



YWCA CANBERRA

**Submission to the Sexual Assault Reform Legislation Amendment
Bill 2022**

Leah.dwyer@ywca-canberra.org.au

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 contribute to the Inquiry into Sexual Assault Reform Legislation Amendment Bill 2022. As a longstanding provider of services for women and girls, including domestic violence support services and advocates for their collective wellbeing and safety, we are committed to seeing progressive legislative and social reform that facilitates their unencumbered access to both justice and front-line justice support.

YWCA Canberra was privileged to be invited to participate in the Sexual Assault Prevention and Response program which has informed much of this omnibus reform. While members of the Prevention working group, we have maintained a strong interest in legislative reform particularly where it related to sexual consent and domestic and family violence. We note that while most of the listed amendments reflect recommendations of the 2021 *Listen. Take action to prevent, believe and heal* report, some recommendations predate this consultation and were documented in the *Report of the Review of the Family Violence Act 2016* as a result of widespread consultation with victim-survivors of violence.¹

Evidence of prior family violence

An intrinsic purpose of law reform is to keep pace with evolving community standards and understanding. In this regard, community awareness of domestic and family violence has grown, and so too does the broad collective understanding that intimate partner violence, rather than being a series of discreet incidences, often presents as a pattern of abusive behaviour.

We welcome the amendments to the *Evidence Act (1991)* which permit prior, uncharged acts of family violence to be admissible in evidence, in sexual offences, where it provides substantive context to the allegations. Not only does this reform place sexual offending, as it happens between intimate or otherwise domestic partners, within the broader forms of power and violence used to exercise relationship control, but it recognises the cumulative impacts of patterned offending some of which, in the dynamics of an abusive relationship, “may appear trivial” to outsiders (74A(2)).

YWCA Canberra believes this reform, and the narrative it cements regarding *patterns of behaviour*, is both timely as a set of consistent national principles to define and respond to coercive control are being established across the country. Further, as the ACT takes the initial steps to criminalise coercive control in the *Family Violence Act (2016)* undertaking reforms to

¹ [Review of the implementation of the Family Violence Act 2016 \(ACT\) : report prepared on behalf of the ACT Government \(nla.gov.au\)](https://www.nla.gov.au/review-of-the-implementation-of-the-family-violence-act-2016-act)

other peripheral legislation and beginning the public conversation on the dynamics of abuse and violence is a fundamental first step.

The defendant's level of intoxication

YWCA Canberra supports those amendments to the *Criminal Code (2002)* which deem self-intoxication of a defendant as irrelevant to the trier of fact when assessing recklessness in determining sexual consent. In the absence of this reform, a defendant's intoxication can continue to be considered by a jury when assessing whether a defendant was reckless while establishing consent. This amendment aligns with community expectations that drunkenness, while not an inevitable indicator of guilt, is also not an excuse for criminality and should not be drawn upon as a mitigating factor in establishing recklessness as it pertains to sexual assault offences.

The amendment provides for explicit jury directions that preclude self-intoxication from being taken into consideration. As reported in the *Listen. Take action to prevent, believe and heal* report, this reform is expected to also remove a degree of confusion on the part of juries as to the how drunkenness can be both a factor in recklessly establishing consent but not in and of itself in defending against sexual offence allegations. Beyond this, YWCA Canberra continues to monitor progress at the national level regarding jurisdictional consistency of both the language and scope of law reform relating to sexual offending and we welcome that this change adds incrementally to this consistency.