

# Sexual Consent Reforms Review

An ANROWS submission to the  
NSW Department of Communities  
and Justice

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ANROWS

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

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## Overview

ANROWS supports the Department of Communities and Justice (the Department) in sustaining and refining the sexual consent reforms. The use of a communicative and affirmative model of consent reflects contemporary understandings of sexual autonomy. Focus on the importance of clear, positive definitions of consent and modernised sexual offence frameworks is broadly consistent with approaches emerging across Australian jurisdictions (Australian Law Reform Commission, 2025).

Legislation alone cannot achieve the stated objectives of this law reform while rape myths and misconceptions remain prevalent in the community and in legal settings. National studies including ANROWS' *National Community Attitudes towards Violence Against Women Survey (NCAS; Coumarelos, Roberts, et al., 2023; Coumarelos, Weeks, et al., 2023; Minter et al., 2021)*, *The Man Box 2024 (The Men's Project & Flood, 2024)*, *The Adolescent Man Box 2025 (The Men's Project, 2025a)*, and *The NSW Man Box 2025 (The Men's Project, 2025b)* show that problematic attitudes about sexual violence and gender inequality persist, especially among young people aged 14 to 24.

These include violence-supportive and misogynistic attitudes. The finding from the 2021 NCAS found that 34% of respondents believed that sexual assault allegations are commonly used to get revenge (Coumarelos, Weeks, et al., 2023). These attitudes are also concerning because they are linked to problematic behaviours. The NSW Man Box study found that young men who had the strongest Man Box endorsement – social norms that pressure men to act in a certain way to be a “real man” – were 10 times more likely to perpetrate sexual violence against an intimate partner compared to those with the lowest endorsement (The Men's Project, 2025b). Further, they were more likely to report viewing non-consensual acts in pornography (The Men's Project, 2025a).

These findings underscore the need for sustained public education and attitude and behavioural change work alongside legislative change.

ANROWS is pleased to provide a submission to inform this review of sexual consent reforms in NSW, following our initial submissions informing the initial NSW sexual consent law reform in 2018 and 2019. We welcome the opportunity to work alongside the Department by contributing and translating evidence to strengthen this shared effort.

## Recommendations

ANROWS recommends that the Department:

1. Explicitly recognise coercive control patterns in the “circumstances where there is no consent” (s 61HJ), by including additional clear and relevant examples.
2. Include jury directions that cover coercive control and economic dependence.
3. Develop and publish detailed investigative guidance for police that directs them to focus on what the accused did to seek consent.
4. Ensure that all agencies provide ongoing trauma and violence informed training on communicative consent, and that this training is evaluated.
5. Make the s 292A–292E directions presumptively mandatory when consent is in dispute, with judges able to opt out only in exceptional cases and required to give reasons.
6. Require judges to give jury directions on flirtation, post-offence contact and trauma responses at pretrial and as context during trial when raised.

7. Amend *the Criminal Procedure Act* to require judges to consider giving relevant consent directions at or near the time of key evidence, with the option to repeat them in the summing up.
8. Relocate “stealthing” from a legislative note and include it as an explicit “circumstance of non-consent” to ensure consistency with reforms in other states and territories.
9. Include a jury direction to address the misconception that perceived flirtatious or sexual behaviour implies consent to later sexual activity.
10. Continue investment in independent monitoring of police and prosecution decision-making in sexual offence matters, including external review of ‘no further action’ decisions.
11. Support ongoing evaluation of specialist approaches to managing sexual assault proceedings.

## **Question 1: Do the consent reforms meet the policy objective of clarity and certainty about consent, and consequently address misconceptions about consent in law and legal processes?**

A primary policy objective of the sexual consent reforms was to achieve clarity and certainty about consent and consequently address misconceptions in law and legal processes.

The law clearly defines consent and lists situations where consent is absent, and this aligns with evidence about sexual violence. The non-exhaustive list, including silence, intoxication, coercion, intimidation, unlawful detention, abuse of power and fraudulent inducement, is appropriate and should stay.

ANROWS recommends amendments and updates to reviewable provisions in our response to Questions 2 and 3 to strengthen clarity and certainty about consent.

## **Question 2: Should any of the reviewable provisions be amended or updated, including the jury directions?**

### **Strengthen content regarding coercive control and consent**

Including Section 61HJ(1)(f) is essential as it states that there is no consent when someone participates due to coercion, blackmail or intimidation. The Second Reading Speech explains that this section is meant to cover conduct that amounts to coercive control, particularly in the context of domestic and family violence. The District Court case of *Khoshdil*, which is referenced in the discussion paper, does show that coercive controlling behaviour can be considered in court decisions.

The legislation needs to clearly identify that coercive control is a “circumstance where there is no consent.” This is important because coercive control limits the extent to which a victim-survivor can safely navigate consent with a partner. For example, they may feel they need to say yes to sexual activities to keep themselves or others safe, if there is control and fear (ANROWS, 2019c).

Clarifying this legislation will potentially support a significant number of victim-survivors. Evidence shows that coercive control is a core tactic of domestic, family and sexual violence (Australian Institute of Health and Welfare, 2024), and women are more likely to be sexually assaulted by an intimate partner than by a stranger or acquaintance (Australian Institute of Health and Welfare, 2025).

ANROWS recommends that the Department:

- Explicitly recognise coercive control patterns in the “circumstances where there is no consent” (s 61HJ), by including additional clear and relevant examples.
  - This could be done by adding examples of economic abuse, threats to reputation, migration status, and social or cultural relationships.
- Include jury directions that cover coercive control and economic dependence.

This is consistent with recommendations that ANROWS made to the NSW Law Reform Commission in 2018 and 2019 (ANROWS, 2018, 2019a, 2019b). Making these changes would also increase the clarity of the legislation, help to align NSW with national best practice, and better reflect victim-survivor experiences of coercive patterns over time.

## **Strengthen operation of the affirmative standard**

The reforms clarify that consent is a free and voluntary agreement at the time of sexual activity. They also introduce an affirmative consent requirement (s 61HK(2)). An accused cannot claim they believed the victim-survivor consented unless they took steps to confirm consent at the time. The law clearly states that a lack of physical or verbal resistance does not mean a person is consenting (s 61HI(4)). It also explains that consent can be withdrawn at any time by words or behaviour, and that consent to one sexual activity or person does not mean consent to other sexual activities.

Early feedback on the reforms indicates that the affirmative consent standard has been useful. It has helped police to frame clearer questions about what an accused said or did, and to have increased confidence to make decisions about charging people based on their knowledge of non-consent.

However, research on police attrition in sexual consent cases highlights that many cases fail to progress at early stages due to perceived weaknesses in the evidence and misunderstandings about consent and victim-survivor credibility (Burgin & Tassone, 2024). Research also indicates that victim-survivors of sexual violence in New South Wales experience problematic police questioning – that is, questioning that overlooks why victim-survivors might respond in a certain way or have trouble recalling events (KPMG & Centre for Innovative Justice, 2023). Victim-survivors reported experiences of being viewed as an “unreliable witness” (KPMG & Centre for Innovative Justice, 2023).

It is also important that law reform is accompanied by programs that focus on changing attitudes and behaviours. Community mistrust of reports of sexual violence is persistent. A 2021 ANROWS-led study found that participants mistrusted women’s reports of violence by default and rarely questioned whether accused men had sought or confirmed consent (Minter et al., 2021).

To strengthen the operation of the affirmative standard, ANROWS recommends that the Department:

- Develop and publish detailed investigative guidance for police that directs them to focus on what the accused did to seek consent.
- Ensure that all agencies provide ongoing trauma and violence informed training on communicative consent, and that this training is evaluated.

The existing exception for accused persons with cognitive or mental health impairments is appropriate given it has a narrow scope and focus on fairness, and should be retained.

## Strengthen use of jury directions to address rape myths

The five new jury directions (CPA ss 292A–292E) are evidence-based and specifically designed to address common misconceptions about consent, including about complainant behaviour, appearance, resistance and trauma responses. Research on trial transcripts in NSW has shown that these myths were frequently raised before the consent reforms and recommends that specific directions are needed to respond (Quilter & McNamara, 2023).

Henderson & Duncanson (2017) highlighted that when judges use rape myth jury directions early and proactively, rather than only at the end of a trial, counsel adjust their questioning and arguments, and rape myths appear less frequently in trials. When jury directions are given only at summing-up, they unintentionally may reinforce rape myths.

ANROWS recommends that the Department:

- Make the s 292A–292E directions presumptively mandatory when consent is in dispute, with judges able to opt out only in exceptional cases; and then with a requirement to give reasons.
- Require judges to give jury directions on flirtation, post-offence contact and trauma responses at pretrial and as context during trial when raised.
- Amend the Criminal Procedure Act to require judges to consider giving relevant consent directions at or near the time of key evidence, with the option to repeat them in the summing up.

## Question 3: Are any of the proposals at Appendix D supported?

### Amend provisions on stealthing

ANROWS has previously recommended using affirmative consent models to address emerging forms of sexual violence such as stealthing. Affirmative consent models enable emerging forms of sexual violence to be addressed proactively, rather than requiring each form to be individually criminalised.

ANROWS supports the Department’s explicit recognition of stealthing in this legislation.

ANROWS also strongly supports a consistent national approach to consent and has previously provided submissions to jurisdictional inquiries and reviews into criminal justice responses to sexual offences in New South Wales (ANROWS, 2018, 2019a, 2019b), Queensland (ANROWS, 2020), the Northern Territory (ANROWS, 2023b), Western Australia (ANROWS, 2023c) and at the Commonwealth Government level (ANROWS, 2023a, 2024a, 2024b).

As such, ANROWS recommends that the Department:

- Relocate “stealthing” from a legislative note and include it as an explicit “circumstance of non-consent” to ensure consistency with reforms in other states and territories.

### Include new direction on flirtatious or sexual behaviour not implying consent

ANROWS supports the introduction of a jury direction to address the misconception that perceived flirtatious or sexual behaviour implies consent to later sexual activity. Findings from the 2021 NCAS highlight that a notable minority of Australians do not understand affirmative consent.

Specifically, the research found that 8 to 11% of respondents believed that sexual assault was justified when the woman had initiated kissing, and 3% agreed that it was justified when the man had initiated kissing (Coumarelos, Weeks et al., 2023). It also reflects a gendered and victim-blaming understanding of sexual assault, where men can be excused for sexual assault if the women initiated sexual contact.

The 2021 NCAS also found that 1 in 10 (10%) respondents agreed that, since some women are so sexual in public, it is understandable that some men think they can touch women without permission (Coumarelos, Weeks et al., 2023, p. 143).

ANROWS therefore recommends that the Department:

- Include a jury direction to address the misconception that perceived flirtatious or sexual behaviour implies consent to later sexual activity.

## Final comments

### Continue monitoring and evaluation activities

Early data in the Discussion Paper shows that reports of sexual assault and sexual touching have increased, including via the Sexual Assault Reporting Option, and that court workloads in sexual matters remain large. At the same time, the Discussion Paper states that the available data do not yet allow us to form conclusions about changes in conviction rates or trial outcomes for post-reform matters. This is because cases often run for a long time, and many cases currently underway started before the reforms were in place.

ANROWS recommends that the Department:

- Continue investment in independent monitoring of police and prosecution decision-making in sexual offence matters, including external review of 'no further action' decisions.
- Support ongoing evaluation of specialist approaches to managing sexual assault proceedings.

These recommendations would support the statutory review to remain responsive as more robust data and evidence emerge.

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Australia's National Research Organisation for Women's Safety Limited (ANROWS) is the country's independent, trusted voice for reliable and informed evidence on domestic, family and sexual violence.

ANROWS builds and disseminates the evidence to inform the [\*National Plan to End Violence against Women and Children 2022–2032\*](#).

Our work is underpinned by a commitment to producing high-quality, policy-relevant evidence to inform and influence practice, service delivery, and systems reform. Since our establishment, ANROWS has led, contributed to, or commissioned more than 150 research projects. We undertake targeted research both internally and in collaboration with academic institutions and sector partners.

Every aspect of our work is motivated by the right of women and children to live free from violence and in safe, equitable communities. We engage closely with victim-survivors, communities, service providers, governments and policymakers to ensure our work reflects the diversity of lived experience and supports collective responses to gender-based violence.

We recognise and amplify the strength, knowledge and resources that exist in Aboriginal and Torres Strait Islander communities. We are committed to building on what is already working in communities, for communities; being informed by a culturally safe and decolonised way of working; and being transparent and embracing humility in our commitment to strengthening our work with First Nations researchers.

ANROWS is a not-for-profit organisation jointly funded by the Commonwealth and state and territory governments. We are also commissioned and competitively tender for research and evaluation work.

We are registered as a harm prevention charity and deductible gift recipient, governed by the Australian Charities and Not-for-profits Commission (ACNC).

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