



YWCA CANBERRA

Comment on the Crimes (Stealth) Amendment Bill 2021

Acknowledgement of Country

YWCA Canberra proudly recognises the rights of Aboriginal and Torres Strait Islander peoples to own and control their cultures and pays our respect to these rights. YWCA Canberra acknowledges the need to respect and encourage the diversity of Indigenous cultures and to respect Indigenous worldviews, lifestyles and customary laws. We extend our respect to the Aboriginal and Torres Strait Islander women who for thousands of years have preserved the culture and practices of their communities on country. This land was never surrendered, and we acknowledge that it always was and will continue to always be Aboriginal land.

About YWCA Canberra

YWCA Canberra is a feminist not-for-profit organisation that has provided community services and represented women's issues in Canberra since 1929.

Our mission is 'We strengthen communities by supporting girls and women through our services and advocacy' and our vision is 'Girls and women thriving'.

We provide essential, quality services for women, girls and families in the ACT and surrounding regions. We work in the areas of children's services, community development, homelessness and affordable housing, youth services, personal and professional training, women's leadership and advocacy.

We are externally accredited against the [Quality Improvement Council \(QIC\) Health and Community Service Standards \(7th Edition\)](#). Accreditation against the QIC standards support us to improve client and community engagement, diversity and cultural appropriateness, management systems, governance and service delivery, while committing to a cycle of continuous quality improvement. In addition to the QIC standards, we are accredited against the following external client related service standards for our key areas of work:

- [Australian Charities and Not for Profit Commission](#)
- [National Quality Standard for Early Childhood Education and Care and School Aged Care](#)
- [National Regulatory System for Community Housing](#)
- [Registered Training Organisations Standards](#)

Through our national Affiliate Association with YWCA Australia, we are part of the World YWCA network, which connects 120 countries across the globe.

Introduction

YWCA Canberra welcomes the opportunity to provide feedback on the suggested amendment to the Crimes Act (Stealthing) Bill 2021. As a feminist not-for-profit organisation with a 90-year history in Canberra, one area of our work is providing therapeutic and support services to women who have experienced gender-based violence. Our events schedule and youth engagement programs, targeted to young people in formal education settings, mean we also bring experience in hearing and sharing the voices and concerns of young people trying to safely explore sexual development in their peer group. We have been longstanding advocates for legislative reform and participated in the earlier Crimes (Consent) Amendment Bill 2018, giving evidence to incorporate an affirmative definition of consent into the ACT Crimes Act.

The period since this 2018 inquiry has seen the public discussion and awareness of the dynamics of consent substantially progress while the legislation and education setting has not kept pace. This social transformation co-exists with evidence demonstrating a strong proportion of young people as young as nine, are being exposed to sexual content that has the potential to reinforce myths around consent such as “women say ‘no’ when they mean ‘yes’”¹ These counter narratives reflect two divergent realities between a growing public discussion taking place among the broader population and the premature exposure of young people to sexual content that is not being countered by adequate consent education.

YWCA Canberra are not a legal service. In making this submission we conducted a short survey targeted to young persons aged 16-24 who were residing in Canberra. The survey attempted to gauge the latent awareness young people had of both the act and terminology of ‘stealthing’, their

“When we learnt about respectful relationships in high school it became more clear, however this was in Year 10 when half of us were already having sex. In sex ed we didn’t learn enough about consent or respect, I feel I am lucky that we learnt it eventually but wish I learnt about emotional abuse and respect earlier on. I feel that my first boyfriend manipulated me into having sex many times and I didn’t know it was wrong at the time” - Respondent 19-24

understanding of the current legislative framework and their exposure to and reflections of the sexual consent education they may have received.

As longstanding advocates for the community and for women who may be survivors of sex crimes or other forms of gender-based violence, we support legislative reform that

¹ Australian Institute of Family Studies (2017) *The effects of pornography on children and young people*. <https://aifs.gov.au/publications/effects-pornography-children-and-young-people-snapshot#:~:text=violence%20against%20women-Exposure%20to%20pornography,and%2017%25%20of%20someone's%20genitals>.

unambiguously includes 'stealthing' as an act that negates consent previously given on the condition that a condom was used. We offer recommendations that complement legislative reform to prevent and respond to stealthing and sexual violence more broadly.

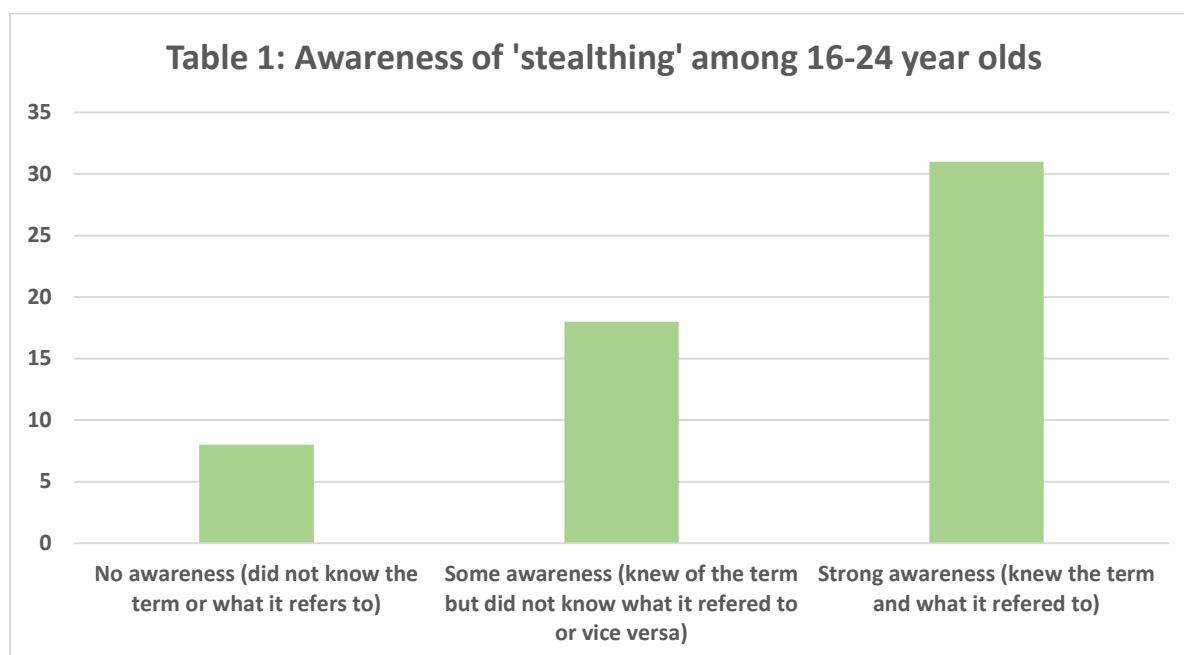
Survey rationale

To substantially value-add to the Directorate's consultation on this important reform, YWCA Canberra reached out to our community to gauge the current level of awareness among young people of 'stealthing', their understanding of the law around consent and, their exposure to consent education more broadly. We sought their feedback on the quality of consent education and the impressions of whether this education provided an adequate footing into managing and navigating sexual development. The survey received 101 responses in total, with 44 responses eliminated due to ineligibility based on the age-bracket (n=32) or not residing in the ACT (n=12). The analysis presented here is derived from the remaining responses (n=57).

The survey was deliberately targeted to young people aged 16-24 years. The decision was made to capture those who are still in the formal education setting as well as others whose age meant they had only recently exited formal education and their consent education, in the event they received some, reflected a contemporaneous model.

Awareness of 'stealthing' and exposure to consent education

Awareness of stealthing among young Canberrans is variable. A small majority of respondents (54%, n=31) indicated they had a strong understanding of 'stealthing', meaning they knew both the terminology and the action it referred to.



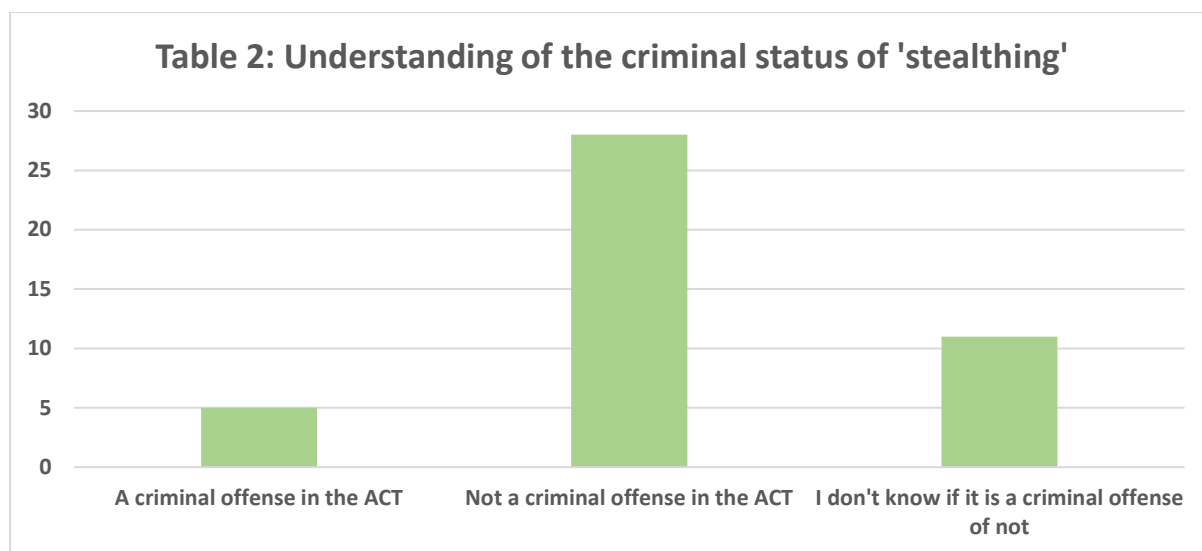
In order to better understand the routes that young people take to become sexually cognizant, we asked those respondents with 'some' or a 'strong' awareness of stealthing how they came to their current level of understanding. The majority of responses indicated

“Discussions with well-educated friends, and news articles about attempts to criminalise online” – Respondent 19-24

“I was aware that men did it through talking with friends and then it happened to me” - Respondent 19-24

in some instances personal experiences of sexual assault. Crucially, there was no indication that formal education was relevant in developing an awareness of 'stealthing'.

Our survey also attempted to gain an understanding as to whether young people believed 'stealthing' to already be a crime (Table 2). A majority of respondents (63%) do not believe 'stealthing' to be a criminal offense. The remaining responses either believed 'stealthing' to already be a criminal offense (11%) or did not know its status (25%). As we did not target for education level or understanding of s 67 of the Crimes Act 1900, the question did not account for the possibility that responses may reflect the respondent's prior understanding of the legal argument that 'stealthing', as an act that negates consent, could, theoretically, be prosecuted under the condition of s 67.1G.



The responses reflect a degree of confusion about the reach of the law on matters of consent. Despite the theoretical legal argument of s 67.1G, confusion regarding the criminality of 'stealthing' and the fact the majority believe it is not a criminal offense in the Crimes Act 1900 has the potential to influence a person's decision to pursue criminal charges in the event they experienced an act of 'stealthing'. Given acknowledged underreporting of sexual assaults and

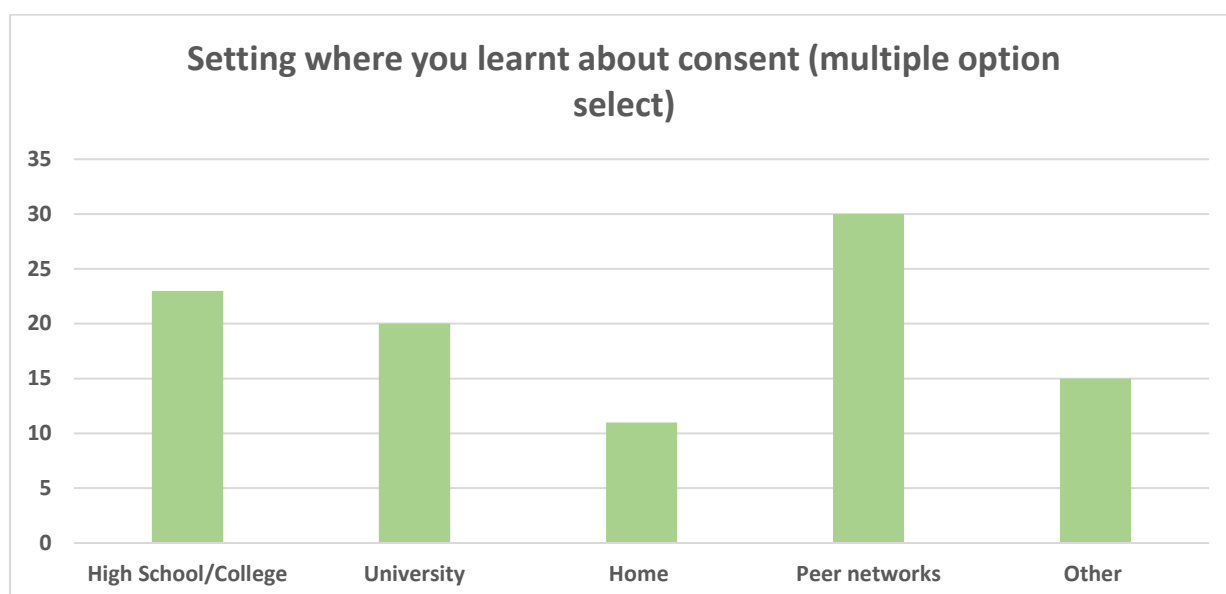
broad scepticism among survivors in how the justice system responds to crimes of sexual consent, YWCA Canberra recommends that proposed legislative reform be complemented by broader community education to lift awareness.

Recommendation 1: Incorporate an explicit reference to stealthing as an act that negates consent in s 67.1 of the Crimes Act.

Recommendation 2: Reinforce legislative reform with a complementary and concurrent community education campaign.

Beyond Legislative Reform

We acknowledge the comments attributed to the Minister for Women, that legislative reform is only “one part of th[e] story”² in addressing low prosecution rates for sexual assault cases despite an increase in formal complaints of sexual assault. We agree that legislative reform should not exist in a vacuum. Rather, an understanding of an individual’s rights when it comes to negotiating the terms of a sexual encounter as well as accommodating access to justice following an alleged sexual assault demands both a legislative and social response.



To this end, we sought to understand the settings where respondents learnt about consent. Unsurprisingly the role of informal peer-networks was significant. The ‘other’ category promoted further input from the respondent to provide detail on the setting of their consent education. In these responses we can see the influence of social media in cultivating

²“Long waitlists and low prosecution rates deterring sexual assault survivors”, The Riot ACT (2021) <https://the-riotact.com/long-waitlists-and-low-prosecution-rates-deterring-sexual-assault-survivors/457446>

awareness of sex and consent with nearly 70% of responses referencing 'social media', 'Instagram' or 'online communities.'

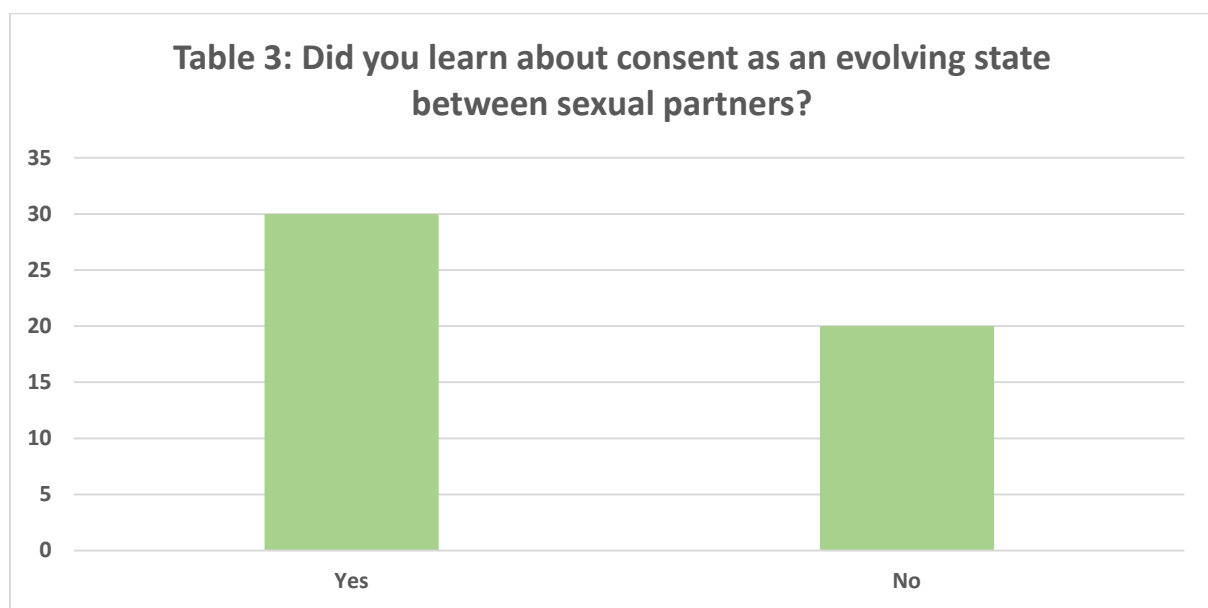
YWCA Canberra are longstanding advocates for comprehensive consent-based education that is evidence based and age-appropriate in a setting that allows the messages of negotiation and personal boundaries to be reinforced and respected. The survey reveals that 98% of respondents had received

“First comprehensive learning was in my first semester at university. Although it was comprehensive, it should have been taught earlier in high school” - Respondent 19-24

“Consent was always taught as if you are having sex you need to say yes or no and that was all” - Respondent 19-24

education on sexual consent. Further exploration of these responses however reflect a concerning trend in the content of consent education and subsequently, in how consent is understood by young people. As the respondents were aged 16-24 and living in the ACT, we are comfortable that the responses represent a

contemporaneous reflection of consent-education in the ACT education system.



The survey responses indicate an outdated model of consent continues to underpin consent education in ACT Schools. This model presents consent as a binary. In particular, 'yes means yes and no means no', was repeatedly referred to by respondents and appears to be a common instruction used to communicate consent in a real setting. This mantra has limited

relevancy today as victim responses such as freezing or acquiescing to avoid escalating the situational violence at hand are recognised as valid fear responses.³

‘Stealthing’ occupies a unique position in the dynamics of consent. Because it takes a previously consented to arrangement (sex with a condom) and changes the terms of that arrangement (sex without a condom), it highlights consent as an ongoing negotiation between parties and that consenting to one specific act does not imply consent to other acts. This distinction of consent as an evolving agreement is important in countering public discourse that can lend itself to victim blaming and recognising the validity of reactions to assault including freezing or acquiescing out of fear.

As the community’s understanding of consent has transformed, so too must our instruction of it. Promulgating ‘yes means yes, no means no’ is not only no longer reflective of acknowledged victim responses it is also not reflective of the Crimes Act 1900 s 67.2 where ‘the absence of physical resistance shall not (...) be regarded as consenting to the sexual intercourse’.

YWCA Canberra are advocates of law reform that is reinforced with broader community campaigning. In this regard we draw your attention to previous

recommendations, not yet acted upon, from the Report on Inquiry into the Crimes Act (Consent) tabled by the Standing Committee on Justice and Community Safety. In this inquiry the Committee recommended that; *a complementary education program on consent be put in place [and that] such a campaign especially focus on young people.*

Recommendation 3: Conduct a comprehensive review of consent-based education material used in ACT Schools to ensure contemporary relevancy and sufficient understanding and confidence among educators.

“Consent was always taught as if you’re having sex you need to say yes or no and that was all” – Respondent 19-24

“They explained in school that it’s an agreement before sex, but not that you can revoke it at any time. I learnt the second part online” – Respondent 19-24

“That consent actually has to be a yes or no, you can’t just go ahead even if the person isn’t stopping you” - Respondent 16-18

“[Consent was] just about saying yes but not on what terms you are saying yes to – Respondent 19-24

³ In their advice to the NSW Attorney General regarding consent in relation to sexual offences the NSW Law Reform Commission (2020) recommended the *Criminal Procedures Act* (NSW) include a direction to incorporate the ways people respond to threats of sexual assault including “freezing or by not saying anything at all” <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report%20148.pdf>

Recommendation 4: The recommendations arising from the 2018 Inquiry into the Crimes Act (Consent) be progressed with a view to implementation.

Conclusion

Young people are exploring their own sexual development and establishing a nuanced understanding of sexual consent in the absence of formal education settings. The very nature of sexual development and exploration relies heavily on the influence of informal peer networks. Responses to our survey however indicate there remains immense scope for formal education to have a role in facilitating an understanding of the dynamics of consent and the realities of less overt forms of sexual assault among young people.

The survey responses indicate a degree of confusion among Canberrans aged 16-24 on the issue of 'stealthing' and its criminal status in the Crimes Act 1900. Further to this, the educational instruction many are receiving on consent may not be sufficient to provide guidance on consent as an evolving agreement, which 'stealthing', by its very nature, is an abrogation of. This confusion may impact on willingness of survivors to pursue criminal charges relating to a sexual assault and subsequently there is likely to be benefit to amending the Crimes Act 1900 to include an explicit reference to 'stealthing' as an act that negates consent previously granted. Given the survey responses indicated an outdated model of consent education was commonplace in ACT schools, there is clearly a need to review existing education material and teacher guidance as it relates to consent, regardless of whether the proposed amendment is agreed to.