

## SUBMISSION TO THE

### *Discussion Paper Review of Sexual Consent Laws in South Australia*

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COTA SA welcomes the opportunity to provide a submission to *Discussion Paper Review of Sexual Consent Laws in South Australia*.

We are an older people's movement run by, for and with older people. We represent the rights, interests and futures of 700,000 older South Australians. We engage widely with older South Australians across the state, in person, via phone and email. The lived experiences of the diverse community of older South Australians shape our policy and advocacy work.

COTA SA is currently undertaking a research and co-design project for Office for Women that explores Family, Domestic and Sexual violence experienced by older women in South Australia (due for completion in October 2024). It has been found that the intersectionality of age, gender and violence is often missing from academic literature and research. As a consequence, the unique experiences of older people, and especially older women, who are experiencing, or have experienced, violence are often invisible in the sexual violence discussion and rather get picked up in discourse around elder abuse.

In the context of the *Discussion Paper*, we urge that the unique experiences of older people are considered regardless of whether it is labelled 'sexual violence' or 'elder abuse'. This is particularly important in the context of older people who have experienced sexual violence in Residential Aged Care<sup>1</sup>, or where the perpetrator is known to and trusted by the victim, such as

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<sup>1</sup> At the time of the Royal Commission into Aged Care Quality and Safety, there were an estimated 2,520 incidents of unlawful sexual contact in Residential Aged Care.

a carer or family member. We have made comment on the *Discussion Paper* and discussion questions where we feel we can meaningfully contribute.

## Issues

- The *Discussion Paper* acknowledges that sexual violence is still under-reported to police (p7). Research literature<sup>2</sup> has identified the following barriers for older women to report abuse:
  - Fears of shame and stigma related to leaving a marriage
  - Ideals of being a good mother
  - Perceiving violence as normal or inexistent
  - Fears of being blamed by family or friends if they reached out for help
  - Lack of awareness of services
  - Deterrence of reporting by others, such as family members
  - Financial insecurity
  - Technological barriers to service access
  - Lack of services tailored to the experiences of older women
- COTA SA supports an affirmative consent model (p16), however further consideration will need to be given to how this would occur between two people where one does not have decision-making capacity. In a healthcare setting, for example, capacity is the basis of informed consent. In a non-violent, intimate partner relationship, would it be considered that affirmative consent cannot be given and, therefore, that any sexual act is 'violent'?
- It is important that the circumstances in which there is no consent include chemical restraint either as another circumstance or within the definition of 'intoxicated'.
- It is noted that domestic abuse victims may give evidence at a pre-trial special hearing (p30). We would like to ensure the definition of 'domestic abuse victim' also includes victims who may have been assaulted by a person of trust, such as a family member or carer, including in Residential Aged Care.
- We support protected communications to be expanded to include health information (p34). We understand that health professionals are often the first point of disclosure for older women who are victims of violence. Given the fear of shame and stigma older women may feel of experiencing sexual violence, it is important that they feel safe that this information will not be disclosed to others.
- We support that all victims should be pre-warned about the intention of defence to ask about prior sexual activity (p34). This is especially important for older generations who culturally, may have been less open about disclosing such activities. Further, individuals identifying as LGBTI+ may be particularly sensitive on this topic given a lifetime of discrimination or fear of discrimination.

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<sup>2</sup> [Violence against older women: A systematic review of qualitative literature | PLOS ONE](#)

### For further information and discussion

COTA SA would be pleased to meet with the Attorney-General's Department to discuss our submission. Please contact Chief Executive, Miranda Starke in the first instance.

### Acknowledgement of Country

*COTA SA acknowledges and respects Aboriginal people as the traditional custodians of the land of South Australia. We honour Aboriginal peoples' continuing connection to Country and recognise that their sovereignty was never ceded. We pay our respects to First Nations Elders past, present and emerging and extend that respect to all Aboriginal people.*