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Our Watch Submission to Review of Sexual Consent Laws in South Australia

February 2024

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# Acknowledgement of Country

Our Watch acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay respects to Elders past and present and recognise the continuing connection Aboriginal and Torres Strait Islander people have to land, culture, knowledge, and language for over 65,000 years and that this land was never ceded.

As a non-Indigenous organisation, Our Watch understands that violence against Aboriginal and Torres Strait Islander women and children is not an ‘Aboriginal and Torres Strait Islander problem.’ As highlighted in Our Watch’s national resource *Changing the picture*, there is an intersection between racism, sexism and violence against Aboriginal and Torres Strait Islander women.

Our Watch has an ongoing commitment to the prevention of violence against Aboriginal and Torres Strait Islander women and children, who continue to experience violence at a significantly higher rate than non-Aboriginal women. We acknowledge all Aboriginal and Torres Strait Islander people who continue to lead the work of sharing knowledge with non-Aboriginal people and relentlessly advocate for an equitable, violence-free future in Australia.

# Summary of advice and recommendations

Our Watch welcomes the opportunity to provide this submission to the Attorney-General's Department of South Australia as part of its current *Review of sexual consent laws*. As an organisation with extensive experience and expertise in the primary prevention of gender-based violence within the education system, Our Watch offers this submission regarding the role of consent law and consent education.

Given the significant focus on consent laws and consent education across Australia, which emphasises the need for an evidenced base approach to Respectful Relationships Education (RRE), Our Watch’s feedback highlights existing evidence on consent education, including limitations and opportunities for improvement in South Australia. In the context of RRE, and in line with our expertise, Our Watch’s submission focusses on the discussion question 1, *‘Should the definition of consent in South Australia include a positive obligation to obtain consent, consistent with an affirmative model of consent?’*

In response to this discussion question, Our Watch notes:

* In principle support for the South Australian Government’s strengthening of consent laws, including the adoption of an affirmative model of consent.
* Legal frameworks which assess consent based on a set of physical actions or verbal responses are unlikely to, on their own, achieve the broader societal change required to reduce and prevent sexual violence in the long term. The fundamental principles of bodily autonomy, mutual respect, enthusiasm and willingness should be the focus of a comprehensive approach to consent education, as opposed to a focus only on legal definitions.
* Consent education should occur as part of an evidence-based approach to respectful relationships education which includes teaching and learning about gender equality, sexuality, and respectful relationships, rather than consent being taught as a stand-alone topic.

**Our Watch therefore recommends that the South Australian Government:**

1. Ensure an affirmative model of consent is supported by a long-term vision and commitment for evidence based respectful relationships education in all South Australian schools.
2. Ensure age-appropriate consent education occurs as part of a broader program of teaching and learning about gender equality, sexuality, and respectful relationships, across all year levels, as opposed to being taught as a stand-alone topic in one-off sessions.
3. Recognise respectful relationships education as a key priority for the prevention of violence against women and embed a long-term vision and commitment as part of state-based prevention of violence strategies.

Our Watch welcomes the opportunity to provide further advice or assistance to the South Australian Attorney-General's Department in relation to the issues outlined in this submission. Please contact Amanda Alford, Director of Government Relations, Policy and Evidence at [Amanda.alford@ourwatch.org.au](mailto:Amanda.alford@ourwatch.org.au)

# About Our Watch

**A national leader in prevention**

Our Watch is a national leader in the primary prevention of violence against women and their children in Australia. We are an independent, not-for-profit organisation established by the Commonwealth and Victorian Governments in 2013. All Australian governments are members of Our Watch, including the government of South Australia.

Our vision is an Australia where women and their children live free from all forms of violence. We aim to drive nation-wide change in the culture, behaviours, attitudes, and social structures that drive violence against women and their children.

Guided by our ground-breaking national framework, *Change the story*, we work at all levels of our society to address the deeply entrenched, underlying drivers of violence against women, especially those stemming from gender inequality. We work with governments, practitioners and the community, at all levels of Australian society, to address the drivers of violence in all settings where people live, learn, work, and socialise.

# Background

One of Our Watch’s key areas of focus since our establishment in 2013 has been developing the evidence base for Respectful Relationships Education (RRE). We have extensive history, experience and expertise in RRE and have led pilots in secondary and primary schools, working alongside policy makers, educators, students, school leadership and experts in designing, implementing, and evaluating RRE across Australian jurisdictions (see page 9).

Schools are a key setting for the prevention of gender-based violence, including sexual violence. As quoted from ANROWS *Attitudes Matter: The 2021 National Community Attitudes towards Violence against Women Survey* *- Findings for young Australians* (2023)

…intervention in early childhood and school-aged settings are timely for beginning to address stereotyped ideas, attitudes and practices about gender roles and relationships that underpin gender inequalities and violence against women.[[1]](#endnote-2)

Young women and girls, in particular, are disproportionately affected by sexual violence. Global estimates suggest that almost one in four young women between 15 and 19 years of age have experienced physical and/or sexual violence from an intimate partner since the age of 15.[[2]](#endnote-3) In Australia, young women experience the highest rates of sexual violence perpetrated by men, including sexual assault and harassment. However, homophobic and transphobic harassment and abuse are also common in Australia, and young LGBTIQA+ people are particularly vulnerable to the harmful effects of peer-based victimisation.

A Sex Education Survey of South Australian children and young people by the South Australian Commissioner for Children and Young People found that almost half of girls aged 16-17 years (49%) and almost one in three boys (31%) disclosed having experienced some form of unwanted sexual behaviour in the past 12 months.[[3]](#endnote-4) More than one quarter of young people (28.4%) reported having had unwanted sex, with female students twice as likely as male students to have had unwanted sex (36.8% compared to 15.9%).[[4]](#endnote-5)

Pornography may influence understandings about gender roles, sex and consent, particularly as young people are still forming their ideas and attitudes about these issues and are accessing pornography often years before they start having sexual relationships.[[5]](#endnote-6) Given that mainstream pornography includes ‘significant levels of violent, sexually hostile, sexist and racist content’, teachers, parents and the broader community must be equipped with the educational skills and resources to address the influence of pornography.[[6]](#endnote-7) This is especially necessary as the consumption of pornography is common, usually occurs in private, and often – particularly for children and young people – is not accompanied by access to critique or education about its potential impacts.[[7]](#endnote-8)

Independent research commissioned by Our Watch to measure attitudinal changes of young people (aged 12 to 20 years) and 500 parents found that there are still concerning attitudes around sexual consent and pressure for sex. Almost 60% of young respondents believed that if a boy wanted to have sex with a girl, it was up to the girl to make it very clear she did not want to.[[8]](#endnote-9)

The results of the latest ANROWS National Community Attitudes towards Violence against Women Survey (NCAS) indicate significant improvements by young respondents between 2017 and 2021 in their attitudinal rejection of violence against women. This includes rejection of attitudes that mistrust women’s reports of violence and those that objectify women and disregard consent, as well as rejection of sexual violence, including sexual assault and sexual harassment.[[9]](#endnote-10) However, like the gendered nature of the findings from the independent research commissioned by Our Watch, young respondents tended to see rape as more justifiable if the sexual activity was initiated by the woman.[[10]](#endnote-11) Young women were also significantly more likely than young men to “strongly disagree” with attitudes that disregard consent.[[11]](#endnote-12)

As noted by ANROWS, such findings may reveal a lack of understanding that consent is an active and ongoing communication process. It also emphasises the importance of positively influencing the attitudes and behaviour of young people. This includes societal expectations around masculinity which can constrain young men and contribute to sexist attitudes and behaviours, including violence against women. Our Watch’s ‘[The Line](https://www.theline.org.au/)’ campaign, for example, is targeted specifically at young people in Australia (aged 14 to 20 years) to promote respectful relationships and drive online and interpersonal behavioural change. The Line includes conversations on important topics like relationships, consent, dating, masculinity and gender stereotypes.[[12]](#endnote-13)

In September 2023, the Commonwealth released its recommendations into the Senate Legal and Constitutional Affairs Committee Inquiry into the current and propose sexual consent laws in Australia. As a witness at the hearing, Our Watch provided guidance and advice on the role of evidence-based RRE as a fundamental component of supporting young people to build healthy, inclusive and respectful relationships free from all forms of violence, including sexual violence. As a result, Our Watch welcomed the findings of the Inquiry in relation to respectful relationships in schools, in particular Recommendation 13:

The committee recommends that the Commonwealth government, through the Education Ministers Meeting and in consultation with relevant stakeholders, develops a strategy and delivers funding (in conjunction with the states and territories) for upskilling the education workforce, to achieve the consistent and effective delivery of comprehensive Respectful Relationships Education in Australian schools. This should include consideration of mandatory education in the Initial Teacher Education Curriculum.[[13]](#endnote-14)

In addition to the Inquiry into current and proposed sexual consent laws in Australia, in January 2024, the Commonwealth Government released the *Commonwealth Consent Policy Framework: Promoting healthy sexual relationships and consent among young people*,[[14]](#endnote-15) which is a framework to support organisations working to prevent sexual violence, to promote healthy sexual relationships and sexual consent to young people. It outlines a shared community definition of sexual consent, including core concepts and key principles for promoting consent and healthy sexual relationships.

Our Watch recognises the importance of consent education from early years settings through to universities. Our Watch has also supported information sharing and coordination of practice and best-practice policy nationally, including by convening the National Respectful Relationships Education Expert Group (2017–2020). We have provided ongoing advice to departments of education and other stakeholders across the country on how to design and deliver best RRE.

# Discussion questions

## Should the definition of consent in South Australia include a positive obligation to obtain consent, consistent with an affirmative model of consent?

Our Watch supports the strengthening of consent laws in South Australia as a prevention mechanism, including through the implementation of an affirmative consent model, supported by an evidenced-based approach to RRE. Comprehensive primary prevention, including the prevention of sexual violence, aims to influence laws, policies, practices and behaviours of organisations, groups and individuals to promote gender equality and accountability for violence and discrimination. A focus of prevention includes ensuring sexual relationships are based on the principles of consent, agency, communication and mutual pleasure.

Any change to consent legislation should be supported by an evidence-based approach to RRE, which includes consent education. More broadly, appropriate consent laws are important in providing protection for those who have experienced sexual violence and promote accountability for perpetrators. However, their impact on improving understanding of the fundamental principles of consent within the education system can best be enabled by a comprehensive, whole-of-school approach to RRE**.**

Our Watch suggests that the South Australian Government utilise evidence-based approaches to RRE as a tool to ensure concepts including gender equality, gender-based violence, the impact of stereotypes and consent are understood and supported at the whole of society level, particularly by young people who are disproportionately affected by sexual violence.

The effectiveness of the reform in achieving the broader societal change required to reduce and prevent sexual violence (that is, to enact legislative change in isolation) may not be achieved without introduction of an affirmative model of consent supplemented by RRE. As the *Commonwealth Consent Policy Framework* (2023) states

While conversations about consent and healthy sexual relationships should include an understanding of sexual assault and consent laws, the aim … is to support a cultural shift in community attitudes, to promote respectful sexual behaviour and relationships and prevent violence.[[15]](#endnote-16)

It is important to note that navigating consent is not limited to sexual relationships, rather is a process that applies to many areas of people’s lives and interactions with one another. Consent negotiations should assist in building foundational relationship and communication skills. As such, education on respectful relationships, including consent must be an ongoing process that builds on young people’s skills and knowledge in relevant and age-appropriate ways.

### The impact of consent laws on consent education

The evidence suggests that the primary focus of sexual consent education should be on understanding the fundamental principles of bodily autonomy, mutual respect, and enthusiasm and willingness, rather than taking a solely legal approach. The *Commonwealth Consent Policy Framework* (2023) states:

A balanced approach [to consent education] acknowledges concerning and harmful sexual behaviours, associated laws criminalising sexual assault and how these frame societal expectations around sexual behaviour. It is valuable to understand, consult and provide information on the laws that apply... However, this should be balanced with articulating what healthy sexual activity and relationships founded on consent look like, and the benefits of acquiring related consent skills.[[16]](#endnote-17)

Current approaches to consent education in Australia often focus on legality – at what age and under what circumstances sexual activity is legal or illegal. Whilst educating students on the law has its place, knowing the legal definition of a term is not enough, on its own, to change individual behaviour. The prevalence of underage drinking and smoking, despite laws that seek to prohibit these behaviours, demonstrates the gap between people’s familiarity of legislation and how they behave. For this reason, consent education should not rely or focus solely on teaching legal definitions of consent but rather on communication, pleasure, diversity of experiences and healthy, respectful relationships between young people.[[17]](#endnote-18)

A recent report from the South Australian Commissioner for Children and Young People found that many young people are dissatisfied with their current sex education and want to be taught comprehensive sexuality education that includes “an understanding of the social and practical complexity of consent, rather than just a knowledge of legal definitions” as well as a greater focus on gender, power, respectful relationships and gender inequality.[[18]](#endnote-19) The 2021 National Secondary School Student Survey on Sexual Health identified that students would like Respect and Sexuality Education (RSE) to be more affirming, more frequent, and delivered by teachers who are comfortable with the topic areas. They also reported wanting RSE to attend more directly to issues of sexual communication, pleasure and relationships.[[19]](#endnote-20)

These findings are consistent with other Australian research that has shown young people feel RSE is not adequately inclusive of gender and sexual diversity,[[20]](#endnote-21) and does not focus enough on relationships, navigating sexual intimacy or the social and cultural dynamics of sex and relationships.[[21]](#endnote-22) There is an opportunity to ensure that consent education reflects the reality of students’ lives, focuses on the importance of respectful, honest and open communication, mutual enthusiasm and enjoyment. Strengthening consent education in these ways supports young people in their development of healthy, respectful and consensual intimate relationships.

### An evidence-based approach to respectful relationships education

Respectful relationships education is the holistic approach to school-based, primary prevention of gender-based violence, which includes teaching and learning about healthy relationships, gender, power and control in relationships and consent.[[22]](#endnote-23) RRE uses the education system as a catalyst for generational and cultural change by engaging schools, as both education institutions and workplaces, to comprehensively address the drivers of gender-based violence, including sexual violence, and create a future free from such violence.

RRE goes beyond what is delivered in the classroom. Whilst classroom instruction that enables students to identify, question and challenge the drivers of gender-based violence is a major facet of RRE, evidence shows that to achieve maximum effectiveness, RRE should be realised through a whole-of-school approach. This means addressing the overlapping domains that shape the social climate surrounding students and staff, including curriculum, school policy and practices, school culture and ethos, the working conditions and culture experienced by staff, and the relationships modelled to students by their school community, including staff, parents, guardians and community groups.

Schools are a key setting for the prevention of gender-based violence. RRE in school settings is one of the most promising strategies to prevent gender-based violence, including sexual violence. It provides an opportunity to reach young children early in their development and shape their attitudes, beliefs and behaviour around gender equality and respect. By continuing this education in later years, it provides crucial support and skills to adolescents who are experiencing their first intimate relationships. RRE also supports the creation of safe learning environments for all children and young people, through the transformation of school cultures to create environments that promote gender equality, respect, and non-violence.

A whole-of-school approach ensures a culture among both staff and students where gender stereotypes are challenged, gender-based discrimination is unacceptable, and gender equality is actively promoted, modelled and embedded across the entire school, not only in the curriculum. It is essential that any work undertaken in RRE, including consent education, is inclusive for young people of all genders and does not reinforce gender binaries or stereotypes.

### Consent education as part of an evidence-based approach to RRE

National and international evidence demonstrates that best practice consent education must occur as part of a whole-of-school approach, within a broader program of teaching and learning about gender equality and respectful relationships.

Teaching and learning about RRE, including consent, should commence in early childhood and should be taught in an ongoing, developmentally staged way as children grow older, through a comprehensive approach to respectful relationships and sexuality education.7 This enables students to incrementally build their knowledge and understanding as they progress through year levels. For example, materials for younger children may involve topics including gender stereotypes and foundational concepts of consent such as needing to ask and give consent for physical touch (like hugging), while older students may have more detailed conversations about consent in sexual relationships and about sexual violence.

Consent education should be taught by teachers who have access to ongoing, comprehensive professional development to ensure they are confident, engaged and have the skills and knowledge to deliver respectful relationships content, including consent education. School staff need system-wide implementation support and ongoing, evidence-based professional development to develop the skills and knowledge necessary to deliver consent education safely, confidently and effectively across all year levels.

Our Watch emphasises the important principle that children and young people have meaningful participation in their own learning and encourages consideration of this in all areas of young people’s education, including relationship and sexuality curriculum. Ensuring young people have a voice in their education and learning affirms their agency, independence and leadership. In practice, it helps create more diverse, relevant, meaningful and positive learning experiences and empowers students to make decisions about their own lives.

# Discussion questions

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Any change to consent legislation must be supported by an evidence-based approach to RRE, which includes consent education. More broadly, appropriate consent laws are important in providing protection for those who have experienced sexual violence and promote accountability for perpetrators. However, their impact on improving understanding of the fundamental principles of consent within the education system can best be enabled by a comprehensive, whole-of-school approach to RRE**.**

Our Watch advise that the South Australian Government utilise evidence-based approaches to RRE as a tool to ensure concepts including gender equality, gender-based violence, the impact of stereotypes and consent are understood and supported at the whole of society level, particularly by young people who are disproportionately affected by sexual violence.

Failure to implement an affirmative model of consent supplemented by RRE (that is, to enact legislative change in isolation), will likely limit the effectiveness of this legal reform in achieving the broader societal change required to reduce and prevent sexual violence in the long term. As the *Commonwealth Consent Policy Framework* (2023) states

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Moreover, it is important to note that navigating consent is not limited to sexual relationships, rather is a process that applies to many areas of people’s lives and interactions with one another. Consent negotiations should assist in building foundational relationship and communication skills. As such, education on respectful relationships, including consent must be an ongoing process that builds on young people’s skills and knowledge in relevant and age-appropriate ways.

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The evidence suggests that the primary focus of sexual consent education should be on understanding the fundamental principles of bodily autonomy, mutual respect, and enthusiasm and willingness, rather than taking a solely legal approach. Quoting again from the *Commonwealth Consent Policy Framework* (2023):

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Our Watch emphasises the important principle that children and young people have meaningful participation in their own learning and encourages consideration of this in all areas of young people’s education, including relationship and sexuality curriculum. Ensuring young people have a voice in their education and learning affirms their agency, independence and leadership. In practice, it helps create more diverse, relevant, meaningful and positive learning experiences and empowers students to make decisions about their own lives.

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