

# ANROWS

AUSTRALIA'S NATIONAL RESEARCH  
ORGANISATION FOR WOMEN'S SAFETY  
*to Reduce Violence against Women & their Children*

## **The Law Reform Commission**

New South Wales Law Reform Commission  
SYDNEY NSW 2001

By email: [nsw-lrc@justice.nsw.gov.au](mailto:nsw-lrc@justice.nsw.gov.au)

### **Re: Consent in relation to sexual offences (consultation paper 21)**

Dear Commissioner,

Australia's National Research Organisation for Women's Safety (ANROWS) thanks the NSW Law Reform Commission for the opportunity to make a submission on the review of consent and knowledge of consent in relation to sexual assault offences in s 61HA of the *Crimes Act 1900* (NSW).

ANROWS is an independent, not-for-profit organisation established as an initiative under Australia's National Plan to Reduce Violence against Women and their Children 2010-2022. ANROWS is jointly funded by the Commonwealth and all state and territory governments of Australia. ANROWS was set up with the purpose of establishing a national level approach to systematically address violence against women and their children.

Our mission is to deliver relevant and translatable research evidence which drives policy and practice leading to a reduction in the incidence and impacts of violence against women and their children. Every aspect of our work is motivated by the right of women and their children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and their children and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

This submission brings relevant ANROWS research evidence to address a number of the questions in the consultation paper.

We would be very pleased to further assist the Commission, if required.

Yours sincerely,

  
**Dr Heather Nancarrow**  
Chief Executive Officer

8 February 2019

## Introduction

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Sexual violence is common. The Personal Safety Survey (Australian Bureau of Statistics, 2016) found that approximately 1 in 5 women and 1 in 20 men had experienced sexual violence since the age of 15. This submission focuses on violence against women only, in line with the remit of ANROWS, and noting that women comprise the majority of victims/survivors of sexual assault.

ANROWS wishes to highlight to the Law Reform Commission that most adult sexual assaults are perpetrated by intimate partners (Black et al.; Logan, Walker, & Cole; Tjaden & Thoennes, all cited in Cox, 2015). The category of “intimate partners” spans dating relationships, as well as longer-term relationships that may be characterised by ongoing violence.

ANROWS also wishes to highlight that some groups are disproportionately affected by sexual violence. ANROWS’s research (Cox, 2015; Mitra-Kahn, Newbiggin, & Hardefeldt, 2016) identifies that these groups include:

- culturally and linguistically diverse women
- Aboriginal and Torres Strait Islander women
- women with a disability
- LGBTIQ women
- women living in rural or remote areas, and
- women in prison.

These groups are disproportionately affected by sexual violence due to the greater rates of sexual violence they experience compared to the Australian average, and/or due to the additional barriers they face when seeking support and justice.

In this submission ANROWS is particularly concerned to identify the impact of s 61HA on survivors of intimate partner sexual violence, and on the priority groups identified above.

ANROWS notes the submission by Rape & Domestic Violence Services Australia to the preliminary inquiry on consent, which states that: “the implementation of consent law is significantly affected by factors beyond the drafting of legislation – most notably:

- The personal attitudes, knowledge and expertise of legal actors; and
- The availability of support services to assist people who have experienced sexual violence to access the criminal justice system.” (Rape & Domestic Violence Services Australia, 2018, p. 6)

ANROWS strongly emphasises the need to address both of these factors, recognising that doing so will require actions broader than the terms of reference of this consultation.

ANROWS supports the call for specialist sexual violence courts that can bring a victim-centred, trauma-informed approach to the process of criminal justice.

ANROWS research (Hegarty, Tarzia, Fooks, & Rees, 2017) highlights the adverse impact on survivors of sexual assault of a system that is not victim-centred and trauma informed. ANROWS research (Maher et al., 2018; Blagg et al., 2018; Kaspiw et al., 2017; Vaughan et al., 2016) also identifies some of the elements that a victim-centred and trauma-informed approach would entail, including:

- an understanding of complex trauma
- an understanding of the impact of sexual violence
- an understanding of the dynamics and impacts of intimate partner sexual violence
- cultural competency and
- disability awareness.

In this submission ANROWS specifically addresses consultation questions 3.2, 4.1, 6.2, 6.3, 6.4 and 6.6.

Before proceeding to these consultation questions, we draw attention to research that illuminates some of the issues relating to:

- 1) sexual violence in the intimate partner context (based primarily on the ANROWS research reviews by Breckenridge, Rees, Valentine, & Murray, 2015; and Cox, 2015)
- 2) sexual violence within the priority groups identified above (based primarily on the ANROWS research reviews by Mitra-Kahn et al., 2016).

## **Sexual violence in the intimate partner context**

The Australian component of the International Violence Against Women Survey found that 12 percent of women who had ever had an intimate partner reported experiencing sexual violence from a partner (Mouzos & Makkai, cited in Breckenridge et al., 2015). Heenan (cited in Breckenridge et al., 2015) found that Australian domestic and family violence workers believed that 90 to 100% of their female clients had experienced intimate partner sexual violence.

Intimate partner sexual offences are difficult to prosecute, in large part because they typically happen in the context of consensual sexual relations before and after the assault, as well as patterns of sexual

activity that are established and do not include verbalised consent (Easteal; Heenan; Logan et al.,; Martin, Taft, & Resick; all cited in Cox, 2015).

Women are more likely to be sexually assaulted by an intimate partner than by a stranger or acquaintance (Cox, 2016). Yet intimate partner sexual violence continues to lack public visibility. Heenan (cited in Breckenridge et al., 2015) noted that it is only since 1985 that Australian laws have allowed for the possibility of rape being recognised as a criminal offence when occurring in marriage or an intimate partnership. Parkinson (cited in Breckenridge et al., 2015) identifies that women themselves do not always recognise their partners' sexually aggressive actions as rape or sexual assault, even in extreme circumstances, and therefore may not disclose.

There is evidence that the community consistently views intimate partner sexual violence as both less serious and more justifiable than sexual violence by a stranger or acquaintance (Christopher & Pflieger, cited in Cox 2015). Research has found that the greater the familiarity between the victim and perpetrator, the more likely it is that an incident of intimate partner sexual violence will be construed as a lie, or a "miscommunication", rather than as an assault. Police officers, as well as victims themselves, have been found to be prone to making such interpretations (McLean & Goodman-Delahunty; Orchowski, Untied, & Gidycz, 2013, both cited in Cox, 2015).

In contrast to these community attitudes, there is evidence that intimate partner sexual violence may in fact be more traumatic than assaults by strangers or acquaintances. This is because sexual assault that occurs within the context of intimate partner relationships is often violent and repetitive, and forms part of a larger pattern of coercive control that is intended to dominate, humiliate and denigrate (Kerr and Schafran, both cited in Cox, 2015; Fredericton Sexual Assault Crisis Centre, cited in Backhouse & Toivonen, 2018).

As well, the cultural and personal meanings associated with intimate partner sexual violence result in women reporting intense feelings of shame – more so than women who experience stranger rape, and more so than women who experience domestic violence that involves physical assault only (Messing, Thaller, & Bagwell; Palmer & Parekh; Temple, Weston, Rodriguez, & Marshall; Wall, all cited in Cox, 2015). Experiencing shame is a significant barrier for women in reporting assault (Parkinson, 2008).

## **Sexual violence within priority groups**

As identified above, some groups are disproportionately affected by sexual violence. They face multiple and intersecting barriers to reporting the violence they experience, and to accessing appropriate support. These barriers include:

- distrust of authorities
- difficulties with the formal language of policing and courts
- geographical isolation
- inaccessibility of services for women with disabilities
- institutional abuse being treated as a workplace issue rather than a criminal matter
- cultural inappropriateness of services, and
- communication difficulties (Mitra-Kahn et al., 2016).

ANROWS's preliminary submission to this inquiry identified the following diversity of experience, and recommended that the Commission take this into account in their review.

### ***Aboriginal and Torres Strait Islander women***

Research has emphasised the importance of understanding the perpetration of family violence within Aboriginal and Torres Strait Islander communities within the context of colonisation (Blagg; Cunneen; Nancarrow; all cited in Mitra-Kahn et al., 2016). In this context, family violence is considered the result of continued cultural dispossession, discrimination and oppression which has eroded traditional values, social structures and customary practices (Al-Yaman, Van Doeland & Wallis; Memmott, Stacy, Chambers & Keys; both cited in Mitra-Kahn et al., 2016). This perspective also highlights the continued social and personal impacts on Aboriginal and Torres Strait Islander people of practices such as displacement from traditional lands, forced removal of children, the loss of Indigenous languages, dispossession of culture, normalisation of violence and the resulting breakdown of enduring social bonds (Al-Yaman, Van Doeland & Wallis; Blagg, Bluett-Boyd & Williams; Day, Martin & Howells; Memmott et al.; Tayton, Kaspiew, Moore & Campo; all cited in Mitra-Kahn et al., 2016). The role of colonisation, intergenerational trauma, and alcohol abuse are also emphasised as primary contributors to male perpetrated family violence, which is thought to compensate for a lack of self-esteem rather than an expression of power and control (Blagg; Milroy; both cited in Mitra-Kahn et al., 2016).

Almost every incarcerated Aboriginal or Torres Strait Islander woman in Australia is a victim of long-term sexual violence, and those with a disability are more likely to be in prison for negligible matters and face gender, disability and racial discrimination (Maher et al., 2018). This finding is significant

given that Aboriginal and Torres Strait Islander women comprise two percent of the adult female population and 34 percent of the adult female prison population (Maher et al., 2018). Research identifies historical fear of law enforcement, “shame, silence and the experience of community sanctions” as significant factors deterring Aboriginal and Torres Strait Islander women from disclosing sexual assault or violence and seeking legal redress via the criminal justice system (Owen & Carrington; cited in Holder, Putt & O’Leary, 2015).

### ***Culturally and linguistically diverse women***

The research indicates that culturally and linguistically diverse women’s experiences of sexual assault may be made more complex by their experiences of multi-perpetrator family violence (Vaughan et al., 2015). As well, the impact of violence and abuse on culturally and linguistically diverse women may be “exacerbated by immigration policy, visa status and the stressors of the migration experience” (Vaughan et al., 2015, p. 2).

The Personal Safety Survey 2012 identified women who had experienced sexual assault and did not report it, and asked them why. ANROWS analysis by Cox (2016) of the Personal Safety Survey 2012 data found that “cultural or language reasons” was given as the main reason for over 11,000 Australians (note that this is a population estimate from the survey sample).

### ***Women with disability***

A growing body of evidence shows that, across their lifetime, women with disabilities are more likely to experience violence from multiple perpetrators compared to women without disabilities (Maher et al., 2018). Further, women with disabilities may have particular vulnerabilities specifically to sexual assault, from the following three categories of perpetrators:

- male residents in residential settings
- staff in residential care facilities or disability support services, and
- as with all women, family members, intimate partners and ex-partners (Murray & Powell, cited in Mitra-Kahn et al., 2016).

In terms of their experiences as victims of sexual assault within the criminal justice system, many in institutional residential settings reported that their disclosure of the offence was minimised by not being treated as a crime, but rather a workplace or service issue (Mitra-Kahn et al., 2016). Further, where the perpetrator also lives with a disability the sexual assault or violence is often excused as behaviour associated with the perpetrator’s disability (Murray & Powell, cited in Mitra-Kahn et al., 2016).

In addition, many women—particularly those experiencing intellectual disabilities, cognitive impairment or mental ill-health—reported being disbelieved or being unable to exercise legal rights (Bartells; Dowse; Frohmader & Sands; all cited in Mitra-Kahn et al., 2016). This is in part due to the lack of ability of police officers to identify disability, and the specific and complex barriers that women with disability face in reporting crime (Maher et al., 2018).

Other issues identified by women with disabilities in seeking redress for sexual assault or violence via the criminal justice system include:

- Being assessed as legally incapable to give evidence
- Being unable to access communication aids or interpreters when making a statement
- Having perpetrators of serious crimes against them going unprosecuted (French; Frohmader & Sands; both cited in Mitra-Kahn et al., 2016).

As well, women with disabilities experience discrimination and exclusion when they interact with environments not designed to accommodate their needs. This in turn may lead to marginalisation and disempowerment (Dowse, Soldatica, Didi, Frohmader & van Toorn; Healey; cited in Mitra-Kahn et al., 2016).

### ***Lesbian, gay, bisexual, transgender, intersex and queer women***

There is limited data on the prevalence of domestic and family violence for LGBTIQ women in Australia. Moreover, there is a lack of understanding as to what constitutes domestic and family violence and sexual assault within LGBTIQ communities, arguably due to the dominance of normative understandings and paradigms of gendered power dynamics (LGBTIQ Domestic and Family Violence Interagency & The Centre for Social Research in Health UNSW; Pitts, Smith, Mitchell & Patel; and Leonard, Lyons & Bariola; all cited in Mitra-Kahn et al., 2016). Lesbian and bisexual women in particular may struggle to identify experiences of sexual violence as violence due to dominant understandings of women being considered incapable of committing rape (Ristock, cited in Mitra-Kahn et al., 2016). However, with respect to their experiences as victims of sexual assault and violence within the criminal justice system, fear of heterosexist responses from police and/or services was consistently raised by LGBTIQ women. A fear of police occurs in the context of homosexuality having been illegal in Australia in the living memory of many people who identify as LGBTIQ (McNair, cited in Mitra-Kahn et al., 2016). Forthcoming ANROWS research by Bear and colleagues will investigate the experiences of LGBTIQ people as victims/survivors and as perpetrators of domestic and family violence, and will review programs of intervention that have been tailored for these groups.

## ***Women in prison***

Research has shown that there is a strong connection between being a female offender and being a victim of crime or domestic and family violence, and sexual assault (Day et al., 2018). Further, a study of the sexual health and behaviour of prisoners in New South Wales in 2008 (Richters et al., cited in Mitra-Kahn et al., 2016) found that almost one in six of the 199 female participants had experienced sexual coercion or sexual violence in their lifetime. A review of the limited literature on this topic supports this, with many prisoners reported as having a history of sexual assault traumatisation, child sexual abuse, physical abuse and adult re-victimisation (Stathopoulos, Quadara, Fileborn & Clark, cited in Mitra-Kahn et al., 2016). While there is a paucity of Australian research on the female prison population and their experiences of victimisation and perpetration of violence, it is known that mental illness, substance abuse and trauma have complex impacts on the nature of female offending and victimisation (Quinn; Stathopoulos et al., both cited in Mitra-Kahn et al., 2016).

## **Question 3.2 The meaning of consent**

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### **(4) What are the potential benefits of adopting an affirmative consent standard?**

ANROWS supports an affirmative consent standard. An affirmative consent standard would have benefit in educating the community about the need for clear consent. It would align with National Outcome 2 of the [National Plan to Reduce Violence against Women and their Children](#): Relationships are Respectful.

The 2017 National Community Attitudes towards Violence against Women Survey (2017 NCAS) conducted by ANROWS investigated Australians' attitudes towards violence against women and gender equality. Findings of particular relevance to the proposed affirmative consent standard include the relatively high proportions of Australians endorsing the following statements relating to consent:

<b>Statement</b>	<b>Endorsement</b>
It is common for sexual assault accusations to be used as a way of getting back at men	42%
Rape results from men not being able to control their need for sex	33%
A lot of times, women who say they were raped had led the man on and then had regrets	31%
If a woman sends a nude image to her partner, then she is partly responsible if he shares it without her permission	30%
When a man is very sexually aroused, he may not even realise that the woman doesn't want to have sex	28%



Women find it flattering to be persistently pursued, even if they are not interested	23%
Since some women are so sexual in public, it's not surprising that some men think they can touch women without permission	21%
Women often say "no" when they mean "yes"	12%
Women who wait weeks or months to report sexual assault are probably lying	11%
If a woman is drunk and starts having sex with a man, but then falls asleep, it is understandable if he continues having sex with her anyway	10%

The 2017 NCAS also investigated whether or not Australians would justify non-consensual sex in different circumstances. The survey found that few Australians believed a man would be justified in his behavior if he tried to have sex with a woman he was kissing after she had pushed him away. However, the proportion of Australians justifying the behavior was greater in the scenario in which the woman had taken the man into the bedroom and started kissing him before pushing him away (see infographic below (Webster et al., 2018)).

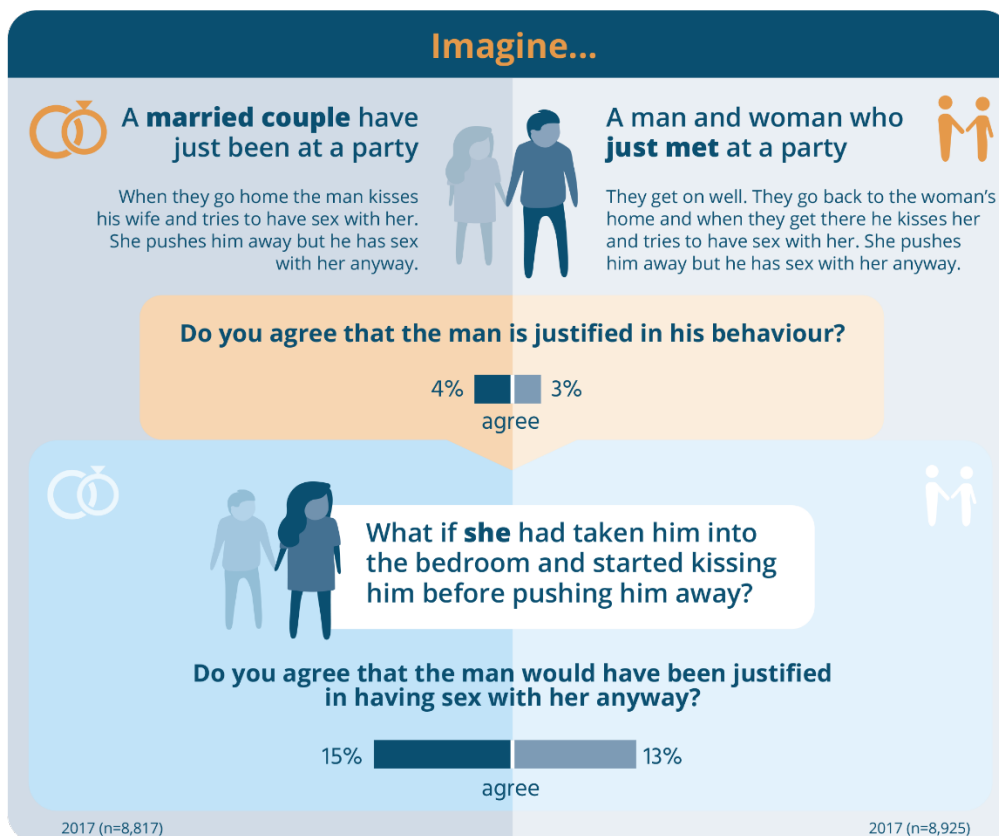


Figure 1. From 2017 NCAS report (Webster et al., 2018, p. 91)

The 2017 NCAS report (Webster et al., 2018, p. 91) states:

“Non-consensual sex can range from rape to coerced sex to non-consensual acts within an initially consenting sexual encounter. Attitudes that deny the importance of consent undermine the complexity in discerning the fine line between consensual sex and coercion (Muehlenhard, Humphreys, Jozkowski et al., 2016; Warren, Swan, & Allen, 2015).

Ensuring ongoing positive consent is important as people have the right to change their minds or are in situations where they are no longer comfortable. Consent is often negotiated in a context where there are gendered power dynamics, expectations and stereotypes around male aggression and female submission (Hust, Rodgers, & Bayly, 2017).

It has been argued that the legal treatment of consent in rape and sexual harassment claims shows the damaging effects of this process as women are forced to prove an absence of consent while men assume consent is given (Fraser, 2015). This is especially the case with non-verbal non-consent.”

## Question 4.1 Factors negating consent

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**(2) Should the lists of circumstances that negate consent, or may negate consent, be changed? If so, how?**

Yes. Domestic and family violence should be included. Domestic and family violence (which, in the context of sexual assault, would most commonly be intimate partner violence) creates a climate of ongoing fear such that consent, arguably, cannot be freely given (Logan & Cole; McOrmond-Plummer, both cited in Cox, 2015).

In the context of domestic and family violence, sexual assault has been identified as the strongest single indicator of escalating frequency and severity of violence. Indeed, the National Risk Assessment Principles for Domestic and Family Violence developed by ANROWS (Toivonen & Backhouse, 2018) specify that intimate partner sexual violence must be considered in all risk assessment processes. This is important when considering how the law on consent applies in cases of intimate partner sexual violence, because it suggests that cases of sexual assault in contexts of domestic violence are likely to involve extreme levels of fear.

ANROWS notes that under the current review (question 4.1 (1)), there is a possibility that the list of circumstances that negate consent and the list of items that *may* negate consent will be reformed into a single list. However, in the case that both lists remain, the decision to include “domestic and family

violence” (or “intimate partner violence”) would also require a choice as to whether this violence is a circumstance that *negates* consent or a circumstance that *may* negate consent.

ANROWS recognises that declaring domestic and family violence as a circumstance that *necessarily* negates consent removes agency from victims/survivors, precluding the possibility that they could ever voluntarily consent while in a relationship characterised by coercive controlling violence. At the same time, ANROWS recognises that placing domestic and family violence on a list of items that *may* negate consent would fail to send a strong educative message about the impact of domestic and family violence on victims/survivors. ANROWS suggests that this issue will require further consideration if the suggestion to include domestic and family violence is accepted and the two lists remain.

## Question 6.2 Language and structure

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### **(1) Should the definition of “sexual intercourse” be amended? If so, how should sexual intercourse be defined?**

ANROWS endorses the proposal given in the preliminary submission of the Australian Queer Students Network and noted in Consultation Paper 21, that the definition of “sexual intercourse” be amended to “penetration of the genitalia or anus of a person”. This definition is both simpler and more inclusive than the current one.

An inclusive definition is an important step towards changing heterosexist attitudes in the community. ANROWS research by Mitra-Kahn et al. (2016) noted that LGBTIQ women consistently raised their fears of heterosexist responses from police and services in relation to reporting their experiences of sexual violence. A fear of police occurs in the context of homosexuality having been illegal in Australia in the living memory of many people who identify as LGBTIQ (McNair, cited in Mitra-Kahn et al., 2016).

## Question 6.3 Jury directions on consent

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### **Are the current jury directions on consent in the NSW *Criminal Trial Courts Bench Book* clear and adequate? If not, how could they be improved?**

Jury directions can be important to address common community misconceptions and attitudes towards consent. Please see the data from the 2017 National Community Attitudes towards Violence against Women Survey cited above at Question 3.2.

## Question 6.4 Jury directions on other related matters

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**Should jury directions about consent deal with other related matters in addition to those that they currently deal with? If so, what matters should they deal with?**

ANROWS suggests that jury directions could also be useful to combat “rape myths”.

The 2017 NCAS conducted by ANROWS (Webster et al., 2018) identified that 18% of Australians disagreed with the statement that “women are more likely to be raped by someone they know than by a stranger”, and 16% said they didn’t know. The report (Webster et al., 2018, p. 54) states:

“The false belief that women are at higher risk of rape by a stranger:

- leads to exaggerated fears of stranger rape, and potentially to women restricting their movements in order to avoid it (Ryan, 2011);
- may contribute to the neglect of rape by known persons in legal and policy reform; and
- is the foundation of what researchers call the ‘real rape script’.

Compared with other crimes against the person, sexual assaults are less likely to be reported, to be prosecuted and to result in conviction (Larcombe, 2011). Researchers have attributed this, in part, to the ‘real rape script’, a story or cultural script that many people hold about what constitutes a ‘real’, ‘credible’ or ‘genuine’ rape (Estrich, 1986). Studies show that the more the circumstances of a sexual assault depart from the ‘real rape script’, the greater the chances that blame will be transferred from perpetrator to victim. This is evident in the responses of victims who are less likely to report (Egan & Wilson, 2012), those to whom they may turn for assistance (Cohn, Dupuis, & Brown, 2009; Grubb & Harrower, 2008; Harrison, Howerton, Secarea et al., 2008; Krahe, Temkin, & Bieneck, 2007; Krahe, Temkin, Bieneck et al., 2008; Weiss, 2009) and in outcomes in the criminal justice system (Ellison & Munroe, 2009a,b; Larcombe, 2011).”

## The 'real rape script': myth and reality

	Myth: the 'real rape script'	Reality
<b>Time and place</b>	In a dark secluded place, outdoors, late at night.	Often a domestic, workplace or social setting (Brecklin & Ullman, 2002; Clark & Quadara, 2010; Untied, Orchowski, & Lazar, 2013).
<b>Victim</b>	Conservatively dressed and of 'good character', not affected by alcohol, no history of mental health or cognitive problems. Typically alone at the time of the assault.	In about half of all reported sexual assaults either the victim or perpetrator have been drinking (Abbey, 2011).  A disproportionate number of victims have disabilities that make them particular targets for assault (Heenan & Murray, 2006).
<b>Perpetrator</b>	Unknown to the victim.	Three times more likely to be known to the victim (ABS, 2017) and may be a person with whom the victim has previously had consensual sex or has spent some time with prior to the assault. Often a man who is socially more powerful than the victim (e.g. a workplace superior).
<b>Consent</b>	Physical force is used, involving aggression and weapons.	Submission typically secured through instilling fear and other forms of psychological coercion (Lievore, 2003).  Weapons rarely involved (Lievore, 2003).
<b>Victim response</b>	Physical resistance resulting in visible physical injury.	A diversity of responses, which may include women psychologically dissociating themselves and giving the appearance of becoming 'frozen' (Mason & Lodrick, 2013). A large proportion of sexual assaults do not involve physical injury (Lievore, 2003).

Figure 2. From 2017 NCAS report (Webster et al., 2018, p. 54)

Specifically, jury directions could address understanding of:

- how common it is for victims/survivors not to report the assault, or not report it immediately
- the reasons why victims/survivors may not report, or not immediately.
- the freeze response
- the impact of trauma on memory

The 2017 NCAS report (Webster et al., 2018, p. 84) further states that:

“Most sexual assault, rape and sexual harassment is perpetrated by a man known to the woman..., and this makes it less likely that the victim will be believed when she alleges that she did not consent (Cook & Messman-Moore, 2018). Rather, the perpetrator may be viewed as having misunderstood or misread her 'signals' and therefore his behaviour is seen as more tolerable than if he had behaved similarly in an encounter with a stranger (Ben-David & Schneider, 2005; Simonson & Subich, 1999).

In many circumstances the perpetrator may hold a position of status in a particular context, and/or hold social or structural power over the woman. This may compound her fear that she won't be believed, as well as her concern that she may suffer social rejection and other consequences if she does report the offence (Crebbin, Campbell, Hillis et al., 2015; McLaughlin, Uggen, & Blackstone, 2017).

A culture of blaming women for 'being raped', disbelieving some women's experiences and minimising others may also lead victims to minimise their own experience, questioning the seriousness of what happened to them, and denying they have been sexually assaulted. This may in turn lead some women to delay reporting. Research into how women label unwanted sexual experiences with dating partners indicates they pass through a process before defining an experience as sexual abuse or assault. In this process, women report having to work through issues of consent, whether they could be said to have 'caused' the abuse and whether indeed the incident was serious enough to constitute assault or abuse (Harned, 2005; Jeffrey & Barata, 2016)."

## Question 6.6 Amendments to expert evidence law

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**Should the law expressly provide for the introduction of expert evidence on the behavioural responses of people who experience sexual assault? If so, why? If not, why not?**

Yes, ANROWS suggests that expert evidence could also be useful to combat "rape myths". As detailed in Question 6.4 above, rape myths are prevalent and may be highly influential to juries. Expert evidence could address understanding of:

- how common it is for victims/survivors not to report the assault, or not report it immediately
- the reasons why victims/survivors may not report, or not immediately.
- the freeze response
- the impact of trauma on memory.

Express provision in the law for the introduction of expert evidence would give weight to the importance of addressing rape myths.

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