



NASASV

NATIONAL ASSOCIATION OF SERVICES
AGAINST SEXUAL VIOLENCE

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To promote further discussion, the Law Council suggests the following principles could guide the assessment of sexual consent laws and be the basis for further consultation.

Principle 1: sexual consent laws and sexual assault offences should be expressed clearly.

- NASASV would agree that the law has a role in education and prevention.

Principle 2: the fundamental principles that underpin the criminal justice process, such as the presumption of innocence and right to silence, must be maintained.

- The human rights of the victim-survivor must also be upheld and maintained in all criminal justice processes.

Principle 3: any change should be justified on the basis of proportionality analysis, having regard to the interests of victim-survivors and the rights of the accused to a fair trial.

- The sexual violence sector is seeking and advocates a fair and just criminal justice system that balances the rights of the victim-survivor, the accused and the needs of the community as a whole.

Principle 4: sexual consent laws should reflect the communicative model of consent.

- NASASV would disagree. The communicative model is the model that currently exists in Queensland and unfortunately has been interpreted in a way that it requires the victim-survivor to communicate “no” or fight the perpetrator off (essentially) to communicate a lack of consent.
- NASASV advocates for an affirmative consent model that requires all parties to reach agreement and to take active steps to establish consent and that silence is not adequate.

Principle 5: consideration should be given to vulnerable groups disproportionately impacted by implementation of communicative model of consent laws, including persons with disability and young persons.

- NASASV supports extensive community education on the issue and prevention work to ensure all community members understand their responsibilities to comply with the law.
- The law also makes provision for these issues in the drafting e.g. See the NSW model.

Principle 6: consideration should be given to a broader range of policies to substantially reduce the incidence of sexual violence, for example: - increasing investment in restorative justice for suitable sexual offence matters;

- **improving financial assistance and truth telling for victim-survivors of sexual violence; and**
- **improving civil litigation options for victim-survivors.**
- NASASV agrees with victim survivors being given as many options and choices as possible to achieve justice. Restorative justice processes may be something some victim survivors seek; however, these models must be developed with the victim survivor at the centre and shouldn't be an excuse for 2nd grade justice.
- For example, in Queensland there has been a long history of restorative justice for youth and the feedback from QSAN services is that these processes are offender centric with their main aim being to keep offenders out of prison. They are also not transparent and open.
- The Women's Safety and Justice Taskforce recommended a review of this program.
- NASASV fully supports improving civil litigation options for victim survivors.

Principle 7: consideration of broader limitations of the criminal justice system, including delays and the scope for appeals, that impact on the experience of victim-survivors. In this regard, consideration should be given to: - appropriate resourcing of the legal assistance sector;

- **appropriate resourcing for judicial officers; and**
- We support the education of judicial officers from a victim survivor perspective and the impacts of trauma. We also support tighter case management of matters to ensure they are being heard as efficiently as possible.
- QSAN actually supports a specialist court model.
- Similarly, to DV specialist courts in Queensland, ultimately you would look at these specialist courts be trialled and rolled out in rural and regional areas.
- The Taskforce recommended the consideration of the establishment of a specialist list.
- The evaluation of the NZ model for specialist court was positive for both victim survivors and offenders.

- **avoidance of over-complex rules prescribing jury directions, which increase the scope for appeals.**
- Unfortunately, a highly discretionary model has not been positive for victim survivors in this area and a more prescriptive approach is required.

Principle 8: the aims of any legislative change towards better realising the communicative model of consent should be supported by community education; there should be ample lead-in time to allow for targeted education of young people and vulnerable people who may be disproportionately impacted by changes.

- NASASV supports extensive education for any legal changes and prevention work on these issues.