



29 June 2018

NSW Law Reform Commission  
GPO Box 31  
Sydney NSW 2001

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**RE: Review of s61HA of the Crimes Act 1900 (NSW) – Consent in relation to sexual assault offences**

Thank you for the opportunity to make a preliminary submission in response to the review of s61HA of the *Crimes Act 1900 (NSW)* which deals with consent in relation to sexual assault.

Youth Action has consistently advocated for legislative changes when their impact can create a safer and more inclusive community where young people have the best chance to develop and succeed. Youth Action has proactively offered its expertise and advice to the Department of Justice and the NSW Parliament in the recent past, including:

- Our response to the Strengthening Child Sexual Abuse Laws discussion paper in 2017
- The Attorney General’s non-consensual sharing of intimate content (‘Revenge Porn’) discussion in 2016
- NSW Parliament’s Inquiry Into the Sexualisation of Children and Young People in 2016.

As the peak body for the 1.25 million young people in NSW and the services that support them, our response largely concerns the impacts of possible legislative measures for young people aged 12 to 25. Additionally, our submission focuses specifically on young women, who are the most likely demographic to be affected by sexual assault.

**Youth Action endorses the recommendations given by Rape and Domestic Violence Services Australia (R&DVSA) in their submission to this review.** In addition to the information and recommendations we have endorsed in their submission, please find additional information below in response to the terms of reference.



## Response to Terms of Reference

### 1. Whether s61HA should be amended, including how the section could be simplified or modernised.

In 2013, the Australian Bureau of Statistics (ABS) Personal Safety Survey reported that 20 per cent of Australian women have experienced sexual violence and young women between the ages of 18 – 24 are twice as likely to experience sexual assault as compared to women of all ages.<sup>1</sup> These disproportionate rates of experience for young women are particularly concerning and require urgent attention.

Youth Action believes that s61HA should be amended to provide a clearer definition of communicative consent. The current provision in the law places an emphasis on consent being the absence of 'no' rather than the presence of a 'yes'. In its current form, s61HA places an undue emphasis on the alleged perpetrator's assumption or belief of consent. This particular emphasis has led to ambiguity in court cases whereby the alleged victim may establish that they did not consent, but the alleged perpetrator believes, or states their belief that they believed consent was established. The law should establish a more objective standard that must be met by alleged perpetrators rather than focus on the subjective element as has happened in previous cases.

In addition to the changes that the law could bring to cases brought before the courts, amendments to the law have the ability to establish norms and behaviours within society as a whole. We believe that an amendment to the current law towards a model of communicative consent has the potential to increase the very low reporting rates for those who have experienced sexual assault as their confidence in the outcomes in court improves. Of the estimated 852,000 women who have experienced sexual assault since the age of 15, 80.9% did not report the incident.<sup>2</sup> In addition to improving reporting rates, the changes could establish new cultural norms that result in fewer cases of sexual assault.

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<sup>1</sup> Australian Bureau of Statistics (ABS) (2012), 'Personal Safety Survey 2012', Quantitative Research Report, 2009, accessed via <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter1002012>

<sup>2</sup> Ibid.



To remove this ambiguity and contribute to a more progressive and objective determination of alleged sexual assault cases, Youth Action recommends, in line with Recommendations 1 and 2 of the R&DVSA submission, that:

- A taskforce should be established to conduct a comprehensive review of the criminal justice response to complaints of sexual offences. The taskforce should comprise all relevant stakeholders including government and non-government agencies, legal actors, sexual assault service providers, academics and, if willing, those who have experienced sexual violence.
- Section 61HA should be amended in order to provide a clearer endorsement of the communicative model of consent.

Please see the submission by R&DVSA for further expert recommendations relating to terms of reference 2 – 5, including the establishment of a specialist sexual assault court, ‘wrap-around’ support services for sexual assault victims, training relating to sexual assault for personnel involved in sexual assault trials and the establishment of specialised sexual assault judges.

We look forward to continuing to work with the Department of Justice and the NSW Law Reform Commission on these matters. Should you have any concerns or further questions, please contact Katie Acheson, Chief Executive Officer, on (02) 8354 3702.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie Acheson".

Katie Acheson  
CEO  
Youth Action