



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SERVICES  
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## Submission Cover Sheet

Crimes (Consent) Amendment Bill 2018

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Young Women Speak Out (YWSO) is a Canberra-based advocacy and campaigning project, supporting five young women aged 16-18 to campaign on the issues that matter to them. We support the Crimes (Consent) Amendment Bill 2018. YWSO **strongly supports affirmative, ideally enthusiastic, consent laws.**

## **YES, YES, YES to Positive Consent Laws**

Why wouldn't everyone want the definition of consent to be changed to affirmative consent? It's difficult to see in the age of #MeToo and huge confusion around what consent actually means, why we wouldn't want to hold everyone to a higher standard. Consent must be defined positively through verbal and physical cues, not the absence of negative communication.

## **Why Young People Want Positive Consent Laws**

Young women are disproportionately impacted: Young women experience sexual assault at higher rates than older women.<sup>1</sup> In the ACT in 2012-13, the Canberra Rape Crisis Centre held 5,685 sessions with young people aged between 12 to 25.<sup>2</sup>

*Changing the Course*, The 2017 Human Rights Commission report<sup>3</sup>, shows students at Canberra's universities are more likely than their interstate peers, to be sexually harassed or assaulted whilst involved in campus and off-campus activities. That's unacceptable. Action must be taken.

Tanvi and Zahra from Young Women Speak Out say:

*"They didn't exactly say no" Well did they say yes? The only way we can remove any possible uncertainty around the definition of consent is by enforcing affirmative consent. The same way the word 'no', or 'stop', is not affirmative consent, silence or a lack of a negative response is not affirmative consent. Only positive verbal and physical cues are affirmative consent!" - Tanvi, 18*

*"Yes means yes. It is as simple as that, and should be recognised as being as simple as that. In the same way that it applies in every other aspect of life, an absence of no, or silence does NOT mean yes. Affirmative consent is extremely important to protect the members of our society and help them get justice if they have been wronged." - Zahra, 18*

## **The role of The Law**

Our legal system reflects our society - the law must address its shortcomings in consent standards and in holding perpetrators of sexual violence to account. We undeniably live in a rape culture. We

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<sup>1</sup> Australian Bureau of Statistics, Personal Safety Survey, 2016, Cat 4906.0, viewed on 13 September 2018 at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/017E326331F0C315CA2581D1000C2EA8?opendocument>

<sup>2</sup> A.Roberts, 2014, Reporting on Sexual Violence A Guide for ACT Media viewed on 13 September at: <http://www.wchm.org.au/wp-content/uploads/2015/02/Media-guide-to-reporting-on-sexual-violence.pdf>

<sup>3</sup> Australian Human Rights Commission (AHRC) 2017 *Change The Course* Report viewed on 14 September at: <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/change-course-national-report-sexual-assault-and-sexual>

currently have high levels of sexual violence, huge underreporting, low prosecution and poor conviction rates. Law reform is well overdue in the ACT.

We need a dramatic shift from sex being something that's done to someone else, to a mutually consensual, respectful experience. We need affirmative, enthusiastic consent, nothing less than a yes.

## **False allegations**

Australian Institute of Family Studies (AIFS) research shows there is no clear and agreed definition of what constitutes a false accusation, and therefore no definitive data on prevalence.<sup>4</sup> Despite this, discourse about false accusation is pervasive (more so than other than other crimes). The AIFS asserts that dominant discourses about false accusations and the (unfounded) stereotype that it is common, “contribute to incorrect beliefs about sexual assault” and “reduces the likelihood of reporting.”

Concerns around false allegations are not a good reason to avoid improving legal standards and the expectations we have about sex. The ACT is expecting far too little around consent. It's abundantly clear the current consent laws are not effective and have not addressed the problem with prolific sexual violence. The Law, alongside respectful relationships education and responsible media messaging – can effect cultural change. Shifting to a 'yes means yes', is far more likely to protect and safeguard against rape and sexual assault. 'No means no' and negative indicators of consent have shown to be wildly ineffective in preventing rape and sexual violence. It also takes away bodily autonomy; sex at a minimum, should be respectful and affirmatively consented to.

## **Underreporting and low conviction rates**

As it is, with the majority of victims and survivors not reporting, sexual assault is one of the most under-reported crimes.<sup>5</sup> Only about 17% of reported sexual offences result in a conviction.<sup>6</sup>

## **Success in Other Jurisdictions**

Other jurisdictions have affirmative consent in their legislation. The ACT needs urgent law reform to come into line with other states and to instil a standard that is much-needed by the ACT community.

Let's join other jurisdictions leading the way and reflecting community standards in the law: California<sup>7</sup>, Sweden<sup>8</sup> and Tasmania - which has the most robust sexual consent laws in Australia, requiring

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<sup>4</sup> Wall, L., & Tarczon, C. (2013). *True or false? The contested terrain of false allegations* (ACSSA Research Summary). Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies viewed on 13 September 2018: <https://aifs.gov.au/publications/true-or-false-contested-terrain-false-allegations>

<sup>5</sup> Tarczon, C., & Quadara, A. (2012). *The nature and extent of sexual assault and abuse in Australia* (ACSSA Resource Sheets). Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, viewed on 13 September at: <https://aifs.gov.au/publications/nature-and-extent-sexual-assault-and-abuse-australia>

<sup>6</sup> Queensland Crime and Misconduct Commission. 2003. *Seeking Justice: An inquiry into the handling of sexual offences by the criminal justice system*. Brisbane: Crime and Misconduct Commission, page 58. viewed on 13 September at: [Queensland Crime and Misconduct Commission. 2003. 'Seeking Justice: An inquiry into the handling of sexual offences by the criminal justice system'. Brisbane: Crime and Misconduct Commission](https://www.qccm.qld.gov.au/seeking-justice)

<sup>7</sup> Kevin de León and Hannah-Beth Jackson, *Why we made 'Yes Means Yes' California law*, October 2015, Washington Post newspaper, viewed on 13 October 2018 at:

active consent, meaning a person does not consent if they do not "say or do anything to communicate consent."

Please let's have a positive definition of consent. Everyone is served well by bringing greater equality to consent legislation. Let's stop the assumed and presumed consent, the 'didn't say no' excuses, let's shift to: if it's not a clear, ongoing yes, then don't have sex. That's better for everyone.

### **Recommendation from Young Women Speak Out**

- The ACT adopt an affirmative consent model, in line with other Australian jurisdictions, ideally Tasmania
- A community awareness campaign, including respectful relationships education - targeted at all levels of community, to accompany the changes to consent legislation

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[https://www.washingtonpost.com/news/in-theory/wp/2015/10/13/why-we-made-yes-means-yes-california-law/?noredirect=on&utm\\_term=.dc519539e529](https://www.washingtonpost.com/news/in-theory/wp/2015/10/13/why-we-made-yes-means-yes-california-law/?noredirect=on&utm_term=.dc519539e529)

<sup>8</sup> Baynes. C., 24 May 2018, Independent Newspaper, *Sweden passes new law recognising sex without explicit consent as rape 'Sex must be voluntary - if it is not, then it is illegal'* viewed on 13 September at:

<https://www.independent.co.uk/news/world/europe/rape-law-sweden-sex-without-consent-metoo-a8367996.html>