



Criminal Lawyers Association of the Northern Territory (CLANT)

Patron: The Hon Justice Dean Mildren • Locked Bag 11 DARWIN NT 0801 • ABN: 64 391 168 310•

CLANT MEMBERS BULLETIN – JUNE 2023

Dear Members,

I trust this finds you all well. No doubt our Top End based members are enjoying the beautiful dry season weather. For those of you braving the southern winter – our thoughts are with you!

I write to provide an update on CLANT's business and activities. Apologies in advance for the length of this bulletin, however we have some important announcements arising from events this year, and some important business to attend to in the months ahead.

Resignation of Shane McMaster as President:

On Thursday 1 June 2023 the CLANT Committee received written notice from Shane McMaster of his resignation from the position of CLANT President. As many members are aware, Shane sustained serious injuries as a result of a recent accident and his immediate focus is on his health.

Shane brought great enthusiasm to the role of President during the course of his term, which built upon his long-standing contribution as a CLANT Committee member and was undertaken in addition to his extremely busy practice as a senior member of the Territory criminal law profession. On behalf of the Committee and membership, we thank Shane for his dedication and hard-work and wish him all the very best as he continues with his recovery which, we are reliably informed (by Shane), is progressing extremely well.

Until such a time as a new President is appointed, the Committee have resolved that Presidential duties will be shared between the two current Vice-presidents: myself, and Clancy Dane of Territory Criminal Lawyers. Clancy and I can be contacted via email to: jamesstuchbery@wardkeller.com.au and cdane@territorycriminallawyers.com.

Committee comings and goings:

In addition to Shane's resignation, the Committee have recently (and begrudgingly) accepted the resignations of Sarah Gibbs from the position of Secretary, and former President Marty Aust from his position as a general committee member.

Marty joined the Committee in 2015, before his election as President in 2017: a role in which he served, with distinction until 2021. Sarah was also appointed to the Committee in 2015, and was elevated to the role of Secretary in May 2016 – an often thankless task which she endured with admirable aptitude for the best part of 7 years. On behalf of the Committee and membership I thank Marty and Sarah for their service and look forward to their ongoing contribution as "ordinary members" of CLANT.

Congratulations and thank-you to Rebecca Everitt, who has been appointed by the Committee to the role of Secretary, and who has already shown she will be a formidable force in keeping CLANT's business in order. We also welcome (back) Beth Wild, who was recently elected by the Committee to fill a casual vacancy on the general committee, and who has immediately volunteered herself to chair the organising sub-committee for the 2024 biennial conference.

In other Committee news, a huge congratulations to Abi Rajkumar and Christina White, both departing the Territory to commence further study in the United States. Abi has been awarded the 2023 Rio Tinto John Monash scholarship to study at Harvard University, and has been appointed as a 2023 Frank Knox Memorial Fellow at that institution. Christina has been awarded a 2023 Fulbright Scholarship, also to study a Master of Laws at Harvard University. Such incredible achievements from these two, who have both volunteered to stay on as Committee members to assist with CLANT's policy submissions, and with the organisation of the 2024 biennial conference.

Recent resignations and reshuffling have meant that two casual vacancies exist on the general committee which, in accordance with the Constitution, can be filled by direct appointment by the Committee. We welcome expressions of interest to fill these casual vacancies – please contact a CLANT Committee member if you are interested.

We also ask all members to look ahead to the upcoming Annual General Meeting in November, and consider nominating for election to the Committee (including to Executive positions) for the 2023-2025 term.

Notice of special general meeting and dry season drinks:

Members are reminded of the Special General Meeting to be held at **5:00pm Friday 16 June 2023** at **Ward Keller, Level 7, 22 Mitchell Street, Darwin**, which is being convened for the purpose of presenting two proposed amendments to the CLANT constitution. Please see the [Notice and proxy voting form](#) published to the CLANT website.

The Committee is aware that, despite notice of the meeting having been provided to Members via email on 25 May 2023, some members may not have received the notice on account of a change in their email / contact details since their registration for the 2022 *"I can't believe it's not Bali"* conference. If your contact details have changed since that time, please complete a membership application / change of details form (available on the CLANT website) and send to Rebecca Everitt, Secretary, via email to: committee@clant.org.au.

Immediately following the meeting, the Committee invites members to join them for **refreshments at Hotel Darwin**, to welcome the dry season, and to acknowledge the contributions of former President Marty Aust, and former Secretary Sarah Gibbs, following their resignation from the CLANT Committee. A bar tab and light finger food will be provided. Refreshments will also be provided for Katherine and Alice Springs based members, at **locations TBA**.

Call for membership applications:

CLANT membership is open to any person who practices in the field of criminal law within the courts of the Territory (whether exclusively or partly), or who contributes to the field of criminal law or criminal jurisprudence within the Territory (whether exclusively or partly). Persons wishing to become members are encouraged to apply to the Committee for membership, which requires payment of a biennial membership fee of \$20 (or registration and attendance at the biennial conference).

The Committee strongly encourages members to promote CLANT membership within their

respective firms / organisations. Membership application forms will be available at the upcoming "welcome to the dry" drinks for new / prospective members wishing to attend the function.

Save the Dates! 2024 Biennial CLANT Conference – 22 – 28 June 2024:

The Committee is pleased to confirm that the 19th Biennial Criminal Law Conference will be held in Bali in June 2024. The conference will commence with the customary welcome cocktail function on the evening of Saturday 22 June, and close with the traditional "Gala dinner under the stars" on Friday 28 June 2024. Further details regarding venue, conference program, and registration information will be provided in approximately September 2023, but for now please **save the dates!**

We are also now calling for expressions of interest from persons wishing to present a paper at the 2024 conference. Please email your expression of interest, including a brief abstract / summary of your proposed topic to committee@clant.org.au.

Recent meeting with Chief Judge Morris:

Members will be aware of the CLANT [media release](#) earlier this year "*No Defence = No Justice*", issued in response to media reports of a critical exchange in the Darwin Local Court, where a sitting Judge directed criticism to defence lawyers generally, citing a "*permissive attitude*" to crime that was "*pervading the court system*" through the submissions of defence counsel. Following discussions with the Chief Judge, myself and Clancy Dane met with her Honour recently to discuss the issues, and to cite the concerns of the profession arising from this matter.

Her Honour asked us to convey to CLANT's membership that the reported remarks are not reflective of the views of the Local Court bench generally and, on the contrary, the contribution of defence counsel (and indeed all counsel) is gratefully acknowledged by the Judges of that court. Her Honour also highlighted, for members' information, that the Judges of the court regularly engage in professional development training and participate in a wellbeing program to ensure they are able to properly deal with the vicarious trauma that, as we are all-too-painfully aware, flows from constant exposure to the subject matter our profession deals with on a daily basis.

Vale Justice John Nader RFD KC, vale Chief Justice Brian Frank Martin AO MBE KC

CLANT recently published to [its website](#) a statement of condolence acknowledging the passing of CLANT Life Member Justice Nader, and of former Chief Justice Brian F Martin. Justice Nader will be fondly remembered by CLANT for his geniality, vigour and forthrightness, both as an advocate and as a friend. Chief Justice Martin will be remembered for his fairness, firmness and compassion on the Bench, and for his enormous contribution to the Territory community and to our justice system. CLANT extends its sympathies to both men's family and friends.

Justice Nader's passing had served as a salient reminder to the Committee of the importance of acknowledging and honouring the contributions of all CLANT Life Members. Accordingly, it has been proposed that CLANT host a dinner in "off-conference" years, to bring the Membership together and to celebrate the Association and the achievements of its members. Further details will be provided in the coming months, though the Committee has tentatively scheduled the 2023 Dinner for a **date in September** at which time, we hope to be in a position to formally "launch" the 2024 conference.

Upcoming policy submissions – call for Members' comments:

CLANT has been approached by the Department of Attorney-General and Justice for comment on the [Exposure Draft Justice Legislation Amendment \(Domestic and Family Violence\) Bill 2023](#), which comes following the Department's extensive review of the *Domestic and Family Violence Act 2007* in late 2022 (to which CLANT provided an extensive submission). Submissions in relation to the Exposure Draft close 23 August 2023.

In addition, CLANT proposes to submit a response to the NT Law Reform Committee's recent Discussion Paper on consent for sexual offences, which has arisen following a referral from the Attorney-General in the course of the Legislative Assembly's consideration of the *Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023*. Responses to the questions posed in the Discussion Paper are to be submitted by 30 June 2023, and a copy is attached to this bulletin.

Members wishing to provide comment on the Exposure Draft, or the Discussion Paper, through CLANT are encouraged to contact the Committee via email to: committee@clant.org.au.

CLANT Strategic Plan 2023 - 2030

In November 2022, the CLANT Committee engaged an external consultant to assist in the development of a Strategic Plan to guide the Association's work in the short to medium term. We look forward to launching the Strategic Plan in coming months.

One of the primary goals of the Strategic Plan is to better engage with CLANT's membership, and so I hope this (rather lengthy) bulletin acts as a first step in implementing that goal. I envisage (and hope) that improved, more frequent engagement with our membership will ensure the brevity of future bulletins!

If you have any questions, comments, concerns, or issues you wish to raise, please don't hesitate to contact the Committee.

Yours faithfully,



James Stuchbery
VICE-PRESIDENT, CLANT
t: 0439 344 812
w: www.clant.org.au
e: jamesstuchbery@wardkeller.com.au

NORTHERN TERRITORY LAW REFORM COMMITTEE

**INQUIRY INTO CONSENT FOR SEXUAL
OFFENCES**

DISCUSSION PAPER

Discussion Paper
May 2023

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NORTHERN TERRITORY LAW REFORM COMMITTEE

INQUIRY INTO CONSENT FOR SEXUAL OFFENCES

DISCUSSION PAPER

1. INTRODUCTION

1.1. Sexual assault is one of the most serious health and welfare problems in Australia. It is estimated that 2,000,000 adult Australians, 80% of them women, have experienced at least one sexual assault since the age of 15.¹ Notwithstanding the resulting widespread and severe harm, the criminal justice system's response has been largely ineffective: only about 1% of sexual assaults committed in Australia leads to a criminal conviction.² In the face of this failure, governments around Australia have in recent years embarked on numerous law reform initiatives, several of which are currently underway, with the objective of improving justice outcomes in sexual offending cases.

1.2. For its part, the Northern Territory Government proposes to reform sexual offence law in two stages. Firstly, in January 2023 it invited the community to respond to an Exposure Draft of the *Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023*.³ The *Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023 (the Bill)* was subsequently introduced in the Legislative Assembly on 18 May 2023, however, at the date of this Discussion Paper has not yet passed into law.⁴ In preparation for the second stage of these reforms, Attorney-General and Minister for Justice the Hon. Chansey Paech MLA has asked the Northern Territory Law Reform Committee (**the Committee**) to inquire into the topic of consent in sexual offences. Specifically, the Committee has been asked to report on the following matters:

1. whether the Northern Territory should adopt 'affirmative consent' to apply in relation to Criminal Code sexual offences;
2. if the answer to the first question is yes, what form this should take;
3. whether evidence of self-induced intoxication should be able to be taken into consideration in determining an accused's state of mind with respect to consent; and

¹ Australian Institute for Health and Welfare, *Sexual Assault in Australia* (August 2020), 1 and 3.

² Patrick Tidmarsh and Gemma Hamilton, *Misconceptions of sexual crimes against adult victims: Barriers to justice*, Australian Institute for Criminology (2020), 4.

³ Available at <https://justice.nt.gov.au/law-reform-reviews/open-law-reform-consultations/exposure-draft-criminal-justice-legislation-amendment-sexual-offences-bill-2023>

⁴ Available at <https://legislation.nt.gov.au/en/LegislationPortal/Bills/~link.aspx?id=9FF8C5FBC42F4780B1048717B8023DA8&z=z>.

4. whether any other amendments would improve the operation of consent in sexual offences in the Northern Territory.

1.3. The Committee has brought together a group of Northern Territory legal experts to conduct the inquiry. As part of its inquiry, the Committee now seeks the views of service providers and other key stakeholders. This Discussion Paper summarises some of the key issues that arise and sets out a series of questions for recipients to answer.

2. PRIVACY AND CONFIDENTIALITY OF SUBMISSIONS

2.1. Submissions provided to the Committee will be held by the Legal Policy Division of the Department of the Attorney-General and Justice. This means they are potentially subject to freedom of information requests and confidentiality cannot be guaranteed. Additionally, the Committee is seeking case studies and personal stories that can be included in its final report, so that the public is able to understand the basis for its recommendations. The Committee therefore requests submissions contain only de-identified case studies and personal stories, or examples where the details provided are already in the public domain. If personal information is submitted that is not in the public domain, the Committee will de-identify this information before using it in its published reports. The names and contact details of organisational representatives who author submissions will not be treated as confidential information unless this is specifically requested in the submission.

3. HOW TO MAKE A WRITTEN SUBMISSION

3.1. Anyone can make a written submission. The Committee will accept all forms of submission, be they short and informal such as a letter or email, or a more substantial document. Submissions in electronic form are preferred. While we encourage those making a submission to address the questions set out in this Consultation Paper, there is no need address all the questions posed. Further, the submission need not be confined to the issues addressed in this Discussion Paper. Finally, for ease of reference, all of the questions for stakeholder comment set out in this Consultation Paper have been set out in Appendix 1.

Submissions should be sent to:

Executive Officer

Northern Territory Law Reform Committee

E: Lawreformcommittee.DOJ@nt.gov.au

Alternatively, a hardcopy of the submission can be mailed to:

GPO Box 1535

DARWIN NT 0801

The closing date for submissions is **Friday 30 June 2023**.

In the absence of a clear intention that a submission should be treated as confidential, the Committee will treat all submissions received as non-confidential.

The purpose of a submission is to assist the Committee in its formulation of recommendations, and the contents of a submission may be quoted or referred to in the Committee's final report. Submissions also may be made publicly available.

4. CONSENT

4.1. Section 192 of the Criminal Code (NT) (**the Code**), which establishes the offence of sexual intercourse or gross indecency without consent, defines 'consent' as follows:

(1) For this section, consent means free and voluntary agreement.

(2) Circumstances in which a person does not consent to sexual intercourse or an act of gross indecency include circumstances where:

(a) the person submits because of force, fear of force, or fear of harm of any type, to himself or herself or another person;

(b) the person submits because he or she is unlawfully detained;

(c) the person is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely agreeing;

(d) the person is incapable of understanding the sexual nature of the act;

(e) the person is mistaken about the sexual nature of the act or the identity of the other person;

(f) the person mistakenly believes that the act is for medical or hygienic purposes; or

(g) the person submits because of a false representation as to the nature or purpose of the act.

4.2. Under current Northern Territory law, 'harm' is defined to include serious harm to mental health and physical harm to the person or another person. It does not include economic or financial harm, reputational harm, harm to animals or items, harm to the person's employment, sexual harassment, or harm to the person's family, cultural or community relationships, or a course of action amounting to coercive control.

4.3. The Bill proposes to also criminalise conduct colloquially known as “stealthing” (the secret removal or sabotaging of a condom without the consent of the other person to participating in sexual activity without a condom) by adding the following item to the above list:

the person consents to the act with a condom, but another person involved in the act does not use or intentionally disrupts or removes the condom without the person's consent.⁵

4.4. The Code requires that in relevant cases the judge must direct the jury that a person is not to be regarded as having consented to an act of sexual intercourse or to an act of gross indecency only because:

- the person did not protest or physically resist;
- the person did not sustain physical injury; or
- the person had, on that or an earlier occasion, consented to a sexual act whether or not of the same type, with the accused.

The Bill proposes the following additions to the above list:

- the person did not say or do anything to indicate that the person did not consent; and
- during the period or on the occasion when the sexual act occurred, or on an earlier occasion, the person consented to engage in a sexual act (whether or not of the same type) with the accused *or with another person* (emphasis added).⁶

4.5. Affirmative consent laws have been adopted in four other jurisdictions,⁷ and a fifth jurisdiction has committed to the introduction of an affirmative consent model.⁸ Where affirmative consent laws have been adopted in interstate jurisdictions, legislation generally includes similar matters but also provides that consent involves some or all of the following additional features:

- Consensual sexual activity involves ongoing and mutual communication, decision-making and free and voluntary agreement between the persons participating in the sexual activity.
- Consent to sexual activity can be withdrawn at any time by words or conduct.
- A person does not consent to a sexual activity if —

⁵ Section 208GA(2)(h) of the *Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023*.

⁶ Section 208PB of the *Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023*.

⁷ New South Wales, Australian Capital Territory and Victoria introduced affirmative consent models in 2022, and Tasmania introduced an affirmative consent model in 2004.

⁸ In 2022, Queensland committed to the introduction of an affirmative consent model.

- the person does not say or do anything to communicate consent;
 - the person participates in the sexual activity because of force, fear of force or fear of serious harm of any kind to the person, another person, an animal or property, regardless of—
 - when the force or the conduct giving rise to the fear occurs, or
 - whether it occurs as a single instance or as part of an ongoing pattern; or
 - the person participates in the sexual activity because of coercion, blackmail or intimidation, regardless of—
 - when the coercion, blackmail or intimidation occurs, or
 - whether it occurs as a single instance or as part of an ongoing pattern; or
 - the person participates in the sexual activity because the person is overborne by the abuse of a relationship of authority, trust or dependence; or
 - the person participates in the sexual activity because of a fraudulent inducement (which does not include a misrepresentation about a person’s income, wealth or feelings); or
 - consent is obtained by a mistaken belief, induced by the accused, that there will be monetary exchange for the sexual act.
- The list of factors relevant to determining consent does not limit the grounds on which it may be established that a person does not consent to a sexual activity.

Question 1A

What, if any, elements should be added to the Northern Territory definition of consent in the context of sexual assault?

Question 1B

Is the current definition of ‘harm’ in the Northern Territory legislation sufficient? If not, how should it be changed?

5. STATE OF MIND OF THE ACCUSED

5.1. Northern Territory law provides that a person commits an offence of sexual intercourse or an act of gross indecency without consent if they engage in sexual intercourse or gross indecency with another person without the other person’s consent *while knowing about or being reckless* as to the other person’s lack of consent.

5.2. The Code states that for the purpose of this type of offending a person is reckless if:

(a) they are aware of a substantial risk that the other person is not consenting;
and

(b) having regard to the circumstances known to the person, it is unjustifiable to take risk.

5.3. The Code also provides that being reckless as to a lack of consent to sexual intercourse or an act of gross indecency includes not giving any thought to whether or not the other person is consenting to the sexual intercourse or act of gross indecency.

5.4. The Bill proposes to amend the law to require that when considering whether or not a person was reckless as to the lack of consent by the other person to engaging in a sexual act, a jury must have regard to all the circumstances of the case including any steps taken by the person to ascertain whether the other person was consenting to engage in the sexual act.⁹ These provisions are modelled on a similar, repealed, provision from New South Wales.¹⁰ The provision was repealed with the introduction of affirmative consent within that jurisdiction, which requires a person to take steps, rather than just requiring consideration of steps taken.¹¹

5.5. While it is not yet known how the courts will approach this amendment, if introduced, it is anticipated that a jury will be directed in a similar way as under the current law, namely, that they should consider the evidence to determine whether an accused gave any thought to the issue of consent. In any given case, whether such a direction is favourable to an accused will depend on the factual scenario and evidence adduced. Under the proposed amendments, it is expected¹² that a jury would be told as part of their consideration of whether the accused gave any thought to the issue of consent, that they must also have regard to any steps taken by an accused to ascertain consent. This does not mean that if no steps were taken an accused will be found to have the relevant mental state, but rather it directs that it is one factor that the jury must consider.

⁹ Section 208HE of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

¹⁰ Section 61HE of the *Crimes Act 1900* (NSW)

¹¹ That provision has been within the NSW *Crimes Act* since 2018 and was repealed with the introduction of affirmative consent in New South Wales. Some argue that this amendment is a step towards affirmative consent, although it is important to note that this provision is a historical provision in New South Wales and is not found in these terms within affirmative consent models in other jurisdictions.

¹² Based on the similar provision that was in force in New South Wales.

Question 2A

Should the law provide that a person is reckless as to whether the other person consents to sexual activity if the person does not take any steps to ascertain whether the other person consents to engage in the sexual activity?

Question 2B

Should the law provide that for an accused person to raise a defence of mistaken belief that the other person was consenting to sexual activity, the accused person's belief must be not only honest but also reasonable?

6. INTOXICATION

6.1. The Code distinguishes between two types of intoxication, “self-induced” and “not self-induced”. In summary, self-induced intoxication occurs when a person deliberately and voluntarily drinks or otherwise ingests a drug. A person is not criminally responsible for conduct the result of non-self-induced intoxication, for example as a result of drink spiking. By far the most common type of intoxication featuring in Northern Territory sexual offending is self-induced intoxication.

6.2. If a person commits a sexual act while in a state of self-induced intoxication, the Code provides that evidence of their intoxication cannot be considered when determining whether the person intended to commit the sexual act. It can be taken into account, however, when looking at the mental state of an accused.

6.3. As an illustration of how this law applies in practice, here is the direction given by a Northern Territory judge to a jury in one such case:

You are entitled to consider all of the circumstances to determine whether the accused believed that B was consenting to sexual intercourse, including the extent to which the accused was affected by alcohol at the relevant time. The mistaken belief does not have to be a reasonable belief, but it must be actually held. When you are considering whether the mistaken belief was actually held, you are able to take into account whether it was a reasonable belief in the circumstances. The accused does not have to prove that he was under the mistaken belief that B was consenting to sexual intercourse. Rather, the Crown must prove beyond reasonable doubt that the accused was not under such mistaken belief.¹³

6.4. In relation to the issue of recklessness, in a case where the jury finds that an accused was aware that there was a substantial risk that the other person was not consenting, it then has to decide whether it was unjustifiable for the accused to take the risk and proceed to commit the sexual act. The Code does not include provisions that regulate how a jury can or should have regard

¹³ *R v Willcocks (No 2)*[2018] NTSC 38, [24]

to self-induced intoxication when deciding whether the conduct of the accused was unjustifiable. Jurors may have different views as to whether and, if so, how the accused person's intoxication is relevant to a determination of whether their conduct was unjustifiable. The Committee will consider whether Northern Territory law should be reformed by specifying the way in which juries can and should have regard to self-induced intoxication.

Question 3A

Is the current law in relation to self-induced intoxication adequate?

Question 3B

What should the law provide, if anything, about how self-induced intoxication may be taken into account when deciding whether a person acted under a mistaken belief that the other person was consenting?

Question 3C

What should the law provide, if anything, about how self-induced intoxication may be taken into account when deciding whether a person was reckless as to the lack of consent of the other person?

7. JURY DIRECTIONS

- 7.1. One of the objectives of affirmative consent laws is to further a trauma-informed understanding of sexual assault, and in particular that 'freezing' rather than actively objecting to unwanted sexual activity is a common human behaviour.
- 7.2. Given this, affirmative consent laws interstate have incorporated directions to the jury to complement and clarify the intent of the offence provisions. The current Northern Territory jury directions and those proposed in the Bill are summarised at paragraph 4.4 above.
- 7.3. In New South Wales, the law provides that judges may also give the following jury directions:
- there is no typical or normal response to non-consensual sexual activity;
 - people may respond to non-consensual sexual activity in different ways, including by freezing and not saying or doing anything;
 - the jury must avoid making assessments based on preconceived ideas about how people respond to non-consensual sexual activity;
 - people who do not consent to a sexual activity may not be physically injured or subjected to violence, or threatened with physical injury or violence;
 - the absence of injury or violence, or threats of injury or violence, does not necessarily mean that a person is not telling the truth about an alleged sexual offence;
 - trauma may affect people differently, which means that some people may show obvious signs of emotion or distress when giving evidence in court about an alleged sexual offence, but others may not;

- the presence or absence of emotion or distress does not necessarily mean that a person is not telling the truth about an alleged sexual offence;
- It should not be assumed that a person consented to a sexual activity because the person—
 - (a) wore particular clothing or had a particular appearance, or
 - (b) consumed alcohol or another drug, or
 - (c) was present in a particular location.

Question 4

Should, and if so, how should jury directions in a sexual assault matter be modified to:

- a. promote a trauma-informed approach by the jury;***
- b. steer the jury away from reliance on myths and stereotypes about sexual assault; and***
- c. ensure the accused receives a fair trial?***

8. AWARENESS AND COMMUNICATION

8.1. In some jurisdictions, sexual offence laws have been amended to include a statement of guiding principles or objectives, such as:

- consent is integral to a person's autonomy and wellbeing;
- understanding and expectations of consent affects everyone who engages in sexual activity;
- consent is not to be assumed but must be proactively obtained at the time of engaging in sexual activity;
- subject to specific exceptions regarding children and other persons who are especially vulnerable, every person is free to consent to sexual activity of their choice; and
- consent can be withdrawn at any time.

Question 5

Should there be any guiding principles or objectives inserted into the Territory legislation in relation to sexual offences to assist in sending a message regarding the purpose of the laws?

Question 6

If the law is changed to require affirmative consent, what suggestions do you have for a communication strategy to support awareness and cultural change?

Question 7

If the law is changed to require affirmative consent, how should the change in the law be evaluated or reviewed?

APPENDIX 1 – QUESTIONS FOR STAKEHOLDER COMMENT

Question 1A - What, if any, elements should be added to the Northern Territory definition of consent in the context of sexual assault?

Question 1B - Is the current definition of 'harm' in the Northern Territory legislation sufficient? If not, how should it be changed?

Question 2A - Should the law provide that a person is reckless as to whether the other person consents to sexual activity if the person does not take any steps to ascertain whether the other person consents to engage in the sexual activity?

Question 2B - Should the law provide that for an accused person to raise a defence of mistaken belief that the other person was consenting to sexual activity, the accused person's belief must be not only honest but also reasonable?

Question 3A - Is the current law in relation to self-induced intoxication adequate?

Question 3B - What should the law provide, if anything, about how self-induced intoxication may be taken into account when deciding whether a person acted under a mistaken belief that the other person was consenting?

Question 3C - What should the law provide, if anything, about how self-induced intoxication may be taken into account when deciding whether a person was reckless as to the lack of consent of the other person?

Question 4 - Should, and if so, how should jury directions in a sexual assault matter be modified to:

- a. promote a trauma-informed approach by the jury;
- b. steer the jury away from reliance on myths and stereotypes about sexual assault; and
- c. ensure the accused receives a fair trial?

Question 5 - Should there be any guiding principles or objectives inserted into the Territory legislation in relation to sexual offences to assist in sending a message regarding the purpose of the laws?

Question 6 - If the law is changed to require affirmative consent, what suggestions do you have for a communication strategy to support awareness and cultural change?

Question 7 - If the law is changed to require affirmative consent, how should the change in the law be evaluated or reviewed?