

No To Violence Response to Questions on Notice – Senate Inquiry into current and proposed sexual consent laws – Additional Information

Clarification on Reasonable Belief in Consent

1. No To Violence (NTV) Submission raised the topic of reasonable belief in consent in our submission on pages 12 and 13.
2. NTV’s recommendation 7 (a) for consideration also included the following on page 5 of our submission:

Recommendation 7: Consider developing national guiding principles for jury directions to reduce prejudices that may impact trial outcomes. This could include:

 - (a) Requiring trial judges to give jury directions on consent and reasonable belief of consent (or what are not grounds for reasonable belief), including that when making findings about the mental element (intent or reasonable belief), the fact finder (juror) must not consider any opinions, attitudes or values held by the accused person that do not meet community standards.
3. NTV is not a legal organisation and our comments are not legal advice. There are numerous legal scholars and experts who have written articles on this area of reasonable belief in consent including the following among many others:
 - Cossins, Annie (Professor). 2019. Submission to the NSW Law Reform Commission Consultation Paper 21: Consent In Relation to Sexual Offences, Faculty of Law, University of NSW.
 - Larcombe, Wendy, Bianca Fileborn, Anastasia Powell, Natalia Hanley, and Nicola Henry. 2016. “‘I Think It’s Rape and I Think He Would Be Found Not Guilty’: Focus Group Perceptions of (Un)Reasonable Belief in Consent in Rape Law’. *Social and Legal Studies* 25 (5). <https://doi.org/10.1177/0964663916647442>.
4. Reliance on rape myths in sexual assault cases hinder successful prosecutions and can stoke community mistrust in the effectiveness of criminal justice system. For example, a reasonable belief in consent can be informed by common rape myths.
5. As a legislative example of knowledge about consent, in section 61 HK of the NSW *Crimes Act 1900*:
 - (1) A person (the accused person) is taken to know that another person does not consent to a sexual activity if—
 - (a) the accused person actually knows the other person does not consent to the sexual activity, or

- (b) the accused person is reckless as to whether the other person consents to the sexual activity, or
 - (c) any belief that the accused person has, or may have, that the other person consents to the sexual activity is not reasonable in the circumstances.
- 6. The reasonableness of the belief in consent could be approached as set out in subsection (2) of 61 HK of the NSW *Crimes Act*:
 - (2) Without limiting subsection (1)(c), a belief that the other person consents to sexual activity is not reasonable if the accused person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consents to the sexual activity.
- 7. Other witnesses at the hearing have already suggested that the inclusion of ‘within a reasonable time before or at the time of the sexual activity’ in subsection (2) is problematic.
- 8. The reasonable belief in consent can be legislated such as in the above example of subsection (2), without reference to the ‘reasonable time period’ such that a belief that the other person consents to sexual activity is not reasonable if the accused person did not say or do anything to find out whether the other person consents to the sexual activity.
- 9. The above approach on affirmative consent would then include the reframing of the ‘reasonable belief’, such that the Court is satisfied if the accused person did not say or do anything to find out whether the other person consented (rather than requiring the prosecution to show that the accused person had no reasonable grounds for believing the complainant consented).
- 10. In practice, if there is a harmonised approach to affirmative consent (knowledge of consent), the complainant’s (victim-survivor’s) dress, intoxication, previous consensual sexual activity, sexual conduct, resistance or lack of resistance should then be unable to be used as reasonable grounds on which an accused person formed his belief as to consent.

Additional information details about NTV Training

- 11. Please refer to the following information about NTV’s Training and Professional Development:

<https://ntv.org.au/training-and-professional-development/>

No to Violence’s Workforce Development team offer training and professional development to all organisations committed to ending men’s use of violence and abuse. This includes specialist family violence professionals, integrated service providers, and private, public, and community organisations.

Our evidenced-based training programs are delivered by professionals with extensive practice and teaching experience in the domestic and family violence space.

For more information about how No to Violence can support you or your organisation, please contact: training@ntv.org.au

For organisational training (customised) -

<https://app.smartsheet.com/b/form/a1253112b9394c838da0e691493e5984>

For Training Course Information and Registration -

<https://ntv.myabsorb.com.au/#/public-dashboard>

- The Five Essential Discussion Tools
- Everyday Conversations: Active Bystander Training
- Case Management: Interventions with Men
- Ethical Care in Online Group Work
- Specialist Practice – Skills for working online
- Four Day Foundational Training
- Advanced – Practice Supervision
- Community of Practice – Case Management
- Advanced – Family Safety Contact Work
- Advanced - Using the Stages of Change Model
- Introduction with Working with Men Using Family Violence
- Working with Fathers Using Family Violence
- Mental Health: Introduction to Working with Men Using Family Violence
- Reflective Practice

For Graduate Certificate in Client Assessment and Case Management (CHC82015) –

<https://ntv.org.au/training-and-professional-development/graduate-certificate-in-client-assessment-and-case-management-chc82015/>

The Graduate Certificate in Client Assessment and Case Management (CHC82015) is a nationally recognised qualification delivered by No to Violence (NTV) training practitioners in partnership with Swinburne University of Technology.

The delivery of this course incorporates men’s family violence experiential learning, reflective practice, and evidence-based models. Its focus is to enhance group facilitation practice for practitioners who facilitate men’s behaviour change groups with men using family violence.

Applicants must be experienced practitioners who provide specialist services to clients with complex and diverse needs within the health and community service sectors.

Funding for the graduate certificate is determined through Swinburne University of Technology. To access this funding, you are required to meet eligibility (more information via the link below).

As per the Swinburne University of Technology application process, suitable applicants will be invited to attend an interview with NTV, who will assess applicant's suitability for the course. If successful at interview, applicants will be made an offer for the course (by Swinburne).

Class sessions are delivered online via Swinburne University of Technology's Learning Management System, Canvas.

The course incorporates teacher-facilitated, timetabled sessions, as well as self-directed learning. Students will engage in a variety of activities including panel discussions, group work and role plays. The course begins with an initial 4-day intensive program, followed by regular classes (one full day per week), and finished with another 4-day intensive.

12. NTV looks forward to working with key workforces (Police, judiciary, legal professionals) on developing training on sexual assault, coercive control, and domestic and family violence.
13. Enclosed is also a brochure about NTV's services.