



11 APR, 2021

You can change things

Sunday Telegraph, Sydney



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You can change things

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SEXUAL assault is the most under-reported crime type in Australia and notoriously difficult to prosecute.

The evidentiary gems that can make or break a murder or a robbery case — CCTV, eye-witness accounts and weapons — are hard to come by in sexual assault investigations.

The court process is often gruelling and lengthy.

Victims have to relive their assault in minute detail in court, and withstand brutal cross-examination that questions their credibility and motive in front of 12 strangers judging them from the jury box. Experts say that process deters many victims from coming forward to police in the first

place. Of those that do, many of their complaints do not make it past police and to court anyway.

Only 3 per cent of sexual assault incidents reported to NSW Police in 2018-19 resulted in guilty outcomes, the NSW Law Reform Commission found.

But there are simple steps that can turn this horrifying statistic around. In partnership with the Rape and Sexual Assault Research and Advocacy initiative (RASARA), we are fighting to make these changes happen and we are calling on you to help. First, call your local MP and demand they support these changes. Second, write and tell us your stories.

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1 LEGISLATE FOR AFFIRMATIVE CONSENT

MOST of these cases come down to the issue of consent — a simple word with an incredibly complex legal meaning. To prove beyond reasonable doubt that a rape occurred, the prosecution must prove that a victim did not consent to sexual activity and the offender knew or did not have reasonable grounds to know there was no consent.

The focus then rests on what the victim did or did not do to show their non-consent.

An offender only needs to show that they had an honest and reasonable belief the victim was consenting even if she was not. This is where many cases come unstuck.

We are pushing for an amendment to the legal definition of consent under section 61HE of the Crimes Act to reflect an affirmative

consent model. That means a person does not consent if the person does not say or do anything to communicate consent.

This reform has been recommended by the NSW Law Reform Commission.

However, we do not believe this goes far enough.

We are asking the state government to legislate that a person must show what active and reasonable steps they took to obtain consent if they want to rely on the honest and reasonable belief defence.

This reflects a standard that consent should be asked for, communicated and ongoing.

It can be as simple as asking: “Is this OK?” or: “Do you want to go further?”

This affirmative consent model is already law in both Tasmania and Canada.



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2 A PILOT PROGRAM OF SPECIALIST SEXUAL ASSAULT COURTS

SEXUAL assault survivors have likened the process of going through the criminal justice system to a trauma on par with the rape.

The environment is unfamiliar and, while the defendant has a lawyer and the state has a lawyer, the victim must navigate the system on their own.

And, because sexual assault cases often come down to one person's word against another, a heavy burden is placed on the victim's evidence.

The cross-examination of a victim can be brutal, invasive and unforgiving. We are asking the government to commit to a pilot program of specialist sexual assault courts.

Similar to the child sexual assault pilot announced in 2015, the specialist judges who have undergone judicial education on sexual violence and its complexities should be appointed to oversee the courts.

There will also be a focus on how survivors are familiarised with the court process and how they give evidence without extreme retraumatisation.

Survivor Saxon Mullins (pictured right, in early 2013) navigated two criminal trials in a highly-publicised rape matter against Luke Lazarus.

Ms Mullins, now a leading advocate for consent law reform, was sexually assaulted in an alleyway behind a Kings Cross nightclub in 2013.

After two trials and two appeals, Lazarus walked free in a controversial decision that triggered a review of NSW's consent laws.

Ms Mullins said specialist sexual assault courts that accommodated for victims

with witness rooms, routes in and out of court that do not cross with the defendant and giving evidence via video link could be really important.

"When we talk about sexual violence cases being heard, a lot of experiences are really bad and some are not," the RASARA director said.

"It should not be a spinning wheel of whether you get a good DPP case officer or if counsel does the right thing. It should not be up for discussion."

In her case, prosecutors advised Ms Mullins against giving evidence by video link — so complainants do not have to sit in the courtroom with defendants and their supporters — because it was less powerful in front of the jury.

"This is why we say we need trauma-informed people working in these institutions," she said.

"They were concerned about winning this case and not about what circumstances I was giving evidence in."

Rape and Domestic Violence Services Australia, which with Women's Safety NSW and Community Legal Centres NSW supports specialist courts, says it should also involve specialist prosecutors, a streamlined process that would result in less retraumatisation and delays and representation for victims.

Such specialist sexual violence courts have been trialled, evaluated and widely applauded in New Zealand since 2016.





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3 RELATIONSHIP AND SEX EDUCATION TRAINING FOR TEACHERS AND AN AUDIT OF HOW CONSENT EDUCATION IS TAUGHT IN ALL SCHOOLS

and seminars. Experts wa

EVER since a petition calling for better sex education sparked a flood of horrific disclosures from private school students about rape and unwanted sex, the national conversation has been focused on consent education.

The national curriculum provides guidance for what Australian students should be taught, including about

respectful relationships.

It is up to states to drill down on the detail and then up to individual schools how much weight they give the subject, as well as the delivery.

In NSW, the revised physical education syllabus, which became compulsory last year, mentions the word "consent" eight times.

However, experts point out that consent is only one part of

relationship and sexuality education. Depending on which school you go to, the focus will vary greatly.

For example, one high school may teach one or two lessons on risk aversion with topics such as pregnancy, contraception and anatomy. But another high school may bring in relationship and sexuality education experts to run comprehensive workshops and seminars. Experts warn the approach in NSW is ad hoc and inconsistent, and the topic is not valued enough or taught early enough.

"The moment students enter formal education environment, they should be getting some kind of RSE (Relationship and Sex Education) that's age-appropriate," criminal lawyer and RASARA primary prevention researcher Katrina

Marson said. "We are mistaken if we think people hit the age of consent and the skills they need to navigate consent and respectful relationships spontaneously manifest."

Parents needed to be involved in the RSE conversation too, she said.

The campaign is calling for independent, Catholic and public schools to submit a detailed audit to NESA of how they are delivering relationship and sexuality education.