

# Justice Responses to Sexual Violence

As the largest national peak body for men's family violence services, our interest in justice responses to sexual violence is focused on sexual violence in the context of domestic and family violence.

Sexual violence is an under-reported form of domestic and family violence and is 'a sign of escalating abuse and heightened risk including risk of lethality'<sup>1</sup>. However, sexual violence is often treated separately to domestic and family violence.<sup>2</sup> This siloing is a missed opportunity to respond accurately to instances of sexual violence within domestic and family violence – denying support to victim-survivors, including by keeping people using violence in view of service and criminal justice systems.

Law reform efforts represent a historic opportunity to accurately represent victim-survivors' experiences in the law. Victim-survivors should be confident that they will be safe and treated with dignity when reporting sexual violence and throughout the prosecution of their case. Safety and dignity for victim-survivors means ensuring accountability for people using violence and opportunities for them to change their behaviour to end their use of violence.

Instituting an affirmative consent standard will go part of the way to address the impact of myths about sexual violence that permeate through the criminal justice system – from the barriers presented to reporting sexual violence through to the availability of interventions for people using domestic and family violence, inclusive of sexual violence.

## Myths drive justifications of sexual violence

The National Community Attitudes Survey (NCAS), run by Australia's National Research Organisation for Women's Safety (ANROWS), consistently finds that at least a quarter of Australians mistrust women's reports of sexual assault.<sup>3 4</sup> Such persistent community attitudes feature in all facets of society, including where police, the judiciary, jurors, and legal professionals live and work.

It is essential that amendments to sexual assault laws include work to **address the impact of rape myths on decision-making** at all stages of sexual assault cases. For example:

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<sup>1</sup> Helps et al. (2023) [Let's Talk About Sex: Exploring Practitioners' Views on Discussing Intimate Partner Sexual Violence in Domestic and Family Violence Perpetrator Intervention Programs](#)

<sup>2</sup> See for example [offence specific programs delivered in custodial environments](#) that differentiate between sexual violence and all other forms of gendered violence.

<sup>3</sup> Coumarelos et al. (2023) [Attitudes Matter: The 2021 National Community Attitudes towards Violence against Women Survey \(NCAS\), Findings for Australia.](#)

<sup>4</sup> See ANROWS' further analysis of these findings in Minter et al. (2021) ["Chuck Her on a Lie Detector": Investigating Australians' Mistrust in Women's Reports of Sexual Assault.](#)

- Low conviction rates for sexual assault offences reinforce notions that women are responsible for preventing and otherwise managing sexual assault.<sup>5</sup>
- Biased decision-making in reporting and prosecuting sexual assault damages **community confidence in the efficacy of the entire criminal justice system** - including with police forces, courts, and prisons.<sup>6 7</sup>

It is crucial that people who use sexual violence are not emboldened by flaws in the criminal justice system's understanding of the use of sexual assault and coercion in the context of domestic and family violence. Improving community confidence in decision-making during sexual assault cases **sends a clear message to the broader community**, to people using violence, and to victim-survivors that **sexual violence is not acceptable** and that accountability rests with those using violence, not with victim-survivors.

**Men accessing No to Violence's phone counselling services regularly justify their use of sexual violence by invoking myths that permeate sexual assault trials.** For example, that:

- Men who use sexual violence are 'out of control';
- Dynamics within sexual violence are part of a 'normal' romance;
- Women commonly make false sexual assault allegations;
- 'Real' sexual assault is only committed by strangers;
- Women bear some responsibility for preventing sexual assault.<sup>8 9</sup>

People using violence are not encouraged to take accountability and change their behaviour when those around them express such violence-supportive attitudes, including by subscribing to common rape myths.<sup>10</sup>

According to the NCAS, the most commonly held myths about sexual assault are:

- 1 in 3 Australians (35%) agree that sexual assault accusations are commonly used to 'get back' at men;
- 1 in 4 Australians (25%) agree that men who are sexually aroused may not realise that a woman doesn't want to have sex;
- 1 in 4 Australians (24%) agree that many women exaggerate the extent of men's violence against women; and

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<sup>5</sup> All of the national organisations and peak bodies focused on women's safety from gendered violence, including No to Violence, supported an affirmative consent approach in the course of the [2023 Legal and Constitutional Affairs References Committee Inquiry into Current and Proposed Sexual Consent Laws in Australia](#).

<sup>6</sup> Gore, Ashlee (2020) [It's All or Nothing: Consent, Reasonable Belief, and the Continuum of Sexual Violence in Judicial Logic](#); Honey-Lowes, Rachel (2020) [Online Anti-Rape Activism: Exploring the Politics of the Personal in the Age of Digital Media](#); and Larcombe et al. (2016) ['I Think it's Rape and I Think He Would be Found Not Guilty': Focus Group Perceptions of \(un\)Reasonable Belief in Consent in Rape Law](#).

<sup>7</sup> See Productivity Commission (2022) [Report on Government Services: Police Services](#).

<sup>8</sup> For more detail on justifications for sexual assault that No to Violence commonly encounters, please arrange a meeting with our CEO, Phillip Ripper, or General Manager of Services, Lauren Palma.

<sup>9</sup> See for example, Australia's National Research Organisation for Women's Safety (2023) [Submission 69, Senate Legal and Constitutional Affairs Committee Inquiry into Current and Proposed Sexual Consent Laws in Australia](#).

<sup>10</sup> DeKeseredy and Schwartz (2013) [Male Peer Support and Violence Against Women: The History and Verification of a Theory](#).

- 1 in 5 Australians (21%) agreed that women who say they were raped do so because they regretted having sex.<sup>11</sup>

The shift towards an affirmative consent legal standard would go part of the way towards refuting persistent community attitudes that sexual assault is acceptable or should not be prosecuted.<sup>12 13</sup> However, staff involved in the enforcement and interpretation of sexual assault laws can enact structural discrimination when they also rely on myths about whose sexual assault allegations are believable. **Recognition of how gendered drivers intersect with other forms of structural discrimination, including racism, classism and ableism is the first step towards improving the safety of the criminal justice system for victim-survivors.**

The responsiveness of the criminal justice system is under threat when professional judgement is impacted by discriminatory attitudes. In these circumstances, people using violence may perceive that the criminal justice system is 'on their side' and that their use of violence is justified. Others may be emboldened to use violence when mechanisms for ensuring accountability fail. The handling of Lynette Daly's death is a pertinent example of the criminal justice system's failure to respond to sexual violence due to structural discrimination (outlined below)

**Myths about sexual assault reinforce discriminatory community attitudes towards women and gender diverse people. These are more pervasive when one or more forms of discrimination intersect.** For example, when gender-based discrimination overlaps with race, class, dis/ability, and sexuality.

Lynette Daly, an Aboriginal woman, died in 2011 because of extensive injuries inflicted on her during the course of brutal sexual assaults by Adrian Attwater and Paul Maris. The New South Wales Director of Public Prosecutions declined to prosecute the case on two separate occasions.

This decision was made despite the horrifying nature of the incident; forensic evidence; Attwater and Maris' prior contact with police; and recommendations made by the NSW Coroner.<sup>1</sup>

Lynette's injuries and blood alcohol content were clear indicators that she would not have had the capacity to consent to the acts inflicted on her. Instead, scrutiny on Lynette's ethnicity, prior system involvement, experiences of poverty, and the nature of her relationships were made a key focus in the handling of this case.

After public attention on Lynette's death, Attwater and Maris were eventually investigated and found guilty in 2017, 6 years after Lynette Daly's death.<sup>1</sup>

Under an affirmative consent standard, there are three essential components necessary to dispel the impact of myths on decision making.

<sup>11</sup> See ANROWS' further analysis of these findings in Minter et al. (2021) ["Chuck Her on a Lie Detector": Investigating Australians' Mistrust in Women's Reports of Sexual Assault.](#)

<sup>12</sup> Heath, Mary (2007) [Lack of Conviction: A Proposal to Make Rape Illegal in South Australia.](#)

<sup>13</sup> Other empirical studies have reported similar findings. See for example Carmody, Moira (2015) [Sex, Ethics, and Young People](#); Larcombe, Wendy (2014) [Limits of the Criminal Law for Preventing Sexual Violence](#); and Marks, Shawna (2021) [The Sexual Politics of Australian Football: Social Constructions of Masculinity, Sex, and Sexual Violence.](#)

1. Police, the judiciary, legal professionals and jurors must have access to **explanatory notes and guidance that directly disrupt myths about sexual assault and embed a universal understanding of sexual assault in the context of domestic and family violence.**<sup>14 15 16</sup> Existing training on domestic, family and sexual violence should explicitly link to roles and responsibilities for police, legal professionals, judicial staff, and jurors. Any relevant complaints processes, disciplinary action, or other consequences for deviating from these roles and responsibilities should also be explicitly stated.
2. Circumstances of non-consent should make it clear that **victim-survivors can have many responses to sexual assault and show resistance in varied ways**, including, but not limited to, physically resisting (fight); becoming non-responsive (freeze); and attempting to leave the situation (flee).
3. **Independently monitor and evaluate any new or amended legislation against pre-established criteria to ensure it is working as intended.**
4. Monitoring and evaluations should seek to maximise engagement with explanatory notes and guidance, as well as any relevant existing training. These must improve marginalised people and communities' experiences with the criminal justice system and build community confidence in criminal justice system decision-making.

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<sup>14</sup> Sexual coercion, similar to coercive control, is an underpinning dynamic of sexual violence. Sexual coercion can overlap with coercive control, systems abuse and other forms violence as part of strategies to avoid accountability for sexual assault and other forms of domestic and family violence.

<sup>15</sup> Cox, Peta (2015) [Sexual Assault and Domestic Violence in the Context Of Co-Occurrence and Re-Victimisation: State Of Knowledge Paper](#); Tarzia, Laura (2021) [Toward an Ecological Understanding of Intimate Partner Sexual Violence](#).

<sup>16</sup> See Insight Exchange (2021) [My Dignity, My Body is Mine](#) for practical examples of sexual violence, including coercion.