

CHILDREN BY CHOICE
ASSOCIATION INCORPORATED

Submission to Inquiry on Sexual Consent Laws in Australia

2nd March 2023

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Senate Legal and Constitutional Affairs Committee
PO Box 6100
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To Whom it May Concern,

RE: Submission to the Senate Legal and Constitutional Affairs Committee, inquiry on current and proposed sexual consent laws in Australia.

On 29 November 2022, the Senate referred an inquiry into current and proposed sexual consent laws in Australia to the Legal and Constitutional Affairs References Committee for inquiry and report.

Please find attached a submission to the Senate Legal and Constitutional Affairs Committee, written in direct response to the consultation listed on the committee website.

Kind Regards
Daile Kelleher

Chief Executive Officer

Introduction

Children by Choice is pleased to make this submission to the Senate Legal and Constitutional Affairs Committee, Inquiry on Sexual Consent Laws in Australia.

About Children by Choice

Children by Choice provides counselling, information and education services on all pregnancy options, including abortion, adoption, kinship and alternative care and parenting. We provide a Queensland-wide counselling, information and referral service for pregnancy. Nationally we deliver sexual and reproductive health education sessions in schools and youth centres and offer training for GPs and other health and community professionals on pregnancy options, reproductive coercion and post abortion counselling across Australia.

We also advocate for improvements to law and policy that would increase access to reproductive health services and information. We are recognised nationally and internationally as a key advocacy group for reproductive and sexual health.

Our pregnancy options counselling service assists 1800–2400 women and pregnant people each year in Queensland through our funding from the Department of Justice and Attorney General. This represents about 15%–20% of abortion seekers in Queensland.

Our education and community engagement team provides training and information to 1900 professionals and students each year.

Our 2022 programs included a Multicultural project, co-designing digital, video and print resources for 4 language groups on pregnancy options, contraception and reproductive coercion. We also partnered with WWILD Sexual Violence service to co-design resources designed for health professionals working with women with intellectual disabilities. Children by Choice have partnered with Women's Health Tasmania to deliver education and professional development in a Tasmanian context. We recently finished a 3 year Queensland Rural, Regional and Remote Abortion Access project which supported access to abortion in marginalised areas.

Our Queensland Abortion and Contraception online map was launched in 2021 in a move to increase transparency and accessibility of abortion and contraception services to the general public and those supporting people seeking services.

Children by Choice has continued to advocate for access to legal, safe, timely, compassionate healthcare and protections for reproductive rights in conjunction with supporting bodily autonomy and reproductive justice.

We developed an Australian position statement after the US overturned Roe v Wade with over 700 individuals and organisations signing on to voice their support for reproductive rights in Australia. We called upon state and territory Health Ministers to embed essential reproductive healthcare into our public health services.

Children by Choice is a member of the Queensland Sexual Health Clinical Network termination of pregnancy working group and is involved in the development of an action plan for Queensland Health provision of abortion in public and primary health settings.

We are representatives on many committees and working groups, ensuring that reproductive health and rights are part of submissions and consultation with government and other stakeholders, such as:

- Women's Health Services Alliance of Queensland
- Ending Violence Against Women Queensland
- SPHERE Coalition for sexual and reproductive health
- QCOSS Women's Equality Network
- Equality Rights Alliance
- Queensland Abortion and Contraception Community of Practice
- QCOSS CEO Network

Our vision is that people can freely and safely make their own reproductive and sexual health choices without barriers.

Our **Annual Reports and Strategic Plan** are available on our website at www.childrenbychoice.org.au.

Submission Response

Affirmative consent

Children by Choice recommends that affirmative consent laws be adopted in all states and territories in Australia. Redefining consent is essential, not only as a legal definition but as a society-wide understanding of the concept.

Affirmative consent requires consent to be (1):

- A mutual connection and understanding
- Given voluntarily
- Ongoing with each new sexual activity
- Not presumed
- Not obtained if a person is not engaging or exhibiting a 'freeze' response

Misunderstanding and myths about rape and sexual abuse are pervasive and contribute to a system where victim-survivors are frequently unable to receive justice in the legal system. The adoption of affirmative consent better reflects the community's expectation of equality and mutual respect in sexual relationships (2).

Stealthing

Stealthing is the act of non-consensual removal of a condom during sexual intercourse. In line with affirmative consent, removal of a condom would require 'fresh consent' and when this is non-consensual, it is sexual assault (3). However, this is not recognised in many jurisdictions across Australia.

Children by Choice has specific experience working with clients who have experienced stealthing as a form of reproductive coercion and abuse. The removal of a condom during sex is used to force a person into pregnancy, often in an attempt to further control them. Not only does this cause harm to a sexual partner by increasing their risk to STIs, but it is also a very damaging coercive tactic that threatens their bodily autonomy and can lead to significant mental health distress (4).

Children by Choice supports proponents for the universal criminalisation of stealthing, including the Director of the Australia Institute's Centre for Sex and Gender Equality and founder of Teach Us Consent, Chanel Contos (5). Contos states that laws against stealthing help reduce sexual violence, because people are then able to recognise it as an assault (5). This also aligns with the community expectations for these laws, with 80% of Australian's agreeing stealthing should be a crime (5).

Submission Response

Consent education

A change in legislation is not enough to shift pervasive societal attitudes. In light of this, Children by Choice recommends the adoption of these laws to be accompanied by a comprehensive, widespread, evidence-based community education campaign about the drivers of gender-based violence, respectful relationships and ethical sexual practice, as well as targeted training for police, law enforcement, legal practitioners and the judiciary (6).

A study assessing antidotes and perceptions of sexual assault in 2017 (6) found that:

- More than one in three people believe a woman is more likely to be sexually assaulted by a stranger than someone she knows;
- Nearly one in five people are not clear that coerced sex in marriage is against the law; and
- One in ten people either agree that it is only rape if a woman physically resists or do not know.

The consistency and harmonisation of these laws is essential for comprehensive education and a shift in pervasive societal attitudes. The differing definitions across the states and territories, cause inconsistencies and confusion, as well as complexities in sexual consent education (1). To reduce the rates of sexual assault in Australia, consent needs to have a clear and consistent definition so there is no ambiguity.

References

- 1.Crowe J, Hill G. It's time we aligned sexual consent laws across Australia – but this faces formidable challenges. *The Conversation*. 2022.
- 2.Riga R. Stealthing to be criminalised as rape and affirmative consent adopted in Queensland's sexual violence law overhaul. *ABC*. 2022.
- 3.Chesser B, Zahra A. Stealthing: a criminal offence? *Current issues in criminal justice*. 2019;31(2):217–35
- 4.Grace KT, Miller E. Future directions for reproductive coercion and abuse research. *Reprod Health*. 2023;20(1):5
- 5.Remeikis A. Australians overwhelmingly agree 'stealthing' should be a crime, study finds. *The Guardian* 2022.
- 6.Snell L. Affirmative consent: What the 'commonsense' NSW law reforms mean. *LSJ: Law Society of NSW Journal*. 2022;(85):68.