



Australian Senate

Legal And Constitutional Affairs Reference Committee

PO Box 6100

Parliament House, Canberra ACT 2600

via online submission: http://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission.

RE: INQUIRY INTO CURRENT AND PROPOSED SEXUAL CONSENT LAWS

The Tasmanian Aboriginal Legal Service (“TALS”) and its specialised program, SiS - Support Information and Strength, focus on providing services to Aboriginal and Torres Strait Islander people who have been subjected to family violence and sexual harm. We welcome the opportunity to provide feedback in relation to the *Inquiry into current and proposed sexual consent laws* (“the Inquiry”).

TALS is a community legal centre that specialises in criminal, civil, family and safe at home legal matters for Aboriginal people in Tasmania. TALS goal is to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade.

TALS is committed to closing the gap and improving life outcomes of Aboriginal people. TALS is an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

Overview:

TALS strongly advocates for:

1. Uniform consent laws informed by victim/survivors from diverse backgrounds, across all Australian jurisdictions;
2. Uniform jury directions across all Australian jurisdictions;
3. Standardized “consent centred” sexual education in schools and communities developed and designed with victim/survivor input, and
4. National level consent focused public education campaigns aimed at men from all backgrounds.

Key focus Areas

National Harmonisation benefits and the impact of consent laws on jurisprudence and consent education:

TALS strongly supports the introduction of uniform consent laws throughout Australia for two key reasons:

1. Uniform consent laws enable consistent jurisprudence throughout Australia. Matters involving sexual violence and questions of consent are invariably traumatic for the victim, and the long drawn out process of appeals can add to that trauma. Nonetheless, it is often appropriate to test new legislative provisions in appeal courts to ensure just outcomes.

Consistent legislation across jurisdictions enables definitive answers to legal questions argued to the High Court to be applied across all jurisdictions, and for superior state courts of criminal appeal to make determinations with broad persuasive application. High Court determinations and persuasive state based authority across consistent legislation is likely to reduce the number of matters that are appealed, thereby reducing the number of people traumatized by the appeal process.

2. Uniform consent laws enable trauma-informed, victim/survivor-centric, and consistent national level education and awareness campaigns.

While laws are important in setting community expectations, sustainable reduction in sexual violence requires community change. One factor in that change is government funded education campaigns. National consent laws will enable development, roll out and funding of education campaigns to be completed at a national level so that all Australians can benefit. Further materials for Aboriginal and Torres Strait Islander Australians, remote and regional Australians, and minority ethnic and cultural groups can be developed alongside and with reference to the national campaigns. A specific focus should be on empowering children and young person with education reflective of consent laws and this could be a national program implemented across Australian schools and/or within the Australian curriculum from foundation to Year 10.

Uniform consent laws enable uniform educational objectives, even if the methodology will vary from place to place, target audience, and culture to culture. Specialised Aboriginal and Torres Strait Islander legal service community-controlled organisations should be provided funding to tailor and develop activities that reflect national consent laws, yet meet individual community needs and challenges.

Furthermore, national consent laws should be coupled with a roll out of trauma-informed, victim/survivor-centric training to prosecutors, judicial officers, and first responders including police and hospitals to improve victim/survivor experience in the criminal justice system and ensure their needs remain at the forefront of investigations/prosecutions. The government should consider creating alternative national restorative justice schemes.

The efficacy of jury directions about consent:

The Tasmanian Supreme Court does not publish a bench book containing directions, and instead relies upon the common law. In practice the Tasmanian Supreme Court draws heavily upon directions from Supreme Courts in Victoria, New South Wales and Queensland.

To date, in the experience of TALS senior lawyers, directions to the jury by Tasmanian Judges have invariably been legally sound and appropriately delivered, and we have no concerns. However, Tasmania is a small jurisdiction, and the sample size of jury directions is correspondingly small.

Research has however shown that often jurors do not often “comprehend standard instructions given by judges”.¹ Jurors, however, have reported that the length of directions, language (avoidance of uncommon words, jargon, double negatives), sentence length and complexity, active voice, and provision of written copies of instructions can all strengthen juror understanding. An analysis of two rape cases in Victoria explored the way in which the order and timing of information given to a jury may dramatically impact its effectiveness and argues that utilising directions throughout the trial and at times such as decision making, pre-trial hearings and evidentiary rulings may strengthen outcomes.²

TALS is strongly supportive of non-binding model directions that form the core of directions on consent, with Judges given the flexibility to expand upon directions as they apply to each particular case. It would be appropriate for these model directions to provide guidelines on how directions can be utilised at earlier opportunities to overcome misconceptions and inaccurate narratives surrounding consent in trials.

Findings of Tasmanian Law Reform Commission and survivor experience:

Consent laws that address shortcomings reported by survivors in the criminal justice process and continue to reflect communicative and affirmative consent will further empower victim / survivors. The Tasmanian Law Reform Commission, at the request of Tasmania’s various Attorneys General, have done considerable work in the area of consent law over the last 25 years. Tasmanian Governments have followed these recommendations, leading to much better consent laws now than in the past. TALS urges all other States and Territories to follow this example.

Yours faithfully,

Hannah Phillips
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Tasmanian Aboriginal Legal Service

¹See, <https://www.bocsar.nsw.gov.au/Publications/CJB/cjb119.pdf>

² See, <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/39-2-5.pdf>