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NSW Law Reform Commission
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29 June 2018

Submission to the review of consent in relation to sexual assault

Dear Panel Members,

The University of Newcastle Women's Collective welcome the opportunity to make this submission to the review of the laws surrounding consent in relation to sexual assault.

1. About the University of Women's Collective

The University of Newcastle Women's Collective is an autonomous collective of University of Newcastle students who campaign around women's issues on campus.

This review is significant to our collective, which has campaigned heavily around sexual assault on campus. We have engaged in consent workshops independent from the university on our campus, and successfully lobbied our university to implement a compulsory consent module as part of all degree programs. We understand that the definition of consent has evolved, this review is welcomed by us, to bring the definition currently within the *Crimes Act 1900* (NSW) in line with modern standards around consent.

This review is informed by our personal experiences, as survivors and women, and as people who want to see the definition of consent that does not just place the onus on a survivor but creates a holistic definition that places the onus on all people engaged in a sexual activity to ensure that all involved are giving enthusiastic and voluntary consent.

2. General comments

The UON Women's Collective endorses the recommendations made by Community Legal Services NSW and Rape and Domestic Violence Services Australia.

3. Summary of recommendations

We recommend:

1. That changes are made to section 2 and 3 of 61HA to ensure affirmative consent is given, so that a person must take reasonable steps to ascertain whether the other participant affirmatively, enthusiastically, consciously and voluntarily consents.
2. Court support dogs should be made available to victim-survivors throughout court proceedings in sexual violence cases.
3. Free, high-quality specialist counselling and other support services to victim-survivors of sexual violence should be granted secure, ongoing funding.
4. A free high-quality legal service specifically for victim-survivors of sexual violence be set up with secure, ongoing funding to advise victim-survivors of their legal rights surrounding the violence they have faced.
5. Funding for educational and awareness-raising programs in culturally and linguistically diverse communities to destigmatise shame surrounding victim-survivors, and to inform communities of how to engage with the legal system to report sexual violence.
6. Further training for police to recognise when interpreters are appropriate and need when taking reports of sexual violence.
7. Further training and hiring of female interpreters to take disclosures of sexual violence and for victim-survivors in court when they give testimony.
8. Funding for educational and awareness-raising programs targeted at member of the LGBTQIA+ community to increase awareness of the potential for intimate partner violence and sexual violence within the community.
9. Specific training for police to understand the dynamics of the queer community and how to sensitively take reports of sexual violence.
10. Addressing underlying systematic issues that create a fear of police and social welfare officers.
11. Sexual assault matters should be dealt with in courts with an appropriate physical set-up and a specialist, trauma-informed staff and judicial officers.
12. Subsidies should be available to all victim-survivors in regional, rural and remote areas whenever such subsidies are necessary to facilitate these victim-survivors' access to appropriate courts.
13. Audio-visual link facilities should be provided such that victim-survivors in regional, rural and remote areas who are unable to travel to can access the most appropriate courts.
14. That comprehensive, ongoing trauma-sensitive training that addresses the dynamics of sexual assault and the effects of trauma be implemented for all systems officials,

including (but not limited to) police, prosecutors and judicial officers. The training should cover crisis intervention, victim/survivor response, and interview techniques, with a focus on being non-judgemental, sensitive, and compassionate.

15. That comprehensive consent training should be implemented in all Australian schools and universities, starting at a young age. Such modules need to build and strengthen the capacity of young people to ensure that they can further their knowledge of consent to their wider community to ensure structural and systemic change.
16. A sexual violence offender register be implemented in New South Wales.
17. The legislation should be amended to include mandatory minimum sentences with a requirement of rehabilitation focused on consent education.
18. That s61HA s4, s5, s7 and s8 remain.

4. Amendments to Section 61HA

4.1 Affirmative consent

The UON Women's Collective believe that Section 61HA of the *Crimes Act 1900* reinforces divisive, implied and inferred consent definitions that blur boundaries between acts of sexual assault and enthusiastic consent. However, we also believe that changes to this law can mitigate such issues through applying affirmative consent. Indeed, in NSW, consent is defined as "a person 'consents' to sexual intercourse if the person freely and voluntarily agrees to the sexual intercourse", however, this leaves much room for vague and misinterpretation. Further, it is to the Collective's discretion that Section 3c of 61HA underpins tones of victim-blaming within the law as it leaves space for reading of the law that a lack of resistance can constitute "reasonable grounds" to assume consent. As such, A Section 3c states that:

"A person who has sexual intercourse with another person without the consent of the other person knows that the other person does not consent to the sexual intercourse if the person is reckless as to whether the other person consents to the sexual intercourse, or the person has reasonable grounds for believing that the other person consents to the sexual intercourse".

Such 'reasonable grounds' could infer that the belief of a lack of resistance is required to assume that consent was given. As women and as survivors of sexual violence, this is shocking to believe that a lack of resistance *can* equate to giving consent. The overrepresentation of resistance during acts of sexual violence portrays illegitimate and unrealistic perceptions of realities [1][2]. In fact, it is well known that a lack of resistance is a legitimate response to experiencing sexual violence, otherwise known as Tonic immobility, whereby victims of sexual violence do not resist to their perpetrator but rather, perform involuntary responses which are often thought of as 'freezing' moments [3]. Again, as survivors of sexual violence, we argue that the onus should not be on a victim to prove to the court whether they did enough to prove their innocence, whether it be through acts of resistance, but rather, whether the accused did enough to affirm consent.

The UON Women's Collective argue that affirmative consent is defined as a two-way process whereby all participants agree on affirmative, enthusiastic, voluntary and freely given consent that is mutually agreed upon by all parties. Existing affirmation models of consent such as the Californian law states that "affirmative consent" means affirmative, conscious and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity' [4].

This example of affirmative consent laws reinforces the two-way process we believe in and moreover, argues that a person must take reasonable steps to ascertain whether the other participant affirmatively consents [1]. Enacting this type of law can allow systemic change in

[1] Goldsworthy, Terry, *Yes means yes: moving to a different model of consent for sexual interactions* (2018) The Conversation <<https://theconversation.com/yes-means-yes-moving-to-a-different-model-of-consent-for-sexual-interactions-90630>>

[2] Women's Legal Service NSW, *Sexual Assault: Your rights and the law*. (2016) <<http://www.wlsnsw.org.au/wp-content/uploads/Sexual-Assault-Your-Rights-and-The-Law-web.pdf>>

[3] Galliano, Grace, et al., 'Victim reactions during rape/sexual assault: A preliminary study of the immobility response and its correlates' (1993) *Journal of Interpersonal Violence*, 8(1)

[4] Student safety: sexual assault, S 976, 113th Congress (2013-14)

the ways in which we view sexual violence and determine the type of treatment a survivor of sexual violence deserves.

In simple terms, a clear and unequivocal “yes” is how we define affirmative consent. No silence or lack of resistance should ever determine nor define consent. Therefore, the UON Women’s Collective recommends that changes to Sections 2 and 3 of 61HA to ensure affirmative consent is given so that a person must take reasonable steps to ascertain whether the other participant affirmatively, enthusiastically, consciously and voluntarily consents.

1. We recommend:

Sections 2 and 3 of 61HA should be amended to ensure that affirmative consent is given. That changes are made to section 2 and 3 of 61HA to ensure affirmative consent is given, so that a person must take reasonable steps to ascertain whether the other participant affirmatively, enthusiastically, consciously and voluntarily consents.

5. Practical applications of Section 61HA

5.1 Court support dogs

Court support dogs have been used in several jurisdiction such as the United States and are beginning to be trailed in Australia. There is significant evidence that support dogs enable witness, particularly those who are suffering from psychological and emotional trauma, to give comprehensive evidence that they may otherwise be unable to give. It can help witness be more coherent and response, helping alleviate some stress and allowing from them to be able to give are more efficient testimony and enhancing the court process and administration of justice [5].

In February of this year after a successful nine-month trial of therapy dogs in Manly Local Court, it was announced that the program would be expanded to a further nine courts in NSW. The NSW Attorney General Mark Speakman acknowledged the that positive effect therapy dogs had on witness but also lawyers and court staff, helping victims and witness give more focused testimony [6].

2. We recommend:

Court support dogs should be made available to victim-survivors throughout court proceedings in sexual violence cases.

5.2 Comprehensive, specialised free counselling and other support service for victim-survivors of sexual violence

Access to, comprehensive, specialist, free counselling and other support service are an essential to facilitate access to justice for victim-survivors of sexual violence.

The Rape and Domestic Violence Services Australia was funded in 2010 to establish 1800RESPECT, which is now Australia’s specialist domestic violence and sexual assault

[5] Holder, Casey, “All dogs go to court: the impact of court facility dogs as comfort for child witnesses on a defendant’s right to a fair trial.” (2013) *Houston Law Review*. (50)4

[6] Mark Speakman (Attorney General, NSW). A.G. Lets the dogs out to ten NSW courts, media release. NSW Department of Justice. 1 March 2018. <https://www.justice.nsw.gov.au/Documents/Media%20Releases/2018/ag-lets-the-dogs-out-to-tennsw-courts.pdf>

counselling services. Our members have extensively used this service to help them deal with the psychological trauma of their sexual assaults and it has been an invaluable service to people who have faced sexual and domestic violence.

In early 2017, the government announced the plans to put the service out to tender, shifting the rape crisis line to a call centre triage model; removing skilled and trained sexual violence counsellors from the front line. The UON Women's Collective does not support this move, it is essential when some who may have faced sexual violence calls 1800RESPECT the first person they speak to is a trained sexual violence counsellor, and not be forced to face a call centre like model where they must wait to be triaged to a someone who can provide them with the expertise to help them. The UON Women's Collective supports the Australia Services Union (ASU) calls to include resources to 1800RESPECT to ensure there is a stable future for what is a vital service.

The UON Women's Collective supports the CLCNSW recommendation that community legal centres are given additional funding. Community legal centres such as the Women's Legal Service NSW and Wirringa Baiya Aboriginal Women's Legal Centre provide essential services, such as advising women who have experienced sexual violence about reporting to police, evidence collection and legal process; victim support entitled, privacy and sensitive information use and complaints about service provides such as the police. These services are invaluable.

The UON Women's Collective acknowledges that community legal centres are not accessible to all, and similar to 1800RESPECT, that a telephone service exists which can be accessed by victim-survivors in regional, rural and remote areas, a community legal centre hotline be set to advise women of their legal rights when reporting sexual violence, victim entitlement and how to make complaints about service provided.

3. We recommend:

Free, high-quality specialist counselling and other support services to victim-survivors of sexual violence should be granted secure, ongoing funding.

4. We recommend:

A free high-quality legal service specifically for victim-survivors of sexual violence be set up with secure, ongoing funding to advice victim-survivors of their legal rights around the violence they have faced

5.3 Specific supports for victim-survivors from non-English speaking backgrounds

Extensive research shows that people from non-English speaking backgrounds are less likely to report sexual violence to the police. The Women's Safety Survey indicated that less than 5 percent of non-English speaking women reported sexual assault to police, compared to 17 percent of Australian-born women [7].

There are several barriers for people from culturally and linguistically diverse backgrounds, and why they may be reluctant to access the Australia legal system which contribute to lower rates of non-English speaking victim-survivor reporting and engaging with the criminal justice system when they face sexual violence. The 1992 Australia Law Reform Commission (ALRC) report, *Multiculturalism and the Law*, identified the following issues faced by non-English speaker when accessing justice [8]:

[7] Australian Bureau of Statistics ABS (1996), *Women's Safety Australia*, Catalogue No. 4128.0, Australian Bureau of Statistics, Canberra.

[8] Australian Law Reform Commission, *Multiculturalism and the Law*, Report 57, 1992

- Lack of information about the law, including information in language other than English
- Lack of access to suitable interpreters, including a lack of skills amongst those administering the legal system to facilities and identify the need for an interpreted in individual cases
- Perception of widespread cultural insensitivity in the operation and administration of the law

Shame has been cited as the principal reason that most women do not make report to the police and are reluctant to access counselling support [9]. Victim-survivors without permanent residence and citizenship also fear deportation following reporting to the police, an unwillingness to endure long and traumatic court process, and worry that there would not be sufficient evidence to obtain a conviction [10]. In addition, another barrier for people from culturally and linguistically diverse backgrounds may be the lack of availability of a female interpreter for issues confronted by CALD women [11]. Furthermore, people may have been intimidated by the police and legal system in their country of origin and therefore do not trust the Australian legal system [12].

An important step is for sexual assault services to support non-English speaking women is through an increase awareness within their community of the nature of sexual assault. This includes addressing views that perpetuate the concept of rape in marriage, blaming victims for their assault, and viewing rape as less serious when a woman is sexually active.

5. We recommend:

Funding for educational and awareness-raising programs in culturally and linguistically diverse communities to destigmatize shame surrounding victim-survivors, and to inform communities of how to engage with the legal system to report sexual violence.

6. We recommend:

Further training for police to recognise when interpreters are appropriate and need when taking reports of sexual violence.

7. We recommend:

Further training and hiring of female interpreters to take disclosures of sexual violence and for victim-survivors in court when they give testimony.

5.4 Specific support for LGBTQIA+ victim-survivors

People who identify as LGBTQIA+ are more likely to have been sexually assaulted on campus in 2015-16 [13]. The National LGBTI Health Alliance reports that 'regardless of their actual identity, a young person whose sexual orientation, sex or gender identity is perceived to be non-conforming is frequently the target of verbal and physical violence' [14]. While data

[9] Lievore, D, *Non-reporting and hidden recording of sexual assault: an international literature review*, 2003, Canberra: Australian Institute of Criminology. <<https://aic.gov.au/publications/archive/non-reporting-and-hidden-recording-of-sexual-assault>>

[10] Lievore, D, *Non-reporting and hidden recording of sexual assault: an international literature review*, 2003, Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/archive/non-reporting-and-hidden-recording-of-sexual-assault>

[11] Law and Justice Foundation of NSW, *Public Consultations: a project to identify legal needs, pathways and barriers for disadvantaged people in NSW*, Background Paper (2003)

[12] Law and Justice Foundation of NSW, *Access to justice & legal needs, a project to identify legal needs, pathways and barriers for disadvantaged people in NSW*, Background Paper (2002)

[13] Australia Human Rights commission, *Change the course: National report on sexual assault and sexual harassment at Australia universities* (2017)

[14] National LGBT Health Alliance, *Submission No 32 to the House Standing Committee on Family, Community, Housing and Youth*, Parliament of Australia, Inquiry into the Impact of Violence on Young Australians, October 2009, 2.

gathered on sexual violence within the LGBTQIA+ community is difficult and has involved problematic questions being asked, and there seems to be a toxic dominate narrative that people within same-sex relationships do not face intimate partner violence or that gay men cannot be sexual assaulted. The UON Women's Collective rejects these narratives and acknowledges that people in queer relationships or engaging in queer sexual activity can be at risk of sexual violence and this needs to be treated with sensitivity.

8. We recommend:

Funding for educational and awareness-raising programs targeted at member of the LGBTQIA community to increase awareness of the potential for intimate partner violence and sexual violence within the community.

9. We recommend:

Specific training for police to understand the dynamics of the queer community and how to sensitively take reports of sexual violence.

5.5 Specific support for Indigenous victim-survivors

It is difficult to measure the prevalence of sexual violence against Indigenous women in Australia. It is generally established through random survey, as opposed to number reported to the police. A national survey on violence against women suggested that Indigenous women were three time more likely to face sexual violence than non-Indigenous women [15]. Within indigenous communities there were found to be several barriers to reporting sexual violence including a fear of police, and fear of social welfare officers removing children.

10. We recommend:

Addressing underlying systematic issues that create a fear of police and social welfare officers.

5.6 Specialised courts

The Royal Commission into Institutional Response to Child Sexual Abuse noted some benefits of specialised courts [16]:

“Specialist prosecution units and courts bring the generic benefits of specialisation, including efficiency gains from prosecutors and judges gaining expertise by concentrating on a particular subject matter. Specialists can usually work faster than generalists because they are more familiar with tasks... Another generic advantage of specialisation is seen to be improved quality of decision-making. Experts are likely to make more knowledge-informed decision than generalists and are less likely to make significant errors of judgement. However, research does not support the claim that the term specialist judges are likely to be freer from what psychologists’ term ‘cognitive illusion’ than generalists judges. Other claimed advantages are greater uniformity in decision-making and better case management.”

Furthermore, in 2014 the NSW Director of Public Prosecutions Lloyd Babb called for similar specialised sexual assault courts [17].

[15] Mouzos, J & Makkai, T. *Women's experiences of male violence: findings from the Australian component of the International Violence Against Women Survey (IVAWS)*. (2004) Research and public policy series No. 56. Canberra: Australian Institute of Criminology.
<<https://aic.gov.au/publications/rpp/rpp56>>

[16] Patrick Parkinson. “Specialist prosecution units and courts: a review of the literature”. Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. (2016): iv.

[17] Rachel Browne. “Specialist courts needed for sexual assault cases, Lloyd Babb tells royal commission” (2014) Sydney Morning Herald.<<https://www.smh.com.au/naional/nsw/specialist-courts-needed-for-sexual-assault-cases-lloydbabb-tells-royal-commission-20140715-zt7kd.html>>

The Royal Commission did address that specialist court for sexual assault case more broadly were impractical to implement. However, sexual assault cases should be carried out in environment psychically set out to ensure the safety of victim-survivors, and with judges who have specialist training and expertise on sexual assault matters. Victim-survivors are entitled to request protection regardless of their location. This mean that for regular, rural and remote areas, where local courts may not have the physically safe environment, such as safe room and separate entrance, further subsidies to travel and audio-visual link ups should be alkali to ensure access to justice for those victim-survivors who are unable to physically reach the appropriate specialist court.

11. We recommend:

Sexual assault matters should be dealt with in courts with an appropriate physical set-up and specialist, trauma-informed staff and judicial officers

12. We recommend:

Subsidies should be available to all victim-survivors in regional, rural and remote areas whenever such subsidies are necessary to facilitate these victim-survivors' access to appropriate courts.

13. We recommend:

Audio-visual link facilities should be provided such that victim-survivors in regional, rural and remote areas who are unable to travel to can access the most appropriate courts.

5.7 Ongoing education for police, prosecutors, and judicial officers

The responses, beliefs and attitudes of system officials such as police, prosecutors and judicial officers to reports of sexual assault are critical to preventing the re-traumatisation of the victim/survivor and can have a significant impact on the case proceedings. While 80,200 people over 18 in Australia experienced some form of sexual assault in 2016-17, only 39% (31,300) people made a report to the police [18]. Only 23% (7,362) of these reports proceeded to the courts, and only 9% (2,877) of the perpetrators from the reports were found guilty [19]. These numbers do not include people under the age of 18, who have been found to be more likely to be victim-survivors of sexual assault, particularly between the ages of 10 - 14 [20].

There is a significant difference between victim-survivors of sexual assault and those who proceeded to report their assault to the police. It has been found that victim-survivors can feel fear and uncertainty when deciding to report sexual assault to the police as they expect that they will be met with hostility and disbelief [21][22]. These fears are further validated through a wide body of research that has illustrated police officers' harmful beliefs surrounding consent, rape myths and the credibility of victim-survivors [23][24].

[19] Australian Bureau of Statistics, *Crime Victimization, Australia, 2016-17: Reporting of crime to police*.

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4530.0-2016-17-Main%20Features-Reporting%20of%20crime%20to%20police-7>>

[20] Australian Bureau of Statistics, *Criminal Courts, Australia, 2016-17: Defendants finalised*.

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4513.0-2016-17-Main%20Features-Defendants%20finalised-4>>

[21] Centres Against Sexual Assault, *Fact Sheet: Statistics about sexual assault*. <http://www.casa.org.au/casa_pdf.php?document=statistics>

[22] Australian Institute of Criminology, *A study of women's help-seeking decisions and service responses to sexual assault*. (Commonwealth of Australia, 2005) [5] Haley Clark, 'Understanding sexual assault victim/survivors' criminal justice needs' (2010) 85(1) *Australian Institute of Family Studies*

[23] Parratt, K, and Pina, A, 'From "real rape" to real justice: A systematic review of police officers' rape myth beliefs' (2017) 34(1) *Aggression and Violent Behaviour*

[24] van der Bruggen, M, and Grubb, A, 'A review of the literature relating to rape victim blaming: An analysis of the impact of observer and victim characteristics on attribution of blame in rape cases' (2014) 19(5) *Aggression and Violent Behaviour*

It has been recognised that, besides initial sexual assault training for police officers and specialists, there is a lack of ongoing training that addresses managing reports of sexual assault. The UON Women's Collective recommends that comprehensive, ongoing trauma-sensitive training that addresses the dynamics of sexual assault and the effects of trauma be implemented for all systems officials, including (but not limited to) police, prosecutors and judicial officers. The training should cover crisis intervention, victim/survivor response, and interview techniques, with a focus on being non-judgemental, sensitive, and compassionate.

14. We recommend:

That comprehensive, ongoing trauma-sensitive training that addresses the dynamics of sexual assault and the effects of trauma be implemented for all systems officials, including (but not limited to) police, prosecutors and judicial officers. The training should cover crisis intervention, victim/survivor response, and interview techniques, with a focus on being non-judgemental, sensitive, and compassionate.

5.8 Education throughout schools and the community

The UON Women's Collective firmly believes that affirmative consent models need to be ingrained into Australian society as a legitimate and integral aspect of growth and development. As such, introducing affirmative consent modules into educational and community institutions for young people as early as possible can have a significant positive impact into how consent is considered and received between all involved participants. The UON Women's Collective recognizes that Australian communities largely understand consent as a passive and dismissive concept, of which is largely influenced by negative and unrealistic stereotypes between participants engaging in sexual activity [25]. We argue that through introduced mandatory training given at a young age, that is designed to educate and strengthen the capacity of young people to learn and engage in positive, enthusiastic and freely given consent.

It is largely known that Australian Universities implement mandatory plagiarism and integrity models to ensure strong academic representation of the Universities [26]. In more recent years, there has been a student activist-led push to demand Universities to include mandatory consent modules to encourage and enforce students to learn about more about consent during sexual activity [27]. Without a doubt, this push from student activists comes after recent reports into the realities of gendered violence within university communities.

Similar to plagiarism modules, mandatory consent measures only treat the symptoms, not the cause. However, the UON Women's Collective wholeheartedly believe that education can be used as one of the many tools for structural change.

15. We recommend:

That comprehensive consent training should be implemented in all Australian schools and universities, starting at a young age. Such modules need to build and strengthen the capacity of young people to ensure that they can further their knowledge of consent to their wider community to ensure structural and systemic change.

[25] Armstrong, C.L. & Mahone, J. "It's on us". The role of social media and rape culture in individual willingness to mobilize against sexual assault' (2017), *Mass Communication & Society*, 20(1)

[26] Fileborn, B. (2018). 'Why mandatory uni courses on sexual consent are unlikely to fix the problem', *ABC News*

[27] Gillings, M. & Williamson, J. (2015). 'Universities run as businesses can't pursue genuine learning' *The Conversation*

5.9 Register for sexual offenders

As well as having a long-lasting impact upon a victim-survivor, the actions carried out by perpetrators of sexual violence have wide repercussions on entire communities and therefore the effective management of sex offenders within the community is of paramount importance. A facet which would improve this management in New South Wales (NSW), would be the implementation of a state-wide registry of sexual violence offenders, made publicly accessible.

Along with the previous recommendations discussed within this submission, we are proposing the administration of a state-wide registry for offenders similar to the models expressed within Victoria and the United States (U.S.). Such public registries enable both sexual assault survivors and members of the wider community to be aware of the location of convicted sexual violence perpetrators within communities which are able to improve the experiences of victims-survivors within the criminal justice system, post initial and often highly traumatic legal proceedings.

A sexual violence offender registry is a system which has been implemented in various countries including Australia designed to allow government authorities to keep track of the activities of sex offenders including those who have completed their criminal sentences. Currently, the state of NSW does not have a public registry of sex offenders available and despite the existence of the Australian National Child Offender Register (ANCOR) only members of law enforcement are able to view the list.

We recommend that the state of NSW implement a public registry system following the model established in Victoria which would greatly benefit and assist both victims-survivors of sexual violence along with communities feel safe.

Operational under the Sex Offenders Registration Act 2004, The Victorian Register of Sex Offenders carries the aims to:

- Reduce the likelihood of registered sex offenders re-offending in the community.
- Assist the investigation and prosecution of any future offences.
- Prevent sex offenders from working in child-related employment or volunteer duties.
- Require the registered sex offenders to keep police informed of their whereabouts and changes to personal details, for a period of time.

We recommend that a similar registry system with aligned aims be implemented in New South Wales in order to provide the opportunity for victims-survivors and members within the community to be aware of the existence of individuals whom have been convicted of crimes of sexual violence which may aid to improve feelings of safety and significantly decrease the ongoing stress caused to victims-survivors post legal proceedings.

Additional to the Victorian registry, the U.S. has implemented a similar model which would be highly beneficial if adopted by NSW. Within America, information on the name, appearance and location of high-risk sex offenders has been available to the public for 20 years incepted in 1994 after the sexual assault and murder of Megan Kanka by her neighbour, a convicted sex offender who had been released into the community [28]. This incident sparked considerable outcry among the American public and in 1996 Megan's Law

[28] 'About Megan's Law' (2013) *National Institute of Justice*.

was passed which required law enforcement agencies to make information on registered sex offenders available to the public, enabling individuals to search for registered sex offenders living in their community [29].

Furthering this, the establishment of a public safety resource in NSW alike the U.S. would aid in improving victims-survivors experiences post legal proceedings as being aware of the location of offenders may considerably decrease feelings of distress and allow for greater attention to be placed upon recovering from trauma experienced. In the U.S., the Dru Sjodin National Sex Offender Public Website (NSOPW) works in partnership with the governments department of Justice to provide the American public with uncomplicated access to sex offender data nationwide. The NSOPW was established in 2005 in honour of Dru Sjodin, a young woman who was kidnapped and murdered by a registered sex offender, who's location was known by police but not made available to the community. NSOPW is the only U.S. government Website that links public state, territorial, and tribal sex offender registries from one national search site. Parents, employers, and other concerned residents can utilize the website's search tool to identify location information on sex offenders residing, working, and attending school not only in their own neighbourhoods but in other nearby states and communities. In addition, the Website provides visitors with information about sexual abuse and how to protect themselves and loved ones from potential victimisation [30].

Supporting our recommendation is research which has been conducted which outlines the considerable public support for a national Australian and publicly accessible registry of sexual violence offenders. This research includes the 2017 study conducted by Professor Caroline Taylor which outlined that two-thirds of the users of Western Australia's online public sexual offender registry were supportive of an Australia-wide online public registry and believed that the public had a right to know if convicted child sexual offenders were living in the area.

16. We recommend:

A sexual offender register be implemented in New South Wales.

5.10 Sentencing

The offences that relate to sexual assault and refer to S61HA have maximum sentences of between 16 to 20 years. It is clear based off the NSW Sentencing Council Report that courts do not agree with the statutory maximum sentences, with only 90% of the maximum being granted. It is also the opinion of the UON Women's collective that perpetrators of sexual violence do not receive adequate sentences and believe that this is partially due to the attitude surrounding the issue of consent and the perceived "grey line".

The UON Women's Collective believes that a range of penalty options should have greater consideration. A greater emphasis on rehabilitation and re-education must be provided as an option in consideration of sentencing. Like the programs on educating on consent as discussed above, a more in-depth education and rehabilitation must be provided to place the greatest emphasis on affirmative consent. Minimum mandatory sentences are also an important consideration. With comparison to the changes surround the 'one punch laws' and the imposition of mandatory sentences it is arguable that the same should be applied to sexual assault sentences.

[29] Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice* (2018).

[30] The U.S. Department of Justice NSOPW, U.S. Department of Justice, <<https://www.nsopw.gov/en/Home/About>>

It is important to note that different sentencing options work for different groups and communities. However, it is essential that options such as restorative justice are only engaged with the consent of the victim. Furthermore, whilst there is no statistical significant analysis surrounding the impact of pleas upon sentencing, with the NSW Sentencing Council Report noting the influences of individual circumstances, it is wholly inappropriate for there to be the use of plea bargaining to allow for lower sentences for perpetrators who plead guilty. As Table 1 in the NSW Sentencing Council Report indicates, there are 6 sections where the guilty plea has received lower average sentences.

The Victim Impact Sentence should remain a significant influence upon sentencing. It is also a process which greater support should be made available to the victim-survivor. As discussed throughout, greater counselling support must be provided, as does funding to community legal centers to support victims within this process.

The *Crimes Amendment (Consent — Sexual Assault Offences) Act 2007* and development of s61HA was a significant step in its time, beyond that of what was the common law of its time. The UON Women's Collective, as established above, support the change towards an affirmative model of consent. However, it is important to note that this encompasses many of the negations of consent currently established within s61HA, which are essential in clearly establishing what is and what is not consent. S61HA s4 must remain, whilst an affirmative consent model would clearly indicate those factors would not result in consent, it is important to maintain a list of including but not limited to negations to allow for a shift away from considerations of consent being not so black and white and grey, to very legally clear cut. Being underage, not having the mental capacity, being unconscious or asleep, being threatened and being unlawfully detained all result in the inability for consent to be obtained.

Similarly, s61HA s5 outlines important negations that remain essential in regard to mistaken belief and identity. This should also be extended to beliefs around sexual contraception and health. If a person consents to sexual intercourse with the use of a condom, and that is removed, their consent has been negated, similarly if they have consented under a false belief of the partner not having sexually transmitted diseases. S61HA s7 is also essential to remain, and whilst it is encompassed in a yes means yes model, it is important to include it to mitigate the argument that it was ambiguous because of body language and that they did not fight back. An affirmative sexual consent model of yes means yes still has to highlight clear examples where a certain action or lack of action does not mean yes. These actions and considerations will also change over time as a greater understanding of consent evolves. Therefore, S61HA 8 is also important in remaining, to not limit the grounds on how a person did not consent.

17. We recommend:

The legislation should be amended to include mandatory minimum sentences with a requirement of rehabilitation focused on consent education

18. We recommend:

That s61HA s4, s5, s7 and s8 remain.

7. More information

Thank you for taking the time to consider our submission. If you have any questions or require further input, please contact us via [REDACTED]

Kind regards,

Elizabeth Murphy-May

Newcastle University Students' Association Womens Collective

Special thank you to Aesha Awan, Christy Mullen, Tori Thew, Hollie Hughes and Emily Taylor for drafting the submission.