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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100, Parliament House
Canberra ACT 2600

15 March 2023

To Whom It May Concern,

RE: SHV submission to the Legal and Constitutional Affairs Committee in response to inquiry on current and proposed sexual consent laws in Australia

I write to you on behalf of Sexual Health Victoria (SHV; formerly Family Planning Victoria). SHV is a state-wide, not-for-profit organisation that has been providing high quality sexual and reproductive health clinical services, training, education and advocacy for over 50 years.

SHV supports the senate inquiry on current and proposed sexual consent laws in Australia and appreciates the opportunity to provide a submission. We consent to this submission being published on the inquiry website and shared publicly online.

If you wish to discuss this submission, please contact me at cmulcahy@shvic.org.au or 0418 108 267.
Thank you for your consideration.

Sincerely,

Caroline Mulcahy, she/her
CEO, Sexual Health Victoria

Sexual Health Victoria submission to the Legal and Constitutional Affairs Committee in response to inquiry on current and proposed sexual consent laws in Australia.

About Sexual Health Victoria (SHV)

SHV (formerly Family Planning Victoria) is a state-wide independent, for-purpose, all-choice organisation that focuses on reproductive and sexual health care, education and advocacy. SHV seeks to advance sexual health literacy and build capacity through education services within primary care and community-based systems to further support people to make decisions about their reproductive and sexual health that are right for them.

For over 50 years, SHV have been a leading provider of:

- Relationships and Sexuality Education (RSE) programs for young people in primary, secondary and specialist schools and community settings
- Professional training and education on reproductive and sexual health for youth and community workers, doctors, nurses and other health professionals
- Sexual health care at our two clinics in Box Hill and Melbourne CBD.

Sexual consent laws, and how they impact the community, form a central part of our work in terms of educating young people about consent and respectful relationships, and supporting victim survivors of sexual violence. From this perspective we offer the following responses to the Senate Inquiry Terms of Reference.

SHV response to Senate inquiry Terms of Reference

Current and proposed sexual consent laws in Australia, with particular reference to:

a. inconsistencies in consent laws across different jurisdictions;

There are many inconsistencies within current state, territory and national laws on sexual consent, including age of consent, image based abuse and failure to disclose laws. Inconsistencies in these laws create the following problems:

1. Increased barriers to community understandings of sexual consent laws, particularly among young people
2. Undermining young people's understandings and attitudes regarding the core ethics underpinning positive, respectful, consensual sex
3. Increased difficulties for educational, health and welfare professionals to understand, educate and support young people according to the law when it comes to sexual consent and experiences of sexual violence
4. Increased barriers to young people seeking healthcare and support due to risk of mandatory reporting.

For example, in Victoria, the age of consent legislation is written in such a way that educators find it difficult to interpret and impart to students. Victorian law aims to address misuse of power in relationships by specifying that sexual relationships have no more than a 24 month age gap if someone is between 12 and 15 years old. This is expressed as the 24-month age gap being a defence in court. Some young people have been left with the impression from schools that the consensual sex they may have had is illegal and must be defended in court if anyone finds out. If young people think they have broken the law, this forms a significant barrier to seeking help, such as contraception or STI testing.

Another area which is inconsistent and confusing for young people is the exchange of sexual messages (sexting). While a person aged between 12 and 18 may be able to validly consent to sexual activity, any sexual images exchanged may be considered child sexual abuse material by federal law. This may be particularly confusing for young people aged 16 to 17 years who do not have restrictions on the age of the person they have sexual relationships with.

SHV have witnessed the inconsistent ways in which image-based abuse laws are applied for young people within schools. Schools often try to manage this without involving the police. If police are notified, they may sometimes use discretion to keep young people out of the judicial system. While it seems reasonable that

adults would take every measure to keep young people out of the legal system and away from a path of legal intervention, this is not what young people are told. Students are typically told that if they break the law, they will face legal consequences. The fear this elicits can become a strong barrier to asking for help.

Failure to disclose law, which applies only in Victoria, is another area of law that complicates messaging around consent when educating young people and the professionals who support them. Failure to disclose law requires all adults in Victoria to report sex that is occurring outside of the legal age. In practice, this means the requirement to report sex that might occur between someone under 16 years and someone 18 years and older, even in instances when the young people regard the sex as consensual. Although set up to protect young people from abuse, this law needs further review and clarification. Exemptions apply for some professionals, including registered medical professionals and psychologists, but not other professionals such as registered nurses, who may be supporting a young person with health services such as contraception. A young person may attend a clinic expecting confidential medical care and find that they are reported to police. This risk creates a large barrier to young people accessing care.

f. impact of consent laws on consent education;

Inconsistencies in laws regarding age of sexual consent make it difficult for educators and community workers to effectively communicate consent laws to young people in school and community settings. SHV have noticed that consent education is inconsistent across the country and within Victoria. While consent education has been mandated, schools are able to choose what resources are appropriate for their students. Many teachers feel underconfident in delivering consent and sexuality education and are hyper aware of potential backlash within parent communities. The Victorian Curriculum, in particular, is not specific enough for teachers to find obvious direction on when and where they could teach sexual consent. The Resilience Rights and Respectful Relationships initiative is relevant to lessons on sexual consent, but not a focus of this resource.

Teaching sexual consent through a primarily legal framework can also be problematic, in that some students may focus on legal loopholes or ways to narrowly avoid illegal behaviour. Sexual consent education should primarily focus on being a positive, ethical, pleasurable experience. Paired with this, any consent education program should enable young people to understand help seeking pathways, including legal reporting, and psychosocial and health support, to enable greater agency in young people's reporting experiences of violence.

School staff also need to understand reporting pathways and prioritise the experience of victim survivors while meeting their mandatory reporting requirements. This is particularly unclear for school staff managing reports of image-based abuse. Staff can be unsure if they need to see or cite materials circulated to make reports. This can put schools in situations in which they are essentially storing child sexual abuse material or viewing it to make a report. SHV have also heard anecdotal reports of parents sharing material to draw attention to the behaviour of students. It is common for young people who have experienced image-based abuse to be blamed for creating a sexual image of themselves. Focus needs to shift to the person who has shared without consent.

SHV recommendations

SHV recommends **unified affirmative consent laws across each state and territory** to increase community and professional understandings of these laws and the critical ethics underpinning them. A change to unified affirmative consent laws has the capacity to promote social change around how Australians view consent and how it should be sought. Harmonisation of affirmative consent laws across Australia will also enable greater clarity and consistency for consent education within the Australian Curriculum, and how it is applied within schools across the country.

SHV promote a student centred, ethics-based approach to consent education. Ideally young people are approaching sexual experiences with the understanding that they have the right to positive experiences if, and when, they choose. This extends to online sexual experiences. An ethics-based approach considers much more than what is reflected in the law, including the array of personal values relating to relationships and intimacy.