., 2023, p. 172). This mistrust persists despite research that indicates that false rape allegations are extremely rare (see Coumarelos et al., 2023). The findings from the 2021 NCAS align with

a recent ANROWS study that investigated Australians' mistrust of women's reports of sexual violence. This study found that participants viewed allegations from a default position of mistrust that was informed by an interplay of rape myths and negative stereotypes about women (Minter et al., 2021). Participants in this study believed that victims and survivors would lie about sexual assault to target or harm men, or to mitigate social damage from embarrassment or regret after a sexual encounter (Minter et al., 2021). There is a clear need to address these misconceptions and this mistrust to ensure that juries are equipped with accurate information.

### **Jury directions to address misconceptions about reporting**

Jury directions could include a discussion of how common it is for victims and survivors to not report sexual violence, or to not report it immediately. Results from the latest Personal Safety Survey (PSS) identified that 20 per cent of women have experienced sexual assault since the age of 16 (ABS, 2023b). However, data drawn from the 2016 Personal Safety Survey and 2019 Recorded Crimes – Victims data revealed that, of women who had experienced sexual assault by a male perpetrator in the 10 years preceding the survey, only 13 per cent had reported the most recent incident to police (ABS, 2021). The number of women in Australia who are not reporting their experiences of sexual violence is therefore substantial. As identified earlier in this submission, fear of not being believed is a key factor in whether women informally or formally disclose their experiences of sexual assault (see O'Donohue, 2019; Whiting et al., 2020).

Additional barriers to reporting sexual violence exist for victims and survivors from specific population groups including women with disability, people with diverse gender identities and sexualities, women from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women (Mitra-Kahn et al., 2016). These barriers 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 (Mitra-Kahn et al., 2016). Another ANROWS study found that, while trans women of colour were twice as likely as other groups of women to have experienced being sexually assaulted 10 or more times, no trans women in the study had accessed support from police or justice agencies (Ussher et al., 2020).

Despite this evidence that suggests many victims and survivors will not report or will delay reporting, the ANROWS study on mistrust of women's reports of sexual assault indicated that participants viewed allegations with increased suspicion when the victim and survivor had not immediately reported to police (Minter et al., 2021). The 2021 NCAS also highlighted that 6 per cent of respondents agreed that women who wait weeks or months to report sexual assault are probably lying (Coumarelos et al., 2023, p. 172). There is a clear need to address these misconceptions around reporting to ensure that juries do not view allegations from a default position of mistrust as a result.

### **Jury directions to challenge the “stranger rape” myth**

As identified earlier in this submission, research indicates that sexual violence is most likely to be perpetrated by someone known to the victim and survivor, most often an intimate partner, than by a stranger (ABS, 2021). However, community understanding of the dynamics of sexual violence is still developing. Findings from the 2021 NCAS indicate that one third of respondents either disagreed (18%) or did not know (12%) that women are more likely to be raped by someone they knew than by a stranger (Coumarelos et al., 2023, p. 174). This misconception is known as the “stranger rape myth”, whereby rape is understood as predominantly happening between two strangers and involving the use of physical force (Coumarelos et al., 2023; Toivonen & Backhouse, 2018). Sexual violence that occurs within intimate partner relationships can also be particularly challenging to prosecute, as it generally occurs within the context of other consensual sexual activities and patterns of sexual activity that do not involve verbalised

consent (Cox, 2015). In this context, ANROWS suggests that it is important that juries are provided with accurate information on the prevalence and characteristics of IPSV.

### **Increasing awareness of the impact of trauma on victims' and survivors' presentation**

It is also important that juries understand that trauma can impact victims' and survivors' presentation and memory. Women with experiences of complex trauma have reported that law enforcement could not identify or did not understand their traumatised presentations and describe being dismissed as mentally ill or "crazy" (Salter et al., 2020). Support workers also emphasised that the initial presentation of a woman to police could have a significant impact on the type of response they received (Salter et al., 2020). Victims and survivors who have experiences of complex trauma may experience dissociation, which is reflected in alterations of memory, emotion, identity and behaviour (Salter et al., 2020). As a result, the victim and survivor may describe events without any emotion (Salter et al., 2020). For many, dissociation is a way of coping with experiences that would otherwise be overwhelming (Salter et al., 2020). However, this leaves victims and survivors open to judgement by the legal system and juries. In ANROWS's study on mistrust of sexual assault allegations, participants viewed victims' and survivors' allegations with more distrust when they did not demonstrate emotional distress (Minter et al., 2021).

**Recommendation 8:** Consider expanding jury directions in sexual offence cases to address:

- misconceptions of consent and mistrust of allegations
- the "stranger rape" myth
- how common it is for victims and survivors to either not report sexual violence, or to not report immediately
- the freeze response
- the impact of trauma on victims' and survivors' memory and presentation.

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