

Asking For It
A comparative analysis of legal and pedagogical
representations of sexual consent and the lived experiences of
young people

by
Rachel Chapman
BSoc.Sci. (Gender Studies), Macquarie University

A thesis submitted in partial fulfillment of the requirements for the degree of Masters of
Research
Department of Sociology
Macquarie University

October, 2015

Contents

	<i>Page</i>
Summary of Thesis	
Acknowledgements	
Introduction	1
Chapter 1: Methodology	4
Chapter 2: Legal Representations of Sexual Consent	14
Chapter 3: Pedagogical Representations of Sexual Consent	29
Chapter 4: Social Representations of Sexual Consent	44
Chapter 5: Comparative Analysis	60
Conclusion	68
References	71

Summary of Thesis

The thesis closely examines and analyses the history of sexual consent within New South Wales (NSW).

The research project was inspired by recent debates within the media and the wider public regarding the role of sex education in developing healthy sexual practices amongst young people. Discourse surrounding the subject often pertained to the omission of sexual consent from sex education classes and how this often left youth confused about how to adequately communicate and understand consent.

Under social conditions where pornography is increasingly used by young people as a form of sex education, questions arose regarding whether young people felt that the formal sex education they received was helpful or relatable to their own experiences. However, before one can adequately examine the social practices of sexual consent by young people, a clear understanding of the legal and pedagogical constructions of consent must be attained. The purpose of this thesis will be to map put these constructions of sexual consent and compare these with the social practices involved in negotiating sexual consent amongst young people.

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

Ethics Committee approval was not required for this thesis.

Rachel Chapman

A handwritten signature in blue ink, appearing to read 'R. Chapman', is written over a horizontal line.

Date: 09/10/2015

Acknowledgements

Dr Tobia Fattore - First and foremost, I must thank my incredible supervisor who guided and supported me throughout the many ups and downs of this past year. Thank you for providing me with constant feedback, encouragement and laughs. Hopefully you can now have your evenings back! Go Wanderers!

Dr Judy Lattas - I would like to acknowledge and thank Dr Judy Lattas for fostering my love and enthusiasm for Gender Studies throughout my undergraduate degree. Thank you for fighting for the recognition of Gender Studies and its expansion within the university.

Andy McConnell - Thank you for everything. Thank you for providing a shoulder to cry on when things were tough and being my biggest supporter throughout my triumphs. Thank you for always being there to have discussions about feminism and consent, frequently at 1:00am.

My Family – Faye, Peter, Maurie, Adam, Tim, Rachael, Nana Pam and Grandy- Thank you for supporting me throughout this intense year. Whether it was making me cups of tea, listening to me vent, providing comforting hugs or consistently asking me how everything was going, please know it was all appreciated. Thank you for supporting my research both before and after you found out what my topic was!

Paul and Petra McConnell - Thank you for your expertise and knowledge on the subject as well as allowing rather loud and divisive arguments to happen across your lounge room.

My Friends - Thank you constantly checking in on me and showing an interest in how my research was going. Your support has meant the world to me.

The Handbag Hit Squad - This experience would not have been the same without the help and support of this gender focused research cohort. They have provided many laughs and encouraging words throughout this process and I wish them all the best in their academic careers.

INTRODUCTION

Catalyst for the Study: Research Aims and Objectives

This thesis examines legal, pedagogical and social representations of sexual consent within Australia. The research objectives of the thesis are to determine how sexual consent is defined by young people across these different contexts and examine the factors which contribute to these definitions. The thesis also aims to investigate how these definitions and understandings compare to actual everyday practices of sexual consent by young people. This research topic was inspired by recent shifts in public discourse pertaining to young Australians and sex.

This research is timely due to the increasingly frequent occurrence of sexual assault and rape stories within the media committed by young people, both internationally and domestically, such as the Lazarus rape case in Sydney. Whilst some of these were explicitly intentional acts of violence, a recurring theme in these media stories is that the alleged perpetrators claimed that they did not know they were committing a crime. This reflected a confusion as to what constitutes sexual consent and a lack of understanding about what the lack of consent looks like in a sexual scenario for these young people. The thesis was therefore inspired by a need to determine not only how young people understand consent and where they gained this understanding, but how they are practically applying it within their sexual encounters.

Although adolescence is often marked by the arrival of puberty and sexual exploration, teenagers are often still viewed as children who should be shielded from some sexual knowledge. This creates a conflict, as teenagers are defined by their biological entrance into the sexual sphere yet are discouraged from engaging in sexual practices with others. These restrictions are enforced through legal restrictions, such as the age of consent, the kind of information provided to young people, for example through educational curriculum; and social norms around appropriate sexual practices, which differ for men and

women. For example, discussions of sex and sexuality are often only provided once a person has reached an age deemed appropriate for the acquisition of such knowledge, regardless of whether a person is already engaging in sexual practices or not.

A specific example of this is the provision of sex education by schools. Although the New South Wales (NSW) Syllabus articulates when sex related information should begin for each grade of students, a reflection of both the law and social expectations, whether this information is provided within a relevant and useful timeframe for students is questionable and has recently been a prominent issue within wider public discourse. Although these 'restrictions' exist, such restrictions frequently do not curb young peoples' sexuality. Young people have sex but they often may be doing so in situations that threaten the safety of young people beginning to engage in sexual practices.

For young people, and perhaps for all people who are of a sexually active age, sexual consent remains a complicated topic to grasp and understand. Although sexual violence is not a new area of academic study, the focus on sexual consent and its manifestations have only begun to be studied in recent decades. Sexual consent is a crucial factor within sexual interactions but learning how to both adequately communicate and interpret it remains complex and often subjective. It has been an increasingly popular topic amongst academics and is proving to be controversial and in need of continuing study. The definition of consent has been difficult to determine due to the various ways it is conceptualised through different disciplines (Beres, 2007). Hickman and Meuhlenhard defined sexual consent as "freely given verbal or nonverbal communication of a feeling of willingness to engage in sexual activity" (Hickman and Muehlenhard, 1999). This is the definition that the thesis shall use when examining how young people, particularly Australians, understand and navigate consent.

Methodological Overview for the Study

The study examines legal, educational and social practices, examining the dominant features of each and compares constructions of sexual consent across these three areas. These areas were selected for study as they each hold significant power in reproducing and promoting 'acceptable' sexual practices.

Constructions of sexual consent within Australian law defines not only the age at which an individual can legally begin to engage in sexual activity, but also determines what behaviour is constituted as criminal.

Through defining what sexual consent looks like in a sexual scenario, the law is the starting point in researching how consent is actually defined and enacted by young Australians. Formal education is a key socialisation institution, which also has a function in reproducing appropriate social behaviour during an important developmental life phase and thus is crucial to examine when investigating how sexual consent is taught. This assists in determining what knowledge is passed on to young people about sexual consent and what information has been omitted. A final examination of the social practices of Australian young people allows comparisons to be made between the information provided through legal and educational discourse and the actual practices of young Australians. Are legal and educational constructions of sexual consent influential for young people in their own sexual practices? Using discourse analysis as the methodological framework, the thesis interrogates how young Australians both conceptualise and communicate sexual consent. A specific focus on the dominant heteronormative sexual script assists in analysing the impact of reproduced masculine and feminine gender norms on how consent is both communicated and interpreted.

As the thesis is undertaken within a qualitative tradition, it is primarily concerned with investigating some of the historical and social factors that contribute to these constructions and the ways that young people themselves give meaning to sexual consent. This method is an appropriate way to approach the research objectives as it allows dominant themes regarding sexual consent to be identified and analysed from the sources examined within the thesis. The literature and data sources chosen to be included

serve to provide both the context of the study and to build a foundation for further knowledge and understanding to be reached. The close attention to language and understandings of consent as constructed through historical and social contexts, young people's definitions and normative practices regarding sexual consent are established and understood in greater detail. Details pertaining to the research methods undertaken to achieve the research objectives are further discussed within

Chapter 1: Methodology

Outline of the Thesis

This qualitative research project critically examines the legal, pedagogical and social representations of sexual consent with a specific focus on the Australian context. Following the Methodological Framework presented in Chapter 1, Chapter 2 investigates the history of consent laws within Australia, specifically focusing on NSW. This includes laws pertaining to the age of consent and the factors which contributed to its changing limits, including its contestations and even calls for its eradication. Through this, shifting conceptualisations of what defines sexual consent legally and the factors which contributed to this are analysed. Specifically, in Chapter 2 consent is examined in relation to sexual assault and rape law. The definition of sexual consent within the law is crucial as its presence (or lack thereof) is often the key factor examined when determining if a crime has been committed, particularly in cases where physical injuries may be minimal or were not received. Defendants must articulate how they felt consent was communicated by alleged victims. This Chapter therefore discusses the relationship between 'subjectivity' and consent within the law, an issue central to both pedagogical and social representations of consent also, and which is also explored in those Chapters. Young people's understandings of the law are therefore also examined to determine whether the law plays a role in how they navigate sexual interactions on a daily basis.

In Chapter 3, the thesis discusses pedagogical representations of sexual consent. Sex education is provided in schools across Australia and can sometimes be the only source of information on sex young people receive. Whilst schools provide vital information regarding the biology and physical elements of sex and sexuality, Chapter 3 discusses how the social dimensions of sexual practices often fall to the wayside even though they are part of the NSW PDHPE Syllabus. In this Chapter, the Syllabus is the focal point of analysis pertaining to the pedagogical representations of sexual consent. The Syllabus material and content is compared to evaluations that young people have of the education they received, allowing for analysis as to whether and why a disparity exists between the curriculum and the relevance of the curriculum from young people's perspectives. As sexual consent is not explicitly discussed within the curriculum material, the thesis also examines outside programs which are currently being designed and implemented to help educate young Australians about both the importance of sexual consent and its complexities.

Chapter 4 examines the social practices of young Australians regarding consent. The ways in which young Australians communicate sexual consent and the sociological factors which contribute to these practices are examined. The Chapter discusses the centrality of different sexual scripts and their role in negotiating sexual consent through assessing normative practices around sexual practices, such as alcohol consumption before and during sexual encounters and the impact that such practices have on how males and females communicate consent with each other. The increasing prevalence of sexual consent within public discourse and this reflection within the media is also explored throughout the thesis.

The legal, pedagogical and social representations of sexual consent are subject to comparative analysis in Chapter 5. Complementary and contrasting themes are examined and factors contributing to how legal, pedagogical and social representations of sexual consent are discussed. It is through comparatively analysing the three separate representations that differing definitions of and normative expectations regarding sexual consent can be accounted for and understood. Where do these constructions align,

how do they differ and what are the implications for young people? The Conclusion summarises the findings of the thesis and highlights the dominant themes pertaining to how young Australians conceptualise and define sexual consent.

Disparities between how young Australians conceptualise sexual consent and how they enact sexual consent on an everyday basis provides the information required to reach the key research objective of this thesis, which is determining how beliefs and practices of sexual consent can differ across the key institutions that are meant to guide and inform young people on a fundamental interpersonal and social practice – sexual consent. Through this analysis, the research objectives of determining how young people define sexual consent and the factors that contribute to this can be established.

CHAPTER 1: METHODOLOGY

Overview of Chapter

A key research objective of the thesis was to determine how sexual consent is defined across different contexts and how is sexual consent communicated. To research this, it was important to investigate past conceptualisations and understandings of consent, examining these within their historical contexts. To interrogate these constructions and understandings, three data pools were examined within the research project. These pools were constructed with resources collected across the three categories of legal, pedagogical and social representations of sexual consent. Discourse and content analysis were selected as research methods for the thesis. The Chapter shall provide a rationale for the research methods undertaken to acquire the required information for the project's key objectives to be determined.¹

The thesis is based upon discourse analysis of historical and current representations of legal, pedagogical and social practices of sexual consent within New South Wales (NSW).² The thesis is based on an analysis of three key sources of discursive texts that represent alternative constructions of sexual consent; laws regarding sexual consent (providing insights into legal constructions of sexual consent; sex education curriculum in NSW (providing insights into pedagogical constructions of consent); and published research that documents young people's attitudes and practices regarding sexual consent (providing insights into young people's social practices and constructions). Whilst official documents are examined within the piece, public discourse pertaining to the representation of sexual consent within the legal and education systems are also explored. Through this, both public awareness and attitudes towards these

¹ Due to the short time eight month frame of the research project and the highly sensitive nature of the topic, ethics clearance was unable to be obtained and therefore there is no firsthand collected data within the project.

² Narrowing the scope to NSW gives the thesis a specific framework on which to focus. An analysis of Australia wide policies and documents would exceed the length and time limits for the thesis.

representations can be documented. These understandings and conceptualisations of sexual consent are then compared to the actual everyday social practices of sexual consent by Australian young people.

The Methodological Framework: Discourse Analysis

As a key research objective of the thesis is to determine how young Australians define and understand sexual consent, discourse analysis is an effective way to extract and interrogate the data required to address this question. Analysis was initially applied to the three data pools separately, isolating themes and patterns specific to each category. Through this, conclusions regarding the definitions and construction of consent were able to be established. It was then possible to compare the discursive themes and patterns across the varying sources of data and establish how social practices relate to the legal and pedagogical constructions of sexual consent.

Discourse analysis is a particularly useful and enlightening tool within the study of sexual consent as it is concerned with the way language reflects power and wider social practices (Jacobs, 2010). By examining the language that is used in discussions of sexual consent and adolescent sexuality, the way power and meaning is communicated can be discussed. The use of certain language also reflects the desired wider social and political outcomes. This has been essential in this study, as the very aim is to track the history of sexual consent within NSW. As such, it has been crucial to ensure that the texts have been read with their contexts in mind, such as the political climate at the time, widely held beliefs and the intentions of those writing the sources that are utilised.

When investigating common themes amongst popular commentaries, it was particularly useful to document the catalysts for sexual consent being discussed within the media. The majority of cases occurred in light of recent sexual assault cases involving young people, such as the previously mentioned Lazarus rape case in Sydney and the Steubenville rape case from the US. These sparked discussions

about sex education and the importance of teaching consent adequately both in schools and at home. It became apparent that there is an emerging moral panic surrounding sex education, which is briefly examined within the thesis. There has frequently been social disapproval towards the introduction of sex education to younger adolescents out of fear that this would merely increase promiscuity and harm. However, recently there have been concerns that current sex education is not substantial enough and this in fact is what is harming Australia's young people.

Discourse analysis includes examining the language used to construct understanding by particular groups, including examining the social and historical contexts in which they were used. Through including the historical context, changes and developments in understandings and power relations are analysed. This assists in determining how concepts are reproduced and understood. The use of discourse analysis within the research for this thesis allowed recurring patterns and themes pertaining to these concepts of sexual consent to be examined.

The research utilises published primary data as a key point of analysis, providing insights into how consent has been understood by young people and their own feelings and concerns pertaining to the education they have received on the topic through formal secondary education (Sauers, 2007; Mitchell *et al.*, 2014). This research project is based within qualitative tradition as it is focused on establishing and interpreting social meanings regarding sexual consent and relating these practices with how sexual consent is reflected in legal and educational policies.

As previously stated, a variety of understandings of sexual consent were documented during the research process. Therefore, it was crucial to investigate how the definition and perception of sexual consent was constructed by the three different discourses, two of which are institutional and one which reflects practices and behaviours. To do this, a close examination of the way that consent was framed and terms associated with consent is undertaken throughout analysis of a variety of texts. This is a

common method of approach within textual consent analysis and allows for deeper understandings of complex concepts and social understandings (Hsieh and Shannon, 2005). This was important to consider when examining different texts as it confirmed that when a participant was discussing consent, they may be conceptualising consent and sexual assault in a particular way. This highlighted a possible disparity between the legalities and wider understandings of sexual consent but also created a new key avenue for the research.

It was not only important to confirm how consent was being constructed and understood, but what factors contributed to this understanding. This also had to be researched within the appropriate historical context to ensure clarity and understanding. Through this lens, it became possible to analyse the motives and expectations regarding sexual consent within educational and legal discourses, and how these understandings relate to constructing gender orders, particularly amongst young people. This allowed closer investigation into the way that policies and educational programs were structured and communicated, closely examining the actors involved. The disparities between the institutional representations of sexual consent, legal and pedagogical, and the social representation of everyday practice may indicate a failure in institutional knowledge amongst the wider public. Comparatively, it may reflect an unrealistic standard of young sexuality promoted by legal and education institutions. Through gaining this clearer understanding of constructions of sexual consent in these three discourses, this thesis aims to contribute to understanding the relationship between law, education and practices, which can be further explored through undertaking the collection of primary data, such as interviews and surveys.

Data Sources

The data utilised within the thesis are from the categories of legal, pedagogical and social representations of consent. Chapter 1 examines the legal representations and examines how sexual

consent is defined within the Crimes Act 1900 – SECT 61H. This is then analysed in conjunction with debates pertaining to the relevance and definition of consent within the law. Chapter 2's primary point of analysis is the NSW PDHPE Syllabus and its material in relation to sex education. As states, the thesis uses already published data for analysis purposes. The use of such published primary data within the research provides many advantages yet also comes with limitations. An advantage of using published material is that it supplies nonreactive data to the study. Sexuality and sexual practices are highly sensitive topics and as such there is a chance that participants within the study may alter their answers. This may be due to fear of judgement from the researcher, concern over legalities of their actions or a desire to please the researcher and can ultimately skew the results and credibility of a study (Singleton, 2010). Sexual consent remains a sensitive and controversial topic to study, particularly in relation to young people, therefore it has been beneficial to use data collected by experienced researchers and analyse them for this specific study.

One of the key texts examined within the thesis is Sauers' qualitative work "Sex Lives of Australian Teenagers" (2007). Sauers' research makes available a series of surveys conducted online which aimed to gather and publish uncensored data on the sexual attitudes and practices of Australian teenagers. Although Sauers does provide an analysis of the surveys within her book, an index includes all of the unedited surveys which allows analysis of the data and qualitative data specific to the thesis research objectives to take place. By citing the written text, the experiences of these teenagers, many of whom are below the legal age of consent in NSW, are able to be closely examined and the age-specific discourse surrounding sexual consent interrogated. However, using data that has been collected by another researcher does pose risks and limitations. A further limitation is that, since I have not collected the data for the purposes of this study, the existing data has had to be molded around my study as further questions that may be of interest were not able to be asked (Singleton, 2010). This is a risk, but through comparing it with similar data there is a greater chance of ensuring accuracy in the final analysis.

Another key text utilised within the thesis is the Fifth Australian Research Centre in Sex, Health and Society's (ARCSHS) National Survey of Secondary School Students (Mitchell *et al.*, 2014). The examination of these two key studies allows emerging themes to be documented and compared, demonstrating similarities and disparities between the studies that can be further analysed and accounted for. However, the abundance of recent studies provides a variety of sources for this research and each provide differing and useful insights (Hickman and Muehlenhard, 1999; Carmody, 2003; Beres, 2010; Ryan, 2011). For these reasons, the exclusion of primary data is not seen as a setback for the research but rather as the best choice for this study.

Data Analysis

As noted above, the study undertakes a discourse analysis of existing data sources on young people's attitudes and practices regarding sexual consent, laws and curricula. The analytical technique that is used to interpret these three data types is qualitative content analysis. Qualitative content analysis involves "the interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns." (Hsieh and Shannon, 2005). Hsieh and Shannon also refer to such analysis as inherently subjective as each person ultimately views and interprets languages based on their own life experiences (2005). However, through ensuring a sufficient amount of texts and data have been added to the analysis, it is the hope that there shall be a greater chance of some objectivity within the final conclusions. Although, the study is primarily qualitative, it is important to note that there is often a quantitative aspect to content analysis (Weber, 1990). This is the method of analysis used to interpret data within the research. The material examined, such as official legal documents and public commentaries acquired through the previously mentioned surveys and online news articles from the last few years, were coded for emerging themes. These were first examined in isolation and then comparatively analysed to determine common themes across the three categories and how they impact

and influence each other. This helped to establish the dominant ideas, concerns of the parties involved in wider discussions around sexual consent and confirmed which required further analysis.

A key focus of this research is establishing the definition of consent, however, consent is conceptualised in various ways from different perspective, times and contexts. Therefore, ideas of consent varied and did not necessarily match the legal definition and as such required close examination to surrounding text and represented values. Further studies were used to help establish and account for the various ways that consent is understood and defined within particular texts and demographics (Brett, 1998; Taylor, 2007; Klettke and Mellor, 2012).

Although the thesis does not employ traditional empirical methods such as surveys and interviews, based in a comparative discourse analysis of existing data sources, the law, educational curriculum and research on social practices, provides an effective methodological framework to study sexual consent within NSW. Through using content and discourse analysis to investigate historical and current conceptualisations of sexual consent. The analysis of legal documents and the reforms pertaining to the definitions of sexual consent, including those regarding the age of consent, created a solid foundation for further investigation. Tracing certain reforms, such as the increasingly complex laws which determine whether or not consent has been given, and comparing them to wider social discourse has led to critical analysis which shall be discussed in Chapter 5. The use of discourse and content analysis have affirmed that consent is a complex issue with many different conceptualisations across the wider community and that it is a crucial area of study within an Australian context.

CHAPTER 2: LEGAL REPRESENTATIONS OF SEXUAL CONSENT

Chapter Overview

In recent decades, Australian laws regarding sexual assault and rape have changed. A key reason for these changes has been the reconceptualisation of sexual consent and the various ways it can be both communicated and interpreted. This Chapter shall focus on the history of consent law within Australia, specifically focusing on New South Wales (NSW). Through investigating the history and current laws regarding the age of consent, socially acceptable behaviour regarding sexuality and gender norms are able to be examined. The Chapter shall also examine how the law frames and conceptualises consent as a form of communicating willingness to engage in sexual activity. The law is largely a reflection of what Australian society deems as unacceptable and undesirable behaviour in the realm of sexuality.

Therefore, the law promotes particular standards of behaviour for its citizens regarding gender and sexuality. However, whether the law is successful in controlling and guiding the sexual habits and activities of the Australian people, particularly young people, shall be examined briefly within this Chapter and elaborated on in further detail in following Chapters. Therefore, by investigating and analysing the law a comparison between the official legislation regarding the restrictions of sexual activity and the actual lived experiences of young Australians can be made. This Chapter shall also examine whether the law and legal system is efficient or successful at handling cases where there has been a breach of consent. It is important to note that the term “age of consent” has two different meanings. The first refers to the legal age at which one can consent to and engage in sexual activity and the other is when one can consent to legally marry (Simpson et al., 1997). The research within this paper refers to the former and shall investigate the social and political history of the age of consent and why it has been set to different ages at different points within Australia’s history.

The Legal Context of Consent – From the United Kingdom to Australia

Before recent changes to consent law can be examined, it is important to understand the initial way that consent was conceptualised within the Australian context. Traditionally, rape and sexual assault were viewed as property offences against a woman's husband or father, depending on her marital status (Australian Centre for the Study of Sexual Assault, 2011). Sexual assault and rape were predominantly viewed purely as physical crimes which required a victim to be overpowered and often physically injured by her attacker. Physical injuries on a victim or perpetrators body were viewed as solid evidence that a crime had taken place as it demonstrated not only that the victim had been overpowered but that they had attempted to fight back against their attacker. This understanding of sexual consent had implications for those victims who did not receive visible injuries as the absence of such was seen to demonstrate that the victim must have consented (Australian Centre for the Study of Sexual Assault, 2011).

However, this belief has shifted as deeper and more comprehensive understandings of the way that rape and sexual assault can occur, including factors such as coercion, structural power over a person (such as employer or teacher) and physical fear (Howell *et al.*, 2011). The legal system now investigates the presence of consent, as opposed to its absence. This requires defendants to articulate the ways in which they perceived consent to be actively communicated, such as explicit verbal consent and physical actions/body language, rather than merely a victim not resisting. The current conceptualisation of sexual assault within Australian law is that it is an offence against the agency of a victim. This model focuses on the positive model of consent, wherein consent is determined through active and willing participation (Lacey, 1998). For instance Section 61HA of the NSW Crimes Act 1900 specifies the basis of consent to sexual intercourse as being constituted as whether "the person freely and voluntarily agrees to sexual intercourse". Therefore, if one has been verbally coerced or pressured into sexual intercourse they have not actually given their full consent.

Although this is how sexual consent is defined, it stands alone with this definition for consent. For example, consent in other contexts does not bear the same weight. This has been questioned by Brett who queries whether the definition of sexual consent is sound. Comparing sexual consent to medical consent, Brett argues that even if a patient unwillingly signs paperwork for a medical procedure, they have still legally consented for the procedure to take place (Brett, 1998). Therefore, if one hesitantly consents to sexual activity due to verbal coercion or if they felt they may be harmed otherwise, Brett believes they have consented and thus a crime has not taken place. This is a limited view of sexual consent, which ignores the heavy mental impact that victims can endure despite an assault not being 'violent' (Clark, 2010). This not only demonstrates the complex nature of sexual consent but its unique standing within the law. Brett constructs consent as objective and rejects the notion that jurors should examine a victim's "state of mind", believing it only to be useful if a direct threat was involved (p.74). He further argues that if consent is determined through subjective means and states of mind, the legal system will be unable to accurately or fairly discern how a defendant may have viewed the scenario. Although Brett is writing within a Canadian context, his view is still helpful in examining the various ways in which consent may be viewed in Australia.

Legal Processes and Subjectivity Within the Law

Although Brett is concerned about subjectivity within sexual assault cases, the issue of subjectivity within the law of sexual consent is central to understanding the legal constitution of consent. Section 61I of the Crimes Act 1900 (NSW) indicates that sexual assault has taken place when one knows that the other is not consenting to the act in question (section 61I of the Act states "Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to sexual intercourse is liable to imprisonment ..."). There is also the possibility of the defendant being recklessly inadvertent, in which they do not actively seek consent from their

partner and are ultimately indifferent to whether consent was given or not. The grounds for this are specified in section 61HA(3) that states that consent is not given where:

- “(a) the person knows that the other person does not consent to the sexual intercourse, or
- (b) the person is reckless as to whether the other person consents to the sexual intercourse, or
- (c) the person has no reasonable grounds for believing that the other person consents to the sexual intercourse.”

This in itself has caused debate as it holds the possibility that one may receive the same terms of punishment for not explicitly receiving consent as one who actively forced intercourse (Townesley and Dobinson, 2008). Although there is debate surrounding possible punishments for varying levels of sexual assaults and intent, the way that sexual assault is defined within the law is not always reflected by those whose job it is to enforce it. A review by the Australian Institute of Criminology found that jurors often struggled to understand what consent actually is in practice. Their decisions were also influenced by their perceptions of sexual assault victims, such as believing they are promiscuous or look old enough to engage in sex despite being under the legal age, a finding consistent with data gathered in recent Australian studies (Townesley and Dobinson, 2008; Klettke and Mellor, 2012). For example Klettke and Mellor investigate the low conviction rates of alleged child abusers and found that a survey of “580 juryeligible participants” found that typically, females were viewed as being able to consent to sexual activity at younger ages than males (p.198). They believe that this is largely in part to the increasing sexualisation of young girls and teenagers, causing individuals to see them as capable sexual agents rather than as minors. This is particularly dangerous in cases involving those under the legal age of consent. It is clear within NSW law that for persons younger than 16 years of age, any expression of willingness to engage in sexual activity is negated due to their age. This is significant as it confirms that despite this legal restriction, many still believe that the breaking of this boundary is not necessarily a serious offence. If one’s understanding of both consent and its standing within the law can alter

depending on who has been victimised, it is clear that there is both a fundamental flaw in the legal system and how this system treats victims.

Juror perceptions of sexual assault victims are also influenced by the media and how it frames certain variables such as the relationship between being intoxicated and giving consent. Reporting of sexual assault and rape cases within the media often reinforce both rape scripts and the virgin/whore dichotomy, a social phenomenon which shall be further examined in a following Chapter 3 (Belknap, 2010; Dwyer, Eastaugh and Hopkins, 2012). The ways that jurors perceive sexual assault victims can have large weight on the way that a case unfolds. This has been witnessed through the common practice of the defense asking female victims questions about the amount of alcohol they were drinking and how they were dressed at the time of an alleged assault in a hope to sway the jury against the alleged victim (Lievore, 2004; Taylor, 2007; Higgins, Thatham and Banks, 2008). Although juror perceptions are not a key focus of this paper, it is important to note this as it demonstrates that personal beliefs and perceptions that actors within the legal process, including jurors, have of both consent and sexual assault victims can have an impact in how consent is interpreted within the law.

Whilst the reinforcement of rape myths and victim-blaming continue to occur within court cases, often to help sway jury members, there have been efforts made to help rectify this form of bias within the legal process (Criminal Justice Sexual Offences Taskforce, Babb and Attorney General's Department, 2005). Whilst there are numerous factors which can contribute to low numbers of reported sexual assaults and rapes, the difficulty of going through the legal process is a key factor to many victims (Higgins, Thatham and Banks, 2008). The examination process for alleged victims is highly distressing and has been referred to as 'the second rape' by both academics and public commentators (Galvin, 1985; Higgins, Thatham and Banks, 2008). Not only is giving evidence highly traumatising for many victims, but some defendants purposely distress victims in an attempt to disorient them, thus causing their answers during trial to be called into question. This was observed during the trial of the infamous Skaf gang

rapists. One victim, referred to as Miss C, was accused of “moaning with pleasure” during her attack (Buttner, 2007). Referring to this incident, Karen Willis of the NSW Rape Crisis Centre stated,

“Miss C’s matter is one of the more horrendous ones of late and in her evidence she was saying she was crying and screaming and trying to push them away. And the defence lawyer said to her ‘no no no, you were moaning with pleasure weren’t you?’ The reason [the defence lawyer] would have presented that would be to completely disorient her and make her highly distressed so that he can then ask her more questions when she is in a highly distressed state. The defence lawyer is looking to exploit her decreased capacity to respond. It’s a filthy thing to do to someone. But it is very common,” (Willis in Buttner, 2007).

Within the positive consent model that is the basis of the laws of sexual assault within NSW, proving whether consent has actually been given can be both complex and ultimately subjective. In recent years, law reforms and proposals have aimed to solidify this alternate view and provide clarity within trial situations. In 2007, the Crimes Amendment (Consent – Sexual Assault Offences) Act 2007 was passed by the NSW Parliament. The Amendment was the result of an extensive examination and review of sexual assault law which identified three key issues which had to be addressed within the law. These were establishing a statutory definition, an expansion of the ways in which consent could be negated and, as previously stated, the implementation of an objective fault element (Townsend and Dobinson, 2008). To determine whether a sexual offence has taken place or not, Australia’s legal system examines mens rea. This refers to a person’s deliberate intent to commit a crime and is vital in the legalities surrounding sexual consent. For example, one may plead innocent on the basis that they believed a victim was consenting to sexual activity, such as was seen recently in the Lazarus rape case in Sydney (Ralston, 2015). This is examined in conjunction with the actus reus, the physical act of the crime, to determine whether a crime has taken place or not. Within sexual assault, the mens rea and actus reus cannot be separated.

The defendants knowledge that a victim is not consenting is part of the mens rea element but the victims lack of consent is also an element of the actus reus (Lacey, 1998). It is therefore impossible to define sexual assault as purely a physical or mental act, the two being intertwined within the offence. However, the two must be investigated in conjunction with each other to ensure that a fuller understanding of events can take place. If examined in isolation, neither the physical nor the mental elements may be enough to determine whether or not a crime has taken place, particularly if an alleged victim did not receive substantial injuries.

Age of Consent Laws

The history of the age of consent within Australia and NSW was originally based upon models from the United Kingdom. The first known reference to a legal age of consent in the United Kingdom was established in 1275 at the age of 12, but was then raised to 16 in 1885 (Simpson, Figgis and New South Wales. Parliamentary Library Research Service, 1997). The laws did indicate that under the age of 10, that children were deemed innocent, which is still reflected within modern NSW consent law (Warner, 2012). According to the Crimes Act 1900 – SECT 66A, the maximum penalty for a person who has sexual intercourse with someone below the age of 10 is 25 years, though if the circumstances are seen to reflect an aggravated assault, the maximum sentence is life imprisonment. The concept of ‘childhood’ is a relatively modern construction. It has only been in the last century that ‘modern’ conceptions of children as ‘economically useless’ but ‘emotionally priceless’ have become normative (Zelizer 1995). However, children’s sexual innocence have in some form been protected in Australia with laws in colonial Australia introduced to protect vulnerable children who were not yet seen as biologically prepared for sexual intercourse. Two of these laws include the “forced sodomy of boys” and “forcible rape of girls under the age of 10 years old” (Boxall *et al.*, 2013). Whilst these did not explicitly specify ages of consent, they helped create a framework through which one can understand earlier conceptions of appropriate sexual conduct, particularly in relation to young people.

Whilst modern conceptions view the age of consent as a way to preserve childhood innocence and protect young people, particularly females, from potential sexual exploitation, early feminists and law makers in the United Kingdom rather sought to curb male sexual activity “in the home and in the streets and brothels” (Faust, 1995). This was done through the implementation of the Criminal Law Amendment Act 1885, which took four years to pass. The Act raised the age of consent from 13 to 16 years of age and created stricter laws for brothels, allowing them to be prosecuted for employing underage girls. By implementing this restriction on sexual activity, it was believed that females would be proffered greater protection from both sexual disease and exploitation as their men would have legal restrictions imposed on their sexual freedoms, much as females had social restrictions placed on theirs. However, as this was still primarily seen as an age restriction for female protection, the law reflected the heteronormative sexual script that not only were males hypersexual but that all females were in need of the State’s intervention to preserve their purity (Lacey, 1998). In 1883, NSW was the first state or territory to raise the legal age of consent from 13 years old to 14 years of age. However, when South Australia and Victoria raised the legal ages of consent, both states raised it to 16 years of age. It would not be until 1910 that NSW would follow suit and similarly raise the legal age of consent to 16 years old for heterosexual intercourse, the age it remains today. However, despite remaining unchanged for several decades, the laws have attracted significant contestation, with various groups advocating for it to be made either higher or lower while some have called for its complete eradication. This shall be explored further within this Chapter.

In the United Kingdom in 1977, a Royal Commission decided that the Age of Consent should be fifteen as they believed that this age was a “realistic reflection of the sexual behavior of young people” (Simpson, Figgis and New South Wales. Parliamentary Library Research Service, 1997). One factor which influenced this decision was that this age was a marker for many other coming of age activities such as schooling and full time work. As Australia’s laws have closely followed those of the United Kingdom it may be

assumed that the rationale behind the age of consent would be similar. There are varying degrees of maturity assigned to different 'milestones' of adulthood and these vary across Australia. In NSW, the age of sexual maturity is deemed to coincide with other key markers of adulthood and independence, whilst still remaining within the bounds of childhood. For example the age of 16 (the age of sexual consent) is the age in which one can receive their Learner's Driving License but the minimum age that one can leave school is seventeen (Communities, 2014). Hence legal constructions around sexual consent closely match normative ideas around emerging adulthood (although the sociological realities of adulthood are increasingly quite different – see Blatterer 2007). In the Western world, the age of consent has been linked to the age where one could get married, solidifying the relationship between marriage and sexual intercourse, particularly in terms of procreation.

This was also a reflection of the Christian values of early Australian society. Before 1961, each Australian state had their own laws pertaining to the age of marriage which caused multiple problems for married couples travelling between states (House of Representative Committees, 2012). This is similar to the age of consent which still varies from state to state today. In the Australian Capital Territory, New South Wales, Northern Territory, Victoria and Western Australia the age is 16. For South Australia and Tasmania the age is 17 and for Queensland the age of consent is 16 with the exception of anal sex, where the age of consent is 18 years. Similar to other aspects associated with the criminal law, that constitutionally remain the responsibility of the States rather than Commonwealth, the varying ages of consent across the nation indicate that there could be nationwide debate surrounding how best to compromise and reach common ground. This may be particularly so in the case of heterosexual vs homosexual consent, which, as stated above, have different ages in some states, such as Queensland. In The United Kingdom, there have been debates about whether it would be beneficial to lower the age of consent. One particular case was in 1979 when the Working Party of Great Britain voiced that the age of consent should be eradicated altogether. They believed that having a restricted age meant that those

who did take part in underage sexual activity would not seek help or information for fear of being dubbed criminals. They called for the removal of an Age of Consent altogether yet their call was ultimately ignored (Simpson, Figgis and New South Wales. Parliamentary Library Research Service, 1997). Although this is an overseas example, the legal system of the United Kingdom is the basis of the Australian system and has often lead the way in Australian legislation. Despite calls to change the age of consent it has remained 16 for males and females within NSW. However, despite the legal age of consent being 16, many young Australians do seek sexual autonomy and engage in sexual activity before this age (Lacey, 1998). The changes to the age of consent within NSW shall be discussed further in the Chapter. There is no universal age for sexual maturity, either physically or emotionally, and there are many who will feel prepared either before or after they are legally able to consent (Sauers, 2007; Robinson, 2012; Mitchell *et al.*, 2014). One 18 year old male who took part in Sauers' survey study (which shall be examined further in Chapters 3 and 4) responded to a question about the right time to begin having sex by stating,

"I think it's really an individual decision... young people can have sex at any time in their teen years" (Sauers, 2007, p.358).

Another 18 year old female similarly indicated,

"I don't think there is a set age or kind of sex. It should happen when all persons involved are emotionally ready and willing" (p.376).

Individual choice and a state of emotional readiness was a common theme amongst the respondents. This demonstrates that to Australian young people, the legalities of sex are not at the forefront of their feelings and concerns. This may be due to the fact that when young people are of similar age to their sexual partners, the legal age does not carry as much weight or consequence as opposed to sleeping with someone much older. This demonstrates an incongruence between the law and social practice.

This shall be further explored in Chapter 5.

Constructions of Masculinity and Femininity Within the Law

“Law provides an important, and enforceable, demarcation between that which is criminal and that which is virtuous or at least acceptable” (Warrick, 2011,p.167).

This quote communicates the intrinsic link between socially accepted and condoned behaviour and the law (Lacey, 1998; MacKinnon, 2003). The law ultimately reflects and promotes behaviour that is deemed socially desirable and in so doing facilitates the reproduction of desired social behaviour as a normative set of practices and is “primarily concerned not so much with rights as with wrongs” (Lacey, 1998, p.52). This is particularly applicable to the heteronormativity promoted within the law. An example of this has been the setting of the age of consent for male homosexuals. In NSW, the age of consent for homosexual intercourse was only lowered from 18 to 16 years in 1991. Whilst the law is expected to reflect reason, this indicates that the law can be used to discriminate against already marginalised groups (Warrick, 2011). It should be noted that homosexual consent within Australia law refers only to males, as the law refers to anal penetration. There has not been a lesbian specific age of consent documented within NSW.

Whilst the age of consent applies to both sexes, it is widely seen as a way for young girls specifically to be protected from older men. There is less social fear of boys being taken advantage of by older women in the same way. By enforcing an age of consent, it is supposed to ensure protection for young people, particularly females, from those who would seek to sexually exploit them during the developmental stages of their lives (Robinson, 2012). Whilst this may appear to ensure legal protection, there have been debates amongst feminists as to whether this is merely a way ensuring state control over female bodies. The view that the age of consent is a form of patriarchal protectionism believes that this law reduces females to objects whose worth is determined by her sexual status and level of purity (Kirkby,

1995). This argument, is referred to by Kanagasbapathy as “good men protecting women from bad men” (2011). These laws are instead considered as a way to limit the sexual autonomy and freedom of young females and replace this with male expectations of purity and sexual maturity. The assumption that all young females are sexually naïve and would not interact with an older partner unless coerced is a significant limitation on female agency (Kirkby, 1995). Although males must adhere to the same legal age of consent as their female counterparts, constructions of masculinity that underpin age of consent laws do not typically depict men as requiring sexual protection (Margolin, 1990; Howell *et al.*, 2011). This is often due to men being viewed as sexual agents from a young age, as dominant sexual scripts indicate that they are sexual initiators rather than gatekeepers and that they have a consistent desire for sexual activity (Hickman and Muehlenhard, 1999; Sauers, 2007; Beres, Senn and McCaw, 2014; Hlavka, 2014). This shall be explored further in following Chapters.

As discussed in the previous section, the age of consent is set to the age when the majority of young people are seen to be both physically and mentally mature enough to handle the responsibility of sex. Ultimately, the age of consent reflects the moral standards regarding the minimum age that is acceptable for one to engage in sexual practices with another person. In contemporary Western culture, pre-marital sex is now widely accepted and the mean age for first engagement in sexual intercourse is getting younger (Mitchell *et al.*, 2014). Given the recognition that individuals engage in sexual conduct from an age younger than the age of consent laws, there have been discussions regarding the validity of strict age of consent laws, particularly within NSW.

Whilst other Australian states have a degree of leniency within their laws, NSW does not. For example, Victorian law under the Crimes Act 1958 – SECT 45 states that if the accused is no more than two years older than the child in question or that they had a reasonable belief that the child was over 16, this is grounds to plead that the victim was consenting to sexual activity. NSW does not make any exception to the age of consent law and, as such, has the strictest age of consent laws in the country. This is

demonstrated in the Crimes Act 1900 – SECT 66C which highlights the liability of imprisonment for any person who has intercourse with a child under the age of 16 (*Age of consent laws*, 2014). This law has been contested and there have been calls for law reform, seeking the Victorian model which is referred to as “The Romeo and Juliet Defense” (Kanagasbapathy, 2011). The Romeo and Juliet Defense would allow reasonable defense and possible leniency within the law if the offending individual is no more than two years older than the ‘victim’. This argument also aims to ensure those who are in romantic relationships with someone below the age of consent, yet with only a two year difference, shall not be labelled as a sex offender for what may otherwise be seen as a healthy interaction between two willing participants. The opposing side of this debate questions whether the relaxation of age of consent or sexual assault laws would actually benefit young people or merely allow leniency for intentional sexual offenders.

By ensuring that the law only makes concessions for those who are within two years of each other, it still ensures that young people are protected from older individuals. This defense therefore engages with power-imbalances that might arise between individuals who are significantly different in age. It also engages with the problem of the ‘predatory pedophile’, the concern with which has in some ways replaced concern with control of female sexuality, that has traditionally been at the core of age of consent laws. However, there is still debate pertaining to the age difference between a 16 year old and their 14 year old partner and whether differences in maturity exist in this situation. Those who are in favour of the reform believe that the current system frames sex as dangerous and taboo, rather than allowing for healthy teenage sexual exploration. By denying the realities of teenage sexual practice, Kanagasbapathy argues the law ultimately puts Australian teenagers at risk of harm rather than ensuring their safety. By criminalising such practices, teenagers may be punished simply for exploring sexuality if their (otherwise consenting) partner is simply a year younger than them. (Kanagasbapathy, 2011). Whilst there is not currently a call for the elimination of an age of consent, such as that proposed

Working Party in the United Kingdom, the belief that strict laws have the potential to harm young Australians do resonate with their argument. The call for leniency in terms of teenage sexual exploration highlights a slight shift in the understanding and acceptance of teenage and the sexuality of young people sexuality amongst the Australian community.

Conclusion

By tracing the shifts in legal understandings of sexual consent, it is evident that it is a difficult concept to accurately reflect and define within the law. The history of the age of consent within Australia and particularly NSW demonstrates the subjective nature of the law and the differing ways it can be interpreted, such as patriarchal protectionism and homophobia. It is also evident that the way that individuals view sexual assault victims can impact the carrying out of justice within the Australian legal system, as rape myths continue to pervade the courtrooms. Similarly, the views that some jurors hold regarding the ability for young Australian women to consent to sexual activity, despite not yet reaching the legal age, reflects how social constructions of gender and sexuality can influence the practice and implementation of the law. Perspectives from various stakeholders, such as jurors and young Australians, provide new insights into how the law has been constructed and for whom. It is critical that the law is consistently critiqued and examined to reflect changing conceptions and understandings of sexual consent. The age of consent and the communication of sexual consent are both crucial within the Australian and NSW legal systems and should be consistently communicated to the wider public. However it is evident that consent is a complex legal concept with both the wider public and legal academics challenging both its definition and its interpretation within a legal framework. Despite the age of consent being widely seen as a way to protect young Australians, it is evident that many are not adhering to this restriction and are engaging in sexual activity before reaching this accepted age.

However, with the evident confusion and contestation as to what defines sexual consent and how it manifests in sexual interactions, there is an argument that young Australians should be well informed and educated on the topic so they can safely navigate the sexual sphere. The role that formal education plays within this learning process shall be examined in the following Chapter.

CHAPTER 3: PEDAGOGICAL REPRESENTATIONS OF SEXUAL CONSENT

Chapter Overview

This Chapter examines the role that sex education plays in constructing and reproducing standards of sexual activity and morality amongst young people. As young people communicate their desire to be provided with information that exceeds the current Syllabus and quite possibly prevailing social norms, the role that the education system plays within contemporary Australia must be examined. This Chapter shall focus on NSW and discuss the current issues facing the education system. Increasing studies reflecting the sexual experiences of young people have been the catalyst for an increasing amount of attention and critique given to sex education within Australian schools. This is in part due to increased media exposure of teenage sexual activity and the corresponding moral panics regarding their safety (Moulton, 2015; Rusciano, 2015; Smith, 2015). Sexual consent has often been at the center of growing concerns as the community expresses fears about young Australians learning unsafe practices from sources such as pornography and wider media (Carey, 2015; Smith, 2015; Baker, 2015). By examining how sex education communicates information to young people, its effectiveness in promoting safe and ethical sexual behaviour can be analysed. This Chapter will investigate the NSW Personal Development, Health and Physical Education (PDHPE) syllabus and address its role in promoting sexual norms to young people. It shall also critically analyse how and why the education system addresses sex the way it does and how this correlates with the purpose of education within Australian culture³.

Education has several important social functions, which, depending on one's theoretical perspective, include socialisation of children, development of human capital, social control and reproduction of social distinction (see for example Bordieu and Passeron 1977). Through a Functionalist lens, the purpose of

³ Although there is sex education within the later years of primary school, often in years 5 and 6, this Chapter shall focus on the education received within a high school environment and the ways on which it reproduces social sexual norms.

education is to “prepare for the needs of everyday life” and that education should help students to gain skills which will allow them to navigate life successfully (Potthoff, 1943, p.148). Potthoff states that one must be prepared for the constantly changing “intricacies of modern life”, a sentiment that remains true today (1943, p.148). Whilst sex education, particularly pertaining to sexual consent, may be seen as a private matter to be discussed within the intimate sphere, discussing this within schools should ensure that every young person receives this much needed information, particularly if it is not provided within the home. Although sex education is provided in schools, young people often look elsewhere for information pertaining to sexuality, demonstrating a disparity between the education provided and the information that young people both want and need (Carmody, 2006). This is currently being seen in numerous calls for schools to address consent within their class content, in response to the increasing number of sexual assault cases involving young people. The idea that the education system should focus not only on the physical needs but social and psychological needs of students resonates with Connell who states “continuous social support is needed” to ensure healthy well-rounded students (Connell, 2007, p.35).

Examining the information needed to be communicated to young people and the role of formal education in providing this information shall be examined within this Chapter. The Chapter addresses the way gender norms are promoted within the curriculum, alternative sex education programs and how young people view the role of sex education within their lives. Whether the education received actually reflects the needs of young people at different ages shall be discussed further within this Chapter. The Chapter proceeds by examining the NSW PDHPE Syllabus.

The New South Wales Personal Development, Health and Physical Education Syllabus

The state of sex education within Australian schools has been a subject of close scrutiny in recent years, both within and outside of academia. Some have argued that the role of sex education needs to adapt

from merely providing biological information to addressing the social and ethical dimensions of sexual interaction (McNeilage, 2013). Sex education is traditionally taught within PDHPE classes, though there is a greater focus on the physical and biological functions of sex than the social and relational components involved in sexual relationships. The NSW PDHPE syllabus indicates that issues such as gender identity, gender power relations and sexual consent should be addressed in various ways throughout the classes from grades 7-10. However most of the curriculum focuses on the biology of sex, for example information regarding STIs.

Throughout high school, students are exposed to information regarding sexual activity at various grades. The information that they are given is applied to them at an age and grade where they are deemed to be both mentally and physically prepared. Or in other words, the content must be deemed 'age appropriate'. The Syllabus for NSW PDHPE is continually revised to ensure that it remains up to date in terms of new policies and desired learning outcomes from the Board of Studies, Teaching and Educational Standards (BOSTES). The current Syllabus was first released in 2003 but was last amended in July 2013 in response to a road safety report which indicated of the dangers of being distracted whilst driving (Board of Studies, 2003). While this demonstrates the way in which The Department of Education attempts to continually update curriculum content to reflect new relevant evidence presented by research and studies, there have been no amendments made to the sex education component of the course despite numerous studies indicating that current education in NSW does not reflect real life experiences of young Australians (Powell, 2007; Sauers, 2007; Carmody and Ovenden, 2013). This shall be discussed further in the Chapter under 'Young People's Views'.

PDHPE is a core aspect of the NSW Syllabus and within that mutual respect is an important component of the teaching. The NSW Syllabus states that PDHPE is an opportunity for students to investigate matters which may have an "impact on the health and wellbeing of themselves and others" both now and later in life (p.8). Years 7-10 are referred to within the Syllabus as Stages 4 and 5. These are the grades in which

PDHPE remains mandatory whilst Years 11 and 12 have various elective options within the realm of PDHPE. Within the wider Syllabus, there is an emphasis on teaching and encouraging mutually respectful relationships between peers within different spheres of life such as school, home and work.

Whilst respect is a key area of sexual consent, it is not taught in conjunction with explicit reference to gender and sexual consent, instead relying on generalisations about appropriate ways to treat others. For example, the Syllabus states one of the overall learning objectives from Kindergarten to Grade 10 as,

- “understand and appreciate the physical, biological and technological world and make responsible and informed decisions in relation to their world
- understand and appreciate social, cultural, geographical and historical contexts, and participate as active and informed citizens” (p.5).

Within the Syllabus, there is a brief outline regarding gender issues that students must learn about, including social influences on masculinity and femininity, gender power relations and media stereotypes (p.19). The ways in which this should be taught are not explicitly stated however, yet the way this content is taught is a crucial aspect to helping reduce violence amongst young people (Allen, 2003b; Carmody, 2006; Carmody and Ovenden, 2013). The lack of guidance within the Syllabus leaves the interpretation of this material open to the discretion of teachers. In Strand 1 of Stage 4, the Syllabus indicates that students will learn about the physical changes that come with puberty, with an emphasis on reproductive health and sense of self. In this strand, students are also expected to learn how to identify and confront abusive relationships, including sexual harassment. Strand 3 explicitly states that learning outcomes include being able to discuss the different variables which effect sexual behaviour, such as gender expectations and responsibilities, as well as identifying forms of appropriate sexual behaviour (p.27). The Syllabus does not state what it classifies as “appropriate sexual behaviour” and this

is therefore left largely open to interpretation by the schools and teaching faculty. Therefore, issues regarding abusive sexual practices remain vague and little direction is given to teachers about how to teach the material, despite the emphasis in the curriculum on learning how to create healthy relationships

Subjectivity Within Content Selection

As mentioned above, the Syllabus largely leaves the interpretation of learning content open to schools and teachers. In Stage 5, there is an emphasis on “developing equal and respectful relationships”, which involves learning to negotiate, conflict resolution and power within relationships (p.33). For example, the Syllabus states that students will learn how to:

“critically analyse the gender stereotypes that may impact on life choices and evaluate the effectiveness of strategies designed to redress inequities” (p.33).

This Stage has the potential to create a solid foundation on which to build understanding of sexual consent through critically examining the sexual scripts associated with dominant social constructions of masculinity and femininity, and how this impacts sexual decisions (Allen, 2003a). The emphasis on negotiation and conflict resolution in particular has the capacity to address how young people can respectfully and appropriately communicate about sexual limits and boundaries without escalating to possible violence and breach of consent.

Exploring appropriate sexual behaviour is continued in Strand 3, which also addresses what qualities one may look for in a sexual partner. The Syllabus continues to emphasise the importance of students learning how to navigate personal space and the consequences of sexual activity, indicated in the following learning outcomes:

“Students learn to:

- identify and evaluate safe sexual health practices, including methods of contraception
- examine personal values and attitudes related to sexual health and identify factors that have contributed to their formation
- analyse how sexual attitudes, behaviours and sexuality are influenced by gender expectations and assumptions” (p.38).

The omission of the term ‘sexual consent’ is cause for concern. Moreover, as well as being not mentioned in this particular list of learning outcomes, sexual consent does not feature throughout the entire Syllabus. This absence may have many consequences, including young people relying on other forms of consent education. Examples of this include pornography and depictions within popular media, which often convey implicit consent as the manner through which sexual relationships are negotiated. A reliance on implicit sexual consent, which is discussed further in Chapter 4, is at odds with how consent is constructed within the law of NSW, as discussed in Chapter 2. The implications of this dissonance between legal and pedagogical constructions is further explored in Chapter 5.

At the time of writing this thesis there was no national sex education curriculum. This has resulted in the different states and territories creating and interpreting their own standards of sex education within their syllabi. This has meant that schools, particularly private religious schools, have large freedoms in what is taught within their classrooms. This is of particular concern given that non-government schools have a critical role in the provision of education in all states and territories, with 34.9 percent of all students attending non-government schools in 2014 (Australian Bureau of Statistics, 2015). One concern regarding this gap in coverage is that some religious schools within Australia teach abstinence to their students and often do not address issues such as safe homosexual sex and contraception (News.com.au, 2013). One 17 year old girl from Sauers’ study stated,

“Everyone is going to lose it one day or another so they might as well be taught about safe sex and the right way to do it. I go to a catholic school, and we were taught to wait until marriage to lose our virginity, when half the school weren’t virgins, which is pretty pointless. I think that children should be taught about safe sex earlier and be more open about it. We weren’t taught about sex until year 10, when I had already had sex” (p.280, 2007).

This quote indicates the dissatisfaction this student feels with her school’s approach to sex education and the disparity between this and the education desired by the participant. Although the student does not explicitly refer to sexual consent, the quote demonstrates not only the potential futility in sex education that is received later in secondary school, but also the impact that a particular school can have on syllabus material. Although the NSW Syllabus has a section titled “Essential Content”, the section states,

“The school will determine the relative emphases it puts on the strands according to the specific needs of its students and the time they require to achieve the related syllabus outcomes” (p.14).

Schools therefore have significant discretion in the way they teach their curriculum, in part due to historical reliance on non-government schools in providing education and the concessions to nongovernment schools in educational policy (Connell et al. 2007). Although this statement makes reference to the needs of a specific school’s population, the ‘needs’ of students may be subject to preconceived ideas about both young people’s sexuality and expectations of students. For example, educators at a religious school, as the example referred to above suggests, may believe that there is little or no need to discuss sexual consent with students if they assume every student follows the school’s religious teaching regarding sexual intercourse. Although parents may send their children to such schools to receive their education through a religion specific lens, if sexual intercourse is framed as an act merely between spouses, students are missing out on vital information. If a national standard of education is

introduced that explicitly addresses sexual consent and has a universal standard of learning content, rather than leaving it to the discretion of schools, students would be closer to receiving comprehensive sex education regardless of religious affiliation.

Gender Analysis as Violence Prevention

As discussed earlier, the Syllabus states that students must learn about power relations between genders, as well as examining social expectations of masculinity and femininity. This would appear to be an ideal place to disrupt traditional heteronormative sexual scripts. However, many students have indicated that sex education classes often result in these scripts being reinforced (Nicholls, 2015). A particular way that this is done is through the discussion of virginity, a topic that many feel is outdated and taught with sexist connotations (Carmody and Ovenden, 2013). Whilst this may not appear to be directly related to discussions of sexual consent, the reinforcement of these stereotypes and scripts confirms the female role of gatekeeper which dictates women's worth through their sexual choices.

This has been examined in various studies but has also been confirmed by young people themselves (Hickman and Muehlenhard, 1999; Hlavka, 2014). By asserting that it is women's responsibility to determine whether they say yes or no to sexual activity, it removes sexual agency from men as it does not account for men not wanting to engage in sexual activity. Rather, men are expected to adhere to expectations of hegemonic masculinity, often alienating and ridiculing those who either do not initiate or indeed turn down sexual advances (Connell, 1995; Kimmel, 2008). In a report recommending national standards of violence prevention education, the National Association of Services Against Sexual Violence suggested approaching this topic within schooling (Carmody *et al.*, 2009). Although the report demonstrated the various theoretical approaches that sexual ethics and violence prevention can be communicated through, such as crime prevention and as public health, the report specifically refers to

feminist gender analysis as fundamental in approaching sexual assault prevention, an assertion shared by many academics within the field (Flood, 2006; Evans, Krogh and Carmody, 2009; Flood and Pease, 2009). The expectations put on young Australians can be harmful to all sexes, genders and sexualities. Expectations of sexuality and sexual practices placed upon young men are often received through mediums such as pornography and wider media and this can be particularly harmful.

The belief that exposure to pornography directly correlates with aggression and violence against women is not new. Feminists during the 1970s and 1980s saw a connection between graphic sexual imagery and the act of rape, believing that sexuality was a key way in which inequality between the sexes was enacted (Dworkin, 1974; Mackinnon, 1987). A contested yet popular theory is that exposure to pornography correlates with men developing negative attitudes towards women. As such, there are concerns that young men may expect the images presented within pornography to be indicative of real life interactions (Carey, 2015; Smith, 2015). Pornography has become increasingly violent in recent years, with acts such as choking and hitting (which were previously their own niche market) becoming mainstream (Hunter, 2014). Explicit consent is often absent within pornographic films and there is concern that young men are learning that females will automatically enjoy the acts portrayed within these films, rather than engaging in conversations prior to sexual activity (Alleyne, 2011; 9news.com.au, 2015). This has caused a call for pornography to be introduced as a topic of discussion within the PDHPE syllabus with a particular focus on consent, following in the footsteps of countries within Scandinavia (Aarhus, 2015; Boots, 2015; News.com.au, 2015). By introducing this topic, the aim would be to disrupt the sexual script being presented, that of sexually aggressive males and willingly submissive females. Through encouraging teenagers to openly communicate with their sexual partners about their desires and boundaries, there is a greater chance that they will be equipped to pursue ethical sexual lives into their adulthood. Although the impact of pornography is not the key focus of this research, it is an important variable in understanding the ways that consent is being communicated and learned.

Teaching young men about the importance of sexual consent and how it should look in their everyday sexual encounters has become a focal point in sexual violence prevention in recent years. The involvement of young men in consent promotion and sexual violence prevention demonstrates a small social shift towards male accountability (Flood, 2006; Flood and Pease, 2009). There are several programs that focus on young men and how they negotiate sexual ethics (for example Sanders, 2001). These programs may be beneficial, but raises questions as to why this information is not integrated within the PDHPE Syllabus and taught by permanent teaching staff.

Young People's Views on Sex Education

Although the age of consent in NSW is 16 years of age, many young people engage in sexual activity before this age. However, considering that education pertaining to sexual negotiation is often only beginning at this age, young people are often entering the sexual sphere unprepared. The National Survey of Australian Secondary Students and Sexual Health, funded by the Australian Government Department of Health, takes place approximately every five years. The Fifth National Survey was undertaken in 2013 and published in 2014 (Mitchell *et al.*, 2014). The study revealed the lack of faith that young people have with the current state of sex education provided to them, with many of them deeming it useless and a waste of time (Mitchell *et al.*, 2014). By the time students are receiving sex education, many have already begun sexual activity. Out of 2000 students surveyed from years 10, 11 and 12, 69% indicated that they had engaged in a form of sexual activity and 34% had had sexual intercourse (Mitchell *et al.*, 2014). This resonates with the study by Sauers which indicated that the largest age block for students to lose their virginity was between 14-16, with 33.5% of females and 38% of males doing so at this age. The second largest age block for both males and females was 11-13 years of age, far below the legal age of consent within NSW (Sauers, 2007). Whilst conservative arguments dictate that it is adults who should have the final say on what their children need to learn, it is crucial for

the voices of Australian young people to be heard (Sauers, 2007; Carmody and Ovenden, 2013). When sex education does not accurately reflect the lived experiences of young people, the likelihood of them being engaged in such education is limited (Allen, 2003).

Within Sauers' study, the participants were also asked if they had been part of sexual encounters in which there was a lack of consent expressed by either them or their partners. An astounding 28% of female students indicated that they had either been raped or pressured into 'consenting' to sexual activity whilst the proportion of male students expressing a similar result was 11% (p. 101). A common theme which emerged was that girls felt obligated to let their partners have sex with them. The reasons given for this is that they either felt that they could not deny their boyfriends or that they would consent to avoid an argument. This is similar to the findings from Mitchell *et al.* (2014) with 19.8% of males and 28.3% of females (that were sexually active) indicating that they had experienced unwanted sex.

Although alcohol was a dominant variable within these encounters, many females within the study indicated they felt frightened and influenced by their partners whereas males felt pressured by their peers. This reaffirms the fear that some men have of losing social capital if they do not engage in sexual activity with their female partners and peers (Kimmel, 2008).

Understandings of consent, particularly within the confines of a romantic relationship, indicate that current educational practices regarding respectful behaviour and sexual consent in particular may not be effective. Although there is an emphasis on avoiding sexual assault and rape within traditional rape scripts, such as strangers on a dark road, there appears to be a severe omission pertaining to consent within close relationships within the curriculum (Ryan, 2011). If there is no direct reference to teaching consent within the NSW PDHPE Syllabus, how could it then be possible for the variety of consent scenarios to be addressed? One crucial finding that Sauers notes is that the female students within the study have not been taught how to confidently communicate their boundaries and fears to their

partners, but rather have been taught to expect a negative and possibly violent reaction (p. 103)⁴. This understanding is similarly expressed through comparable first hand studies of high school students. The 5th National Survey of Australian Secondary Students and Sexual Health indicated that 25% of students surveyed had experienced unwanted sex of some description (Mitchell *et al.*, 2014). Whilst this number cannot be contributed entirely to a lack of adequate sex education, it is possible that it is a contributor. When young people are not taught how to be assertive in their desires and boundaries, this increases the possibility for miscommunication and assumptions regarding sexual consent.

Alternative Sex Education Programs

In its “Controversial Issues in Schools” policy statement, The NSW Department of Education states,

“1.1.1 Schools are neutral grounds for rational discourse and objective study. They are not arenas for opposing political view or ideologies”

The policy continues to state,

“1.1.2 Discussion of controversial issues is acceptable only when it clearly serves the educative purpose and is consistent with curriculum objectives. Such discussion is not intended to advance the interest of any group, political or otherwise” (Deputy Director-General, 2013).

Although content pertaining to sexuality can be controversial, it is evident that its discussion not only meets curriculum objectives, but helps reduce the risk of harm to young people. Recent public events have highlighted the importance of schools as a key institution with the power to prevent violence.

⁴ Social expectations of male aggression will be addressed in the following Chapter.

Australian of the Year and prominent anti-domestic violence campaigner Rosie Batty⁵ has highlighted the role of schools in addressing personal and institutional powers which can both promote or prevent violence (Wilson, 2015). Learning to identify harmful and potentially harmful behaviour is a crucial skill for young people to learn. A current program that provides an alternative model to sex education is the Sex and Ethics Program. Based on a series of interviews with 16-25 year olds, Carmody, Willis and Albury developed the program in 2005 as a way to fill the gaps they identified in school-based sex education.

The interviews conducted in preparation for the program indicated that students often felt as though the education they received did not adequately prepare them for the social complexities of sexual activity, including understandings of sexual consent. The Sex and Ethics program focuses on primary prevention, which aims to alter behaviour and ways of thinking before assault or violence occurs (Evans, Krogh and Carmody, 2009). This does not just involve providing ways that potential victims can protect themselves, but also addresses factors which could lead to an individual committing violence. This can be done through direct conversation and education regarding sexual consent but also through addressing structural gender inequality (Evans, Krogh and Carmody, 2009).

The six week Sex and Ethics Program focuses on working directly with young people and listening to their opinions regarding the content they feel the need to be taught. This is particularly so in relation to sexual consent as many participants within their surveys indicated that they felt unprepared to negotiate sexual consent or how to deal with sexual pressure. A key element of this program is that it does not explicitly state to young people what is 'right and wrong' in regards to sexuality but rather aims to assist students in developing their own ethical framework. This assists in preparing them to make ethical decisions and sexual negotiations which are healthy for both them and their potential sexual partners.

⁵ Rosie Batty became an anti-domestic violence campaigner after her ex-partner murdered their 11 year old son Luke in 2014.

Conclusion

To help ensure the physical and safety of Australian young people, it is vital that they receive the pertinent information regarding sexuality within a relevant and useful timeframe. This chapter has demonstrated this desire from Australian high school students who have communicated their beliefs that their current education is both inadequate and irrelevant to their life experiences. Whilst the current educational model in NSW has many commendable aspects, it is evident that reform is needed so that sex education includes a specific focus on the social dimension of sexual encounters, particularly regarding sexual consent. As the NSW syllabus does not specifically address consent, schools are able to omit this crucial concept from the education they provide their students. Furthermore, as the content within the Syllabus is left largely to the discretion of schools, there is a possibility that many young people are not being educated on important topics pertaining to sexual consent such as gender power relations. When required content is taught, it is evident that many young people do not receive this education in a timely manner that reflects and is relevant to their own experiences.

As discussed in this chapter, the NSW PDHPE Syllabus states that gender power relations should be examined and as such, this may be an effective learning module to integrate discussions of sexual consent into the classroom. By discussing traditional and dominant forms of masculine and feminine sexuality, students may be able to better identify the factors contributing to these reproduced norms. Male students may see themselves and be identified by women as “potential allies” in sexual assault reduction as opposed to merely potential perpetrators (Carmody *et al.*, 2009, p.34).

New information regarding adolescent sexuality and the extent of sexual activity amongst young people indicates that it is critical to ensure that Australian young people have accurate information presented to them, to prepare them for the sexual sphere. If current and future generations are educated about sexual consent and its associated complexities there may not only be reduced levels of sexual violence,

but a greater sense of equality between genders. Education is a key area for primary prevention in regards to sexual violence, at an individual and wider structural and societal level. As such, it is crucial that sex education addresses these factors and is not left open to the interpretation and discretion of schools.

Having examined educational constructions of sexual consent, the next chapter turns to examining the social practices of young people in regards to sexual consent. Gender relations have a complex history within the traditionally masculine culture of Australian society. The factors influencing this history and how this influences young people's understandings, representations and sexual practices and their impact on the way young people view consent shall be discussed in the following Chapter.

CHAPTER 4: SOCIAL REPRESENTATIONS OF SEXUAL CONSENT

Overview of Chapter

Sexual consent has been a focal point of both the media and the wider public in recent years as it becomes clearer that there is still much confusion about what defines sexual consent and why this may be, as we have explored in Chapters 2 and 3. However the study of sexual consent is only a relatively new field of study within academia and has primarily been focused on within the scope of sexual violence prevention. The examination of how young people communicate and interpret consent has been an important feature of studies in this area, however, consent communication is often complex and contradictory. As discussed in the previous Chapters, legal and pedagogical representations of consent communicate sets of standards for young people's sexuality. However, the data discussed within these Chapters indicated that these standards are often not representative of the actual experiences of young people's sexual experiences. It is therefore crucial that the sexual norms and customs of young people are investigated, so clear understandings of how young people conceptualise sex and consent can be gained. Central to the social norms regarding practices of sexual consent within the Australian context are constructions of masculinity and femininity, both historically and how they continue to be reproduced today. This therefore is a central aspect of the analysis in this Chapter. It shall then explore some of the normative practices of young people in relation to sexual consent negotiation such as alcohol consumption and verbal and non-verbal cues. This shall provide the foundation for analysis in the following Chapter, which compares these practices to the legal and pedagogical representations of sexual consent.

Gender practices in Australia, Sexual Double Standards and Shifts in Masculinities

Gender relations in the early stages of white settlement and colonisation of Australia are a critical context for understanding practices around sexual consent. By documenting gender relations and

consent negotiation in Australia from the time of colonisation, the foundation on which contemporary gender power relations were built can be examined. Reproducing gender power relations from the United Kingdom, women in the Eastern Australian colonies were subject to certain expectations of femininity. Female convicts arriving in the colonies were seen predominantly as either comfort women for British soldiers or for male settlers (Summers, 1994; Rees, 2001). This subjected women to what Berneau describes as the virgin/whore dichotomy, wherein women were either seen solely as virtuous or as immoral, often as the defining feature of their being. The status of the female virgin is seen as pure and virtuous but can easily become cast as the whore, if she seemingly succumbs to sins of the flesh (Bernau, 2007). In some respects, this view of female sexuality still persists today and shall be explored further within this Chapter and Chapter 5. In her famous work, Summers referred to this dichotomous view of women, particularly in the Australian settlement context, as constructing women as either damned whores or God's police (Summers, 1994). The female convicts that arrived in the Australian colonies were viewed as "abandoned" and many struggled to overcome this label (Shaw, 1966). Even those who successfully married settlers were still viewed as whores rather than wives and struggled to be viewed beyond their sexual history or even perceived sexual history (Summers, 1994). This was not so for the male settlers who were able to rise above their initial status as convicts, free from enduring public shame.

This sexual double standard has endured and been reproduced in attitudes towards female sexuality. Women who partake in and/or enjoy sex or other forms of sexual activity are often the victim of verbal slurs and judgement (Flood, 2013). However, females who are assumed to have taken part in sexual activity, even if they haven't, are not safe from such damaging slurs (Hlavka, 2014). This judgement can have dangerous consequences in the sphere of sexual consent, as it is often assumed that females who are sexually active are willing to have sex with most people (Hillier, Harrison and Warr, 1998; Asencio, 1999). Women are not only judged by men but are often critiqued by other women if they cross the "fine

line between acceptable femininity... and unacceptable 'sluttiness'" (Flood, 2013, p.96). Conversely, male sexual habits and expressions are primarily 'policed' by other men, often based on pressures to adhere to a dominant heterosexual script (Kimmel, 2008; Flood, 2013). The belief that a woman's body is somehow defiled or loses value once sexual activity has taken place is still an attitude that represents a dominant sexual script regarding female sexuality, whilst in contrast, men gain social capital by gaining sexual experience (Kreager and Staff, 2009; Flood, 2013). This can lead to harmful consequences when sexual consent is seen as less important than the gaining of social capital and peer acceptance.

The correlation between masculinity and violence has been a focus of much attention in academic and policy discourses, with a specific focus on violence prevention and reduction. Whilst the dominant heteronormative script for men is still evident, alternative masculinities exist and dominant heteronormative models of masculinity have been and continue to be contested (Connell, 1995). The performance of masculinity is an important topic, particularly in the Australian context where the stereotype of the strong rugged man of the land stills play an important role in the imagining of a certain kind of masculinity (Nicoll, 2001). Australia has a young but rich history in the field of masculinity studies, an interdisciplinary field which emerged through feminist studies in the 1970s and escalated dramatically in the 1990s. Feminist analysis and the study of masculinities are intrinsically linked (Connell, 2013).

Whilst masculinity has traditionally been framed as inherently violent, modern understandings acknowledge the plurality of masculinities. There has been a shift from viewing men as merely potential perpetrators of violence, towards seeing men as active allies who can have a role to play in the prevention of violence against women (Jewkes, Flood and Lang, 2015).

In recent years there has been a movement to involve men directly with the reduction of violence rather than placing responsibility solely on women to protect themselves. This includes addressing gender norms which tolerate or promote aggressive masculinity. Gender norms and the way that men view masculinity have been a key area of study, addressing how this informs male sexuality and interactions

with women (Jewkes, Flood and Lang, 2015). An example of how gender norms can influence violence, particularly against women, is that males raised in households that adhere to traditional gender roles are often more likely to become perpetrators of violence (White and Smith, 2004; Flood and Pease, 2009). There has also been debate within academia as to whether male participation in sport, particularly team sports, contributes to the acceptance of rape myths and by extension, a stronger likelihood to commit sexual violence (Flood and Pease, 2009; McMahon, 2015). Whilst this has been studied by examining 'bystander attitudes' (the ways in which individuals react when witnessing violence or derogatory comments directed towards women), men who are involved in "homosocial male peer groups" are frequently more tolerant towards violence against women (Flood and Pease, 2009, p.134). This correlates with studies that indicate that men feel pressure to perform and adhere to traditional masculine scripts in order to receive peer acceptance (Kimmel, 2008; Flood, 2013; Jewkes, Flood and Lang, 2015). However, women are not the only victims of male violence with men also making up a proportion of victims of violent crimes, both physical and sexual perpetrated by other men (Jewkes *et al.*, 2013).

Adolescence is a complex time of learning how to navigate the social world whilst also coming to terms with one's own identity (Tolman, 1994). Many individuals first begin engaging in sexual activity during these years often without a basic understanding of the complex nature of sexual consent, as discussed in the previous Chapter. To trace the factors which contribute to sexual assault over time, White and Smith undertook a longitudinal study of men entering college in the United States over five years, documenting their social experiences including their romantic relationships and friendship groups (2004). The participants undertook an initial survey and then completed follow up surveys in each spring semester for the duration of their undergraduate studies. The initial survey included details about their childhood experiences including experiences of domestic violence, sexual activity and family demographics. Their findings found that after four years of college, 34% of participants had engaged in at least one form of

sexual violence, with the most common involving the use of drugs or alcohol to coerce a partner into sexual activity (p.194). There was also a correlation between childhood victimisation and sexual assault perpetration later in life, though the reasons for this correlation were not discussed in the quantitative study.

Although undertaken in the United States this research is consistent with other studies that find that sexually aggressive men often commit their first sexual assaults during their teenage years (White and Smith, 2004; Jewkes *et al.*, 2013; Jewkes, Flood and Lang, 2015). White and Smith's study found that men who committed their first sexual assault in high school were likely to reoffend within the first year of college. They found that "preventing adolescent perpetration would reduce collegiate victimization by about 25%" (White and Smith, 2004, p.199).

In Sauers' study (2007), female participants who had indicated that they had been pressured into sexual activity often felt as though they had little choice in what occurred. One 18 year old participant stated,

"I was pressed against the wall and after I felt like I was dirty, contaminated and I thought he could do it because he was my boyfriend... I was really confused if he raped me or if it was me. I did keep telling him to stop but I don't know if he heard cause his hand was over my mouth" (p.101).

Similarly, a 16 year old girl indicated,

"Well guys put pressure on girls all the time... enough for you to still be able to say no... but you know they still want it and they get shitty if they don't get it so you may as well just give it to them and be over with it" (p.103)

These participants indicate a confusion as to what consent should look like within relationships. The 18 year old's belief that her boyfriend was allowed physical access to her body merely due to being in a

relationship with him demonstrates a lack of understanding about the complexities of consent and her legal rights regarding consent. In particular it demonstrates confusion when conceptualisations of sexual consent are removed from the stranger rape narrative. Whilst the 16 year old participant indicated a feeling of still being able to say “no” to her partner, her expectation of aggression surpassed this. Sexual pressure shall be further discussed in Chapter 5. Acquiescing to sexual activity to avoid arguments is not consent that is willingly and freely given, inconsistent with legal constructions or discussions regarding sexual relationships in educational representations. This expectation of pressure and possible aggression corresponds with an American study by Hlavka, in which 13 year old participant Patricia, in response to being pressured into sexual activity stated,

“they’re boys, that’s what they do” (Hlavka, 2014, p.344).

This normalised view of male aggression and sexual pressure demonstrates not only the influence of dominant sexual scripts but indicates the harm that their acceptance can have. The girls in Hlavka and Sauers’ studies provide a justification for the behaviour of their male partners, essentialising their behaviour as simply the way that boys are.

This view of male sexuality is further conveyed in a 2015 study by Chung. In the sample of 25 young women aged 14-15 years of age, five of the participants indicated that they had been verbally pressured for “sex or sexual practices” that they did not want to take part in (p.1282). One example of this coercion was a male partner threatening to leave the relationship if the girlfriend did not concede to his advances. Whilst one can only speculate about the thought process and knowledge of the boys referred to within the study, it appears that they realise that permission is required from their partners before sexual activity can begin, however, they do not seem to feel that the methods used to gain that ‘consent’ are important. The participants in this study share further similarities with those in Hlavka’s study as they do

not “identify as a victim” (p.1285), but rather expressed that this was merely how heterosexual relationships were. The girls understand male sexuality and aggression to be intrinsically linked.

This acceptance of male sexuality and its impact on sexual consent shall be examined in closer detail in Chapter 5.

Gender Differences in Consent Communication

Practices around sexual consent have been found to be fluid, rather than having one uniform expression for all situations. Boundaries of sexual consent change depending on the context of the encounter, such as the length of a couple’s relationship. This is highlighted in research by Humphreys which demonstrated that the longer a couple has been in a relationship, the less likely breaches of consent would be seen as such from an outside perspective (Humphreys, 2007). Humphreys distributed a survey to his participants, aged between 17 and 66 years old, which contained a story about a couple named Kevin and Lisa. A third of the participants were told Kevin and Lisa were on their first date, another that they had been dating for three months and finally that they had been married for two years. The scenario depicted Kevin attempting to initiate sexual activity despite Lisa resisting, until finally giving in to intercourse. A larger proportion of participants in the ‘two years of marriage’ group indicated that consent had not been breached compared to both the ‘first date’ and ‘three months dating’ groups (p.310).

Humphreys’ research indicates that consent is seen as more important and explicit when couples do not have a long history together whereas when couples have known each other for longer, consent is seen as more implicit and assumed. This also suggests that definitive definitions of consent, as presented in the law, are tempered by social practices. Humphreys’ findings also demonstrated the slight difference in the way that views on consent are gendered, with more females than males agreeing that explicit consent was needed within all three time scenarios (p.312). Other studies on practices of sexual consent have

similarly found that young men are more likely than women to use non-verbal signals to communicate consent to their partners and as such, often believe that women will indicate consent in the same way (Jozkowski *et al.*, 2014). Humphreys' believes that this is due to women still largely being identified as sexual gatekeepers, a view explored in the previous Chapter. However, the role of the gatekeepers becomes increasingly complex as women are increasingly initiating sexual encounter with others (Burkett and Hamilton, 2012).

Although Humphreys' data reveals that women show an explicit need for sexual consent, research by Burkett and Hamilton demonstrates that many women still have internal conflicts when it comes to putting their sexual agency into practice (Burkett and Hamilton, 2012). Whilst Hickman and Meuhlenhard's definition, as referred to in the Introduction to the thesis, does not explicitly mention 'ongoing' sexual consent, an important aspect of consent emphasised by female participants in several of the studies discussed thus far is that consent can be withdrawn at any point and that the 'feeling of willingness' must continue throughout the entire encounter. Research has revealed that young Australian women are critical of other females who have seemingly given consent to partners yet wish to withdraw consent at a later stage. In Burkett and Hamilton's (2012) qualitative research project, interviews were conducted with eight women aged between 18 and 24 about their casual sexual experiences. The study focused on female sexuality through a post-feminist framework, examining the conflict between seemingly achieved full female sexual agency and enacting this agency in everyday life. Whilst the participants indicated that they believed that men should accept a direct and verbal 'no' from their partners, their responses also indicated that many focused primarily on the verbal rather than seeing consent as a mix of verbal and non-verbal cues. A 24 year old participant, Jessica, stated

"I know you can be pressured into having sex: I don't think that's an assault. If you get talked down, you're consenting even though you have pressure on you to consent because if you really don't want it you go 'fuck off I said no'. So if you get worn down you're still consenting" (p.820).

Jessica's response demonstrates that whilst there is a basic understanding of the right to say no, there is still confusion as to what actually constitutes consent as there is a lack of willingness and freely given consent in Jessica's statement. Jessica's statement reflects the enduring script of the female gatekeeper and places an emphasis on female responsibility. Rather than placing an emphasis on a male partner interpreting cues, the responsibility lies with the female partner in overtly communicating the cues. This finding correlates with the beliefs and expectations of the participants in Hlavka's study who also believed that it is up to the female to stop sexual encounters with a simple 'no'. Reciting the story of another girl, 13 year old Rachel being raped by an older male, 12 year old Jillian said:

"Rachel wanted to, but see, the reason why she's telling everybody that he forced her into it 'cause she don't want it right there and then. But he did . . . he talked her into it. But Rachel could of said no but she didn't, so how should he know?" (Hlavka, 2014, p.351).

This way of thinking is central to heteronormative discourses regarding relationships (Sauers, 2007).

Burkett and Hamilton's (2012) study participants hold contradictory views of sexual consent. Whilst the participants often stated that they believed a woman should just say no if she does not want to take part in sexual activity, their personal stories of sexual encounters reflect a hesitation in doing so. For instance, another participant Tracey indicated that you "have to keep your word" if you have sent signals that you may want to have intercourse (p.823). It is difficult to reconcile these expressions around responsibility and agency in situations where imbalances in power, such as gender and history, exist (Beres and Farvid, 2010).

As mentioned earlier, women place a higher emphasis on verbal communication than men do. Although the responses reported in the studies by Sauers (2007) and Burkett and Hamilton (2012) place a primary focus on explicit and verbal communication of consent, other research shows that the most common form of consent communication is actually non-verbal (Hickman and Muehlenhard, 1999; Humphreys,

2007). This is common for both couples in new and longer-term relationships, however non-verbal communication and implicit physical cues are most common amongst couples who have a longer history together (Humphreys, 2007; Jozkowski *et al.*, 2014). It is important for individuals to know that verbal communication is important when both communicating and interpreting consent, however it is equally so when it comes to non-verbal communication. Interestingly, both men and women often indicate that they would use verbal cues to initiate sex but actually primarily rely on non-verbal cues. Jozkowski *et al.*'s believe this difference is due to verbal communication being often intentional whereas non-verbal cues often occur spontaneously (2014, p.912). This is important as it highlights the disparities between how individuals conceptualise and define consent and therefore how it is enacted in everyday practice.

The implications of this shall be discussed further in Chapter 5.

Miscommunication Theory and Sexual History

Miscommunication theory is the notion that sexual assaults can be caused through miscommunication between men and women, largely due to the differing sexual script for men and women (Beres, 2010). The belief in this theory and its manifestation within sexual encounters is often reflected within young people's recounts of sexual activity. The 'National Community Attitudes Towards Violence Against Women Survey' (NCAS) phone interviewed 17,500 Australians aged 16 years and above. Within this survey, the responses of young people aged between 16 and 24 were analysed and presented in a separate report 'The Young Australians' Attitudes towards Violence Against Women' (the youth report). Analysis of the results, some of which are presented below, were analysed independently from findings from other respondents. Comparing the 2009 survey results to those from 2013, it states,

“Of concern is the increase in the percentage of young people agreeing ... that men rape because they cannot control their sexual urges (33% v. 40%)” (p.57).

This finding demonstrates that a significant minority of respondents still maintain a construction of males as hypersexual and victims to their own physical urges and desires. The fact that the number of young people who believe this statement has increased by 7% from the previous survey is concerning, and potentially demonstrates the limited effectiveness of campaigns to change gender attitudes regarding gender identity and respect towards women and may potentially signify concerning developments regarding young people's attitudes regarding sexuality.

However, sexual urges are not the only factor that people believe can contribute to rapes occurring. Recent studies regarding young people focus on how consent is negotiated between them during sexual encounters. As the youth report and Sauers (2007) studies indicate, it is the communication and interpretation of cues which are central to understanding how sexual consent is negotiated. Within Burkett and Hamilton's study, the participant Lisa states that if a female only gives physical cues rather than verbal one's that they are not interested in sexual activity "it's not the guy's fault" if he misunderstands (p.819).

The theory that miscommunication could be a contributing factor in heterosexual sexual assault has been explored in depth (Hickman and Muehlenhard, 1999; Beres, 2010). A common example of miscommunication is when a woman says "no" when she actually is willing to partake in sexual activity, initially refusing so as to preserve an image of feminine purity rather than be seen as hypersexual. The NCAS youth report indicated that many young people believe that the 'token refusal' can be a factor within sexual assaults and as such, some blame lies with the victim if this does occur:

"Up to 1 in 5 young respondents believe that there are circumstances in which women bear some of the responsibility for sexual assault. For example, 20% of young people believe that women often say 'no' when they mean 'yes'. This is 7 percentage points higher than for the 35–64 year age group" (2013, p.5).

Although the belief that females may initially refuse sexual advances is not particularly surprising, it is concerning that up to approximately 20% of young people believe that this therefore means that female victims are therefore partially to blame if men believe they are consenting. However, several studies have also found that a significant minority of young people still believe that men are initially expected to “ignore refusals” from their partners, believing them to be false (Jozkowski *et al.*, 2014, p.905). One study indicated that 40% of males surveyed indicated that they believed to have been with a female partner who had used token resistance, a belief that correlated with a higher likelihood of “sexual aggression” against their partner (Krahé, Scheinberger-Olwig and Kolpin, 2000, p.325). This aggressive heteronormative sexual script does not just impact the interpretation of female consent, but also male consent. As males are viewed as hypersexual and expected to be constantly seeking sexual activity, female partners assume that males are in a near constant state of expressing consent rather than ensuring they ascertain consent for every interaction (Jozkowski *et al.*, 2014). While studies of consent find that some men are expected to use a token ‘no’, it is more widely expected from women (Muehlenhard and Rodgers, 1998). Whilst it is still an expected variable within sexual encounters, Muehlenhard and Rodgers (1998) indicate that when males or females say ‘no’ to sexual activity they mean it as it stands. This is contested amongst academics, demonstrating the complexity and often contradictory nature of sexual consent and different expectations and understandings regarding what normative sexual behaviours constitute.

Normative Practices of Sexual Consent

Although it is accepted in both legal and pedagogical frameworks that consent cannot be given when one is intoxicated, alcohol remains a common feature of young people engaging in sexual activity. Ryan’s work on sexual scripts revealed that when asked to imagine a scenario of a seduction, participants stated that returning to a person’s residence and consuming alcohol before having sex would be a normal expectation (Ryan, 2011). This normative practice of consuming alcohol before sex does not just reflect

social expectations of seduction, but has also been used by women as a way of validating their experiences of casual sex. If a woman has been drinking she can use this to 'justify' her engagement in a practice that women are widely looked down upon for partaking in (Beres and Farvid, 2010). This is not a common practice amongst men as they are still widely expected to engage in casual sex and can do so without social repercussions, instead gaining status through casual sexual encounters (Kreager and Staff, 2009).

Notably, 30% of teenage females in Sauers' study indicated that consuming alcohol or drugs before sex made the experience more enjoyable, compared to 14% of males (Sauers, 2007, p.106). This may reflect similar feelings of validation, as referred to by Beres and Farvid (2010), already presenting at a younger age. However, the majority of males and females indicated that consuming drugs or alcohol neither heightened nor lowered their experience of sex.

The consumption of alcohol before sexual activity is an area in which contradictions can be observed. It is widely accepted that consent cannot be freely given when one is intoxicated however the exact boundaries of this are subject to ongoing debates within public discourse as the boundaries of intoxication is central to what constitutes free consent and agency, which, as discussed in Chapter 2 is central to legal definitions of consent. Despite public knowledge that excessive consumption of alcohol negates consent, when sexual assault does occur it is often the victim who is largely viewed as being to blame if they are intoxicated (Grubb and Turner, 2012). This blame is often internalised by victims, manifesting as feelings of guilt and shame, often creating barriers to reporting the crime or seeking professional help (Sauers, 2007; Relyea and Ullman, 2015). The NCAS youth report also asked about the impact of alcohol, and found that:

“Ten percent of young people believe that partner violence can be excused if the offender is heavily affected by alcohol. This is 3 percentage points higher than for the 35–64 year age group” (p.5).

Although the ability to consent may be significantly compromised if an individual is intoxicated, this finding demonstrates that there is the perception amongst some young people that intoxication can excuse the behaviour of a violent individual. This can complicate consent and perceptions of sexual assault if there are exceptions in which the absence of consent is seen to be excusable. If the consumption of alcohol can cause feelings of guilt and shame among victims of sexual assault, the belief that alcohol can excuse the actions of a perpetrator may emphasise these feelings and further prevent them from seeking help.

Sexual Consent within Public Discourse

Campaigns against victim-blaming have recently been gaining prominence both internationally and domestically. One of the most well-known campaigns is the annual SlutWalk, a protest which began in Canada during 2011 but now occurs all over the world. Sparked by a Toronto police officer’s comments that women would not get raped if they did not dress like “sluts”, the movement condemns assumptions of consent based upon clothing choices or sexual history (‘Politics of Slutwalk’, 2011). Within Australia, Charlie Pickering recently discussed consent and rape on his evening show ‘The Weekly’ (August 12, 2015). Discussing social understandings of victim-blaming, Pickering’s comedic dissection of the way sexual responsibility is taught to males and females, particularly females, resonated with the Australian public. The segment demonstrated the prevalence of the issue within Australian public discourse and the segment was widely shared online and largely positively received.

Although this demonstrates the willingness and desire from much of the public to see this sexual script disrupted, feminist public commentator and journalist Clementine Ford voiced her concerns over the

public's reaction to Pickering's words. Whilst largely agreeing with the content of the piece, Ford criticised the praise Pickering received for reciting facts and analogies that females had been pushing to be recognised for years (Ford, 2015b). Examples of this included mocking the #NotAllMen movement and stating that society should push the message 'don't rape' rather than 'don't get raped'. Ford was quick to point out that women who discuss such issues are often threatened and harassed whilst men are often hailed as "heroes" and "champions" of feminism (Ford, 2015b). This double standard in reactions personally resonated with Ford who compared the reactions to Pickering to her own experiences as a feminist writer online, often receiving rape and death threats when she discusses such issues. Ford continued her criticism by commenting that often women who advocate for closer examinations of consent and rape culture are largely ignored.

These differing reactions reveal how the complex double standards around sexual consent and gender are also reflected in more broad reaching gendered discourses and practices in everyday Australian life. The voices of Australian women are often silenced as they are not being heard in the public sphere or when they are heard, mocked or attacked. For consent to be successfully communicated and received, not only must the voices of Australian women be nurtured and encouraged to be assertive, but Australian men must be receptive to hearing and acknowledging these voices. Whilst Pickering has a large following and it is beneficial for influential male voices to reach their audiences about the importance of respecting a woman's right to refuse sex and the fallacy of rape myths, it is curious that the female voices which initiated the public dialogue are left unrecognised.

Conclusion

This chapter has argued that the understanding of consent is inherently complex. Although young people appear to have basic understandings of the right to refuse sexual intercourse they still have expectations regarding when and how this can occur. The data presented in this chapter indicates that young people

place an emphasis on verbal communication, particularly when it comes to refusals, yet often do not consciously acknowledge the importance of non-verbal communication. This is especially important as most couples initially begin with verbal consent communication but shift to non-verbal cues the longer that they are together, demonstrating the importance of understanding the non-verbal. However, understandings of consent are increasingly complicated for young women learning to navigate the sexual sphere and their own desire, as the sexual script of the female gatekeeper slowly shifts. However, the ways in which young women are seen to both claim 'responsibility', both for themselves and others in failed attempts at refusing sex, demonstrates that they are still subject to the expectations of being gatekeepers whilst there is also increasing scope to act as free sexual agents. Young women seeing themselves as such is crucial in negotiating consent. Cameron-Lewis and Allen assert that a female is unable to see herself as a sexual agent, "how is she able to articulate her consent or lack of consent in a sexually intimate situation?" (2013, p.124). The teaching of sexual consent is therefore inextricably linked to how male and female sexuality is constructed and perceived. Whilst it is important that young girls and women are taught that it is their right to turn down sexual advances, it is also equally important for them to understand that they too are allowed to be active in pursuing sexual encounters with others without guilt or shame.

The use of alcohol during sexual activity is seen as a way for women to validate their sexual experiences and provide a rationale for why they consented to activities such as casual sex, which is still widely frowned upon for young women to engage in. Although the discussion of the importance of sexual consent is widely acknowledged, as seen through its prevalence in both popular media and in the research presented in this chapter, it appears that consent education still focuses primarily on a 'no means no' form of consent rather than acknowledging the many other factors that play a role in consent negotiation.

Whilst undertaking first hand primary research was not possible for this study, the rich data already available demonstrates the contradictory ways that young people both view and enact sexual consent. This has been demonstrated through examples such as the disparity between how young people emphasise the need for verbal consent yet primarily communicate via non-verbal cues and the effects this disparity can have on sexual interactions, particularly those of young women. Studies specifically investigating consent negotiation between teenagers would be beneficial to add to this growing field of study.

CHAPTER 5: COMPARATIVE ANALYSIS

The examination of the legal, pedagogical and social representations of sexual consent with a specific focus on the Australian context has demonstrated the dissonance between these three representations. This is clear through the differences between the legal age of consent, the age at which sex education begins and the age at which most young people begin to engage in sexual activity with another or the first time. This has been further demonstrated through how consent itself is actually defined by young people within social practices as opposed to how it is defined within the law. For example, many believed that acquiescing to sexual activity constituted consent whilst the law indicates the positive model of consent is required to meet its definition and criteria of sexual consent. Traditional sexual scripts and rape myths also demonstrated their impact on the conceptualisation of sexual assault and gender roles. This was demonstrated through the enduring belief in the female gatekeeper and the contradictory beliefs pertaining to female sexual agency. Whilst these representations have been examined in isolation, this chapter compares and contrasts these representations to determine the ways in which they influence and impact each other.

Although the legal age of consent in NSW is 16 years of age, it is evident that a large proportion of young Australians first engage in sexual activity before reaching this age. Whilst doing so is illegal, it is not a

deterrent for young people who wish to engage in sexual activity with another of a similar age. As the data indicated, the largest age group at which individuals first begin sexual activity is 14-16 years of age (Sauers, 2007). Although some teenagers indicated an awareness of the legal age of consent, the legal age is often not the main consideration for when young people decide to have sex. Rather individual feelings of readiness are emphasised. For example, “I think it’s really an individual decision... young people can have sex at any time in their teen years” (Sauers, 2007, p.358). This may reflect a belief amongst young people that the age of consent solely exists to protect them from adults who may wish to take advantage of them. However, in NSW, consent laws function to legally restrict a person under the age of consent and anyone above it, even if only by a few years.

Furthermore, young Australians are engaging in sexual activity before the legal age also indicates that many are doing so before receiving sex education in school. Whilst this is in accordance with both legal and social expectations of young people’s sexuality, providing education precisely at the age when one is legally able to enter the sexual sphere is not going to effectively prepare young people. This is a belief felt by young people, many of whom indicated that the sex education they received was not useful or relatable to their own experiences. The significant amount of young people who indicated that they have experienced a non-consensual sexual encounter is an indicator that many are struggling to safely navigate the sexual sphere. Whilst earlier sex education would be beneficial for young Australians, particularly with a focus on the social and relationship dimensions of sex, an explicit discussion of sexual consent is required. As noted in Chapter 3, the NSW curriculum does not explicitly cover sexual consent. Discussing sexual consent during earlier years of schooling, in conjunction with an examination of gender power relations and the recognition of violence, would serve as a primary prevention mechanism against sexual violence. However, traditional forms of education such as teaching that ‘no means no’ and ‘yes means yes’ does not contribute to a greater understanding of the complexity of sexual consent, as the analysis of young people’s practices regarding sexual consent indicated. Although this may be a starting

point of sexual consent discussion, it is evident that young people often communicate consent via non-verbal cues. This indicates that the interpretation of such cues is crucial within consent education. This is particularly so as the data reflects a confusion amongst young people, and even adults, about what constitutes sexual consent.

Brett's contestation of the way that the law conceptualises sexual consent resonates with how 24 year old Jessica, a study participant referred to within the Chapter 4, also understood consent (Brett, 1998; Sauers, 2007). Both Brett and Jessica shared the belief that acquiescing to sexual activity, even under coercion or duress still technically counts as sexual consent. Therefore communicating that under this circumstance, no crime has been committed. This directly contradicts the positive model of consent as outlined within Australian and NSW law, by which consent must be freely and willingly be given.

Although the article from Brett is nearly twenty years old, the recent data obtained by Sauers demonstrates that that this way of thinking is not only still present, but that young people can conceptualise consent in this harmful way.

By defining consent as a mere 'yes' or acquiescence to sexual activity, it ignores various factors such as gender power relations, coercion and alcohol consumption, which bring into question whether consent has been freely given. However, as the law indicates a positive model of consent is required, a simple 'yes' is not enough to demonstrate consent has been given. Although the law promotes this positive model of consent, as Powell points out it "has yet to successfully enter the norms of young people's everyday sexual encounters" (Powell, 2007, p.10). This disparity demonstrates that young people are often unaware of how consent is defined within the law and thus, can struggle to accurately reflect this within their social practices. Sex education within schools has the potential to link these two together, by not only imparting knowledge about the law but by communicating how this would look within sexual practice. Although discussions of sexuality within schools are controversial and can often be overlooked

in favour of biological process, lessons which reflect sexuality within the law would be beneficial for young Australians who are beginning to engage in sexual activity.

Although sexual assault is largely committed by a person known to a victim, young Australians still frequently believe in traditional rape myths which highlight strangers as the main potential perpetrators. Aligning with findings by Ryan, non-consent was often only associated with physical violence rather than any scenario in which consent was not freely and willingly given (Ryan, 2011). This was demonstrated by one of the participant's from Sauers' study referred to in Chapter 4, who articulated her confusion over sexual consent within a relationship scenario, being unsure if she had been assaulted or not as she thought her boyfriend was allowed access to her body. When adherence to consent was mentioned it was often in reference to the standard notion of merely saying 'yes' to sexual activity. This suggests that understandings of violations of consent are embedded in 'stranger danger' discourses, wherein young people are warned from childhood to be wary of strangers. This discourse fails to prepare young people for sexual encounters with friends or partners and the complexities of sexual consent negotiation that arise in relationships. Powell (2007) states that "few studies" have examined the role of pressure within "the sexual violence continuum" (p.10). However, this may be a crucial element to examine within sex education classes as young women consistently equate pressure in relationships with sexual pressure from their partners (p.10). Many indicate that they either do not know how to handle this pressure or assume that this is merely how all men behave and therefore there is nothing that can be done to stop pressure being exerted upon them (Powell, 2007; Hlavka, 2014). This lack of interpersonal communication and harmful gender stereotyping is meant to be examined within PDHPE courses according to the NSW Syllabus (Board of Studies, 2003). However, these vital lessons are often only briefly addressed.

One 18 year old women who was interviewed within Powell's study stated that the amount of sexual pressure on girls depends on their boyfriends' "sexual needs" (p.11). This statement reflects the

normative sexual script explored by Ryan, that of sexually assertive males who must convince their female partners to partake in sexual activity (Ryan, 2011). However, when asked to devise a seduction script, as discussed in Chapter 4, Ryan's study participants frequently emphasised the importance of alcohol and a male initiating the sexual interaction. This was in contrast to the rape scripts they wrote which reflected the traditional stranger rape script, which included being accosted on a street late at night. Unless these sexual scripts are openly discussed and challenged, especially through appropriately designed curriculum, students may be ill-prepared to navigate sexual consent that does not adhere to traditional sexual scripts.

Rather than addressing and disrupting traditional sexual scripts and rape myths, sex education within schools often reinforces the roles of the sexually forward male and the gatekeeping female. Girls are actively taught that they are the "gatekeepers" of sexual activity and as such are often only taught how to say no to the sexual advances of their male peers and partners (Hickman and Muehlenhard, 1999; Powell, 2007; Burkett and Hamilton, 2012; Hlavka, 2014; Jozkowski *et al.*, 2014). By emphasizing that girls who actively seek sexual pleasure are not the norm and that they are gatekeepers of sexual activity, these lessons perpetuate the female virgin/whore dichotomy, which undermines women's sexual agency and expressions of sexuality. Whilst it is important that they do know how to say no to unwanted sexual advances and know that there is no shame in doing so, they are not adequately taught how to negotiate the sexual activities that they would like to explore. This is of concern not only as it communicates to girls that it is their duty to prevent sexual intercourse from happening, but it also communicates that it is unnatural for females to have sexual agency and desire of their own. Although it is becoming more socially acceptable for women to be liberated sexual agents, (Burkett and Hamilton, 2012) there are still social repercussions for women who have a traditionally masculine view or script pertaining to sexuality. These range from verbal slurs to consequences such as sexual assault and rape as girls who are open about their sexuality are often viewed as willing to sleep with anyone (Asencio, 1999).

Although the social and physical impacts of 'slut-shaming' are not the focus of this study, it should be noted that this is another area of young people's sexuality currently being discussed. The social construction of female sexuality as passive still dominates. To combat this way of thinking, there have been active attempts to introduce sexual education that does not limit female sexuality and addresses both the sexual pleasure and agency of all individuals, regardless of their sex or sexual preferences (Ford, 2015a; Funnell and Marson, 2015). Recent public discussion has also begun to address how to communicate to young men that they too can turn down unwanted sexual advances from their female peers. The equation of masculinity with frequent sexual activity can have lasting effects on their mental health and sense of self-worth and identity. This can also lead to bullying by peers as the men in question may be assumed to be homosexual, since they do not adhere to the hyper-masculine script (Simon and Gagnon, 1984; Kimmel, 2008; Ryan, 2011).

Whilst sexual scripts are changing to reflect and accommodate diverse conceptualisations of what is acceptable male and female sexuality, as seen above, dominant constructions of acceptable gender norms remain. Men still largely gain social capital and peer acceptance whereas females often feel that they must guard their reputations or else may face social consequences such as verbal slurs. The data gathered by Burkett and Hamilton (2012) indicates the conflicting ideas held by young women in regards to sexual encounters and consent. The young women in Burkett and Hamilton's study understood the formal practices of consent as one merely having to verbally communicate a lack of consent, for example, by stating "no". However, when faced with an unwanted encounter themselves, they did not act in a similar fashion. The young women rather 'took responsibility' for the situation they were in and expressed a belief that saying 'no' would not have been appropriate, largely due to a belief that their own actions and the context of the interactions somehow compromised this, such as if they had flirted or had gone back to a man's apartment. This internalisation of victim blaming demonstrates the enduring influence of dominant social understandings of consent. For example, acquiescing to sexual

activity indicates consent and the insatiable male sexual drive, despite these young women seeing themselves as sexual agents, free of 'past' social constraints on their sexual freedoms. There is clearly still confusion regarding the role of gender norms and power relations regarding sexual practices, which is not adequately addressed in sexual education.

A large proportion of Australian teenagers and young people feel that the sex education they receive is neither informative nor relatable to their own experiences (Sauers, 2007; Mitchell *et al.*, 2014). Whilst the NSW Syllabus states that PDHPE classes should cover topics such as gender power relations, violent relationships and respect, these can often be overlooked in favour of the biological processes of sex. Although these topics relate to sexual consent, the term 'sexual consent' does not appear within the current PDHPE Syllabus. Thus, there is no obligation for schools to address sexual consent within their lessons. The young women within Burkett and Hamilton's study indicated a disparity between how they believe consent should be communicated and how they actually do so within sexual scenarios. This corresponds with Humphreys' findings that revealed that whilst the majority of young people indicate that they communicate consent verbally, when non-verbal cues are actually most common. Non-verbal cues are also especially important within a legal framework as they are often used to indicate whether an alleged victim was freely and willingly engaging in sexual activity or not. This is an example of how legal representations do not align with social representations of sexual consent amongst Australian young people.

As discussed in Chapter 4, young men are more likely to communicate consent via non-verbal signals than women who emphasise the need for verbal signals, such as explicitly saying "yes" (Jozkowski *et al.*, 2014). Whilst this was seen as largely due to women's role as sexual gatekeepers, it demonstrates the subjectivity of sexual consent. For example, men also often believe that their female partners would express consent through non-verbal signals. This has led to the exploration of miscommunication as a possible reason for sexual assaults. The subjectivity of sexual consent is also demonstrated through its

fluidity within relationships (Humphreys, 2007). Whilst casual encounters and new relationships often rely on verbal consent communication, the longer a couple have been in a relationship the less they depend on verbal signals and more on non-verbal implicit signals. However, whilst social practices demonstrate the fluidity of consent, sexual consent within the law is static and does not necessarily account for these differing views. The law follows a positive model of consent through which consent must be actively given throughout a sexual encounter. However, if young couples are not 'actively' demonstrating willing consent within their relationships, due to familiarity with each other, it may not actually reflect the legal representations of sexual consent.

The comparative analysis of the legal, pedagogical and social representations of sexual consent demonstrates that institutional definitions and expectations of young people's sexuality does not accurately reflect their everyday social practices. This demonstrates a dissonance between how young people's sexuality is conceptualised and believed to be enacted and the ways it actually is. As discussed throughout this Chapter, this can be dangerous for young people as they attempt to safely navigate the sexual sphere and practice sexual consent.

CONCLUSION

This thesis has sought to determine how young people define sexual consent and whether this reflected legal and pedagogical representations. Through an analysis of relevant documents and various primary studies of young people's attitudes and practices regarding sexual consent, the thesis has documented the complex and often contradictory definitions that young people hold of sexual consent in comparison to institutional definitions.

These complex and contradictory views of sexual consent indicate that there is a disparity between many young people's sexual practices and understandings of consent and legal and pedagogical constructions. This reflects young people's autonomous lifeworlds which adults are separated from, and that adult policy makers and educationalists cannot be fully aware of the various "resources, customs and cultures" that young people are experiencing (Connell, 2007, p.37). By not engaging seriously with young people about their sexual experiences, educationalists risk continuing to develop a curriculum which is not reflective of young people's experiences and lifeworlds. This not only makes the curriculum irrelevant from the perspectives of young people, but can ultimately result in harm rather than protection, as young people overlook or ignore educational messages that promote gender equity in sexual relationships. Although the current age at which sex education substantively engages with the practices of sex appears to correlate with the legal age of consent, receiving this information at the same time as the legal age of consent is problematic because many young people are already engaging in sexual practices. In this respect, both legal and educational practices are out of step with young people's sexual practices.

Comprehensive sex education, particularly pertaining to sexual consent should rather begin before young people reach the legal age so they are potentially informed on how to make ethical decisions and negotiate sexual encounters. However, this possibility is constrained because such information may not

be deemed as 'age appropriate' if it is discussed in detail before the legal age, a criteria which is central to curriculum design. Whilst what may be considered age appropriate is ultimately subjective, based on both personal beliefs and social norms, evidence regarding the sexual activity of Australian young people is helping to establish what information is required and when. As information pertaining to sex and sexual knowledge is highly sensitive and often controversial, it is crucial to understand how best to communicate this information. As discussed in Chapter 3, programs which work directly with young people to establish what they both want and need to learn exist and are being used as a way to fill the information gap frequently left by school-based sex education. These programs have the potential to make broader curriculum more relevant to young people.

As the legal and pedagogical representations of sexual consent do not accurately reflect the social practices of sexual consent, the age at which sexual activity is promoted by these institutional frameworks largely do not impact the actual age that many young people begin sexual activity. Historically, the legal age of consent was established at an age that was thought to reflect the realistic nature of young people's sexuality. Although it is evident that many young people begin having sex before this legal age, this thesis does not argue for the lowering of this age. Rather, crucial information regarding sexual consent should instead be introduced before this age to provide a legal framework and guidance for young people who begin engaging in sexual activity before this age, and so that those who do begin sexual activity at 16 years of age are well equipped and confident to handle the social complexities of sexual interaction.

The information provided to young people through the curriculum should extend beyond basic concepts of consent, such as 'no means no', and reflect the representation of sexual consent within the law, that of the positive model. Young people are largely unaware that consent is legally defined through its active communication throughout a sexual encounter, rather than simply stating 'yes' at the beginning. Simple conceptualisations may be a good starting point in discussions pertaining to sexual consent, but to leave

education at this point may young people without sufficient information to engage in the complex situations that may arise in sexual interactions. Not only may young people may find themselves on the wrong side of the law, but several of the studies analysed in this thesis suggest that young people may be left with feelings of guilt and shame after interactions that do not follow the positive model of consent, often communicating a confusion regarding whether their experiences were consensual or not.

In determining the definitions that young people have of sexual consent, it was apparent that there are gender differences in how consent is conceptualised and expressed. These differences in the way that young men and women predominantly define consent was considered from the framework of 'Miscommunication Theory' (Hickman and Muehlenhard, 1999; Beres, 2010). Whilst young men largely communicated consent through non-verbal cues, young women placed emphasis on verbal cues. This reflects young women's role as sexual gatekeepers, which is still largely expected of women, despite a shift towards the acceptance of active female sexuality. Not only do these gender differences reflect the different ways that consent can both be communicated and interpreted, but it reflects differences in the ways that young men and women understand education about consent, the way different gender roles regarding consent are promoted in education and also the importance of consent. As females are seen as gatekeepers, the need to assertively and verbally express non-consent is emphasised as a way to clearly communicate to male partners who, according to dominant social constructions of masculinity, are hyper-sexual and struggle to contain their sexual urges. However, this merely reinforces traditional sexual scripts in which sexual consent is largely viewed as an issue for women to manage, rather than framing sexual consent as an interactive communication between two or more individuals. While education has a role in disrupting these dominant gendered sexual scripts, current curriculum may not be doing enough to do so.

Sexual consent must be given by both young men and women within a sexual interaction, rather than assuming that all young men are consistently consenting to any possible sexual activity. This not only

harms young women but young men, as it limits their agency and ultimately frames them as potential perpetrators rather than potential allies within sexual violence protection or as potential victims themselves. The importance of sexual consent must be taught to both young men and women, as well as the differing forms it can take, such as verbal and non-verbal, and how to both communicate and interpret these cues. School-based education is potentially an important mechanism to further this, by addressing the heteronormative sexual scripts which have contributed to these conceptualisations of sexual consent. It can also do so by addressing how these scripts impact the differing ways that young men and women communicate sexual consent.

Whilst many young people may not necessarily be influenced by pedagogical representations of consent or find the curriculum relevant, if appropriate sex education is introduced earlier, and addresses the complexities regarding verbal and non-verbal cues and the gender power relations that are intrinsic to practices of sexual consent, pedagogical representations of sexual consent could have a positive impact on young people's sexuality. By teaching sexual ethics and communicating to young people how consent should look in every day sexual practices, not only is there the chance that sexual assaults involving young people will be reduced but that young people will have the confidence and knowledge to safely begin sexual activity. It is potentially through re-visioning education in this way, that young people's understandings and practices regarding sexual consent will be influenced by and come to accurately reflect legal and pedagogical representations.

REFERENCES

9news.com.au (2015) *Sex offending teen warned to stop porn use, news*. Available at: <http://www.9news.com.au/national/2015/03/05/16/12/wa-teen-avoids-detention-for-sex-assault> (Accessed: 5 March 2015).

Aarhus, H. R. in (2015) *Porn belongs in the classroom, says Danish professor, the Guardian*. Available at:

<http://www.theguardian.com/culture/2015/mar/16/pornography-belongs-classroom-professordenmark> (Accessed: 15 July 2015).

Age of consent laws (2014). Available at: <https://www3.aifs.gov.au/cfca/publications/age-consent-laws> (Accessed: 2 May 2015).

Allen, L. (2003a) 'Girls Want Sex, Boys Want Love: Resisting Dominant Discourses of (Hetero) Sexuality', *Sexualities*, 6(2), pp. 215–236. doi: 10.1177/1363460703006002004.

Allen, L. (2003b) 'Power talk: young people negotiating (hetero)sex', *Women's Studies International Forum*, 26(3), pp. 235–244. doi: 10.1016/S0277-5395(03)00053-0.

Alleyne, R. (2011) 'Internet porn 'encourages sex offenders'', *The Telegraph*, 7 May. Available at: <http://www.telegraph.co.uk/news/science/science-news/8499409/Internet-porn-encourages-sexoffenders.html> (Accessed: 3 August 2015).

Asencio, M. W. (1999) 'Machos and Sluts: Gender, Sexuality, and Violence among a Cohort of Puerto Rican Adolescents', *Medical Anthropology Quarterly*, 13(1), pp. 107–126.

Australian Bureau of Statistics (2015) *Main Features - Students*. Available at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4221.0> (Accessed: 8 October 2015).

Australian Centre for the Study of Sexual Assault, A. I. of F. S. (2011) *ACSSA Resource Sheet No 1 - Sexual assault laws in Australia*. Available at: <http://www.aifs.gov.au/acssa/pubs/sheets/rs1/> (Accessed: 13 March 2015).

Baker, K (2015), 'Online pornography – Should schools be teaching young people about the risks? An exploration of the views of young people and teaching professionals', *Sex Education: Sexuality, Society and Learning*, (16)2, pp. 213–228, doi: 10.1080/14681811.2015.1090968

Belknap, J. (2010) 'Rape: Too Hard to Report and Too Easy to Discredit Victims', *Violence Against Women*, 16(12), pp. 1335–1344. doi: 10.1177/1077801210387749.

Beres, M. (2010) 'Sexual miscommunication? Untangling assumptions about sexual communication between casual sex partners', *Culture, Health & Sexuality*, 12(1), pp. 1–14. doi: 10.1080/13691050903075226.

Beres, M. A. (2007) "'Spontaneous" Sexual Consent: An Analysis of Sexual Consent Literature', *Feminism & Psychology*, 17(1), pp. 93–108. doi: 10.1177/0959353507072914.

Beres, M. A. and Farvid, P. (2010) 'Sexual Ethics and Young Women's Accounts of Heterosexual Casual Sex', *Sexualities*, 13(3), pp. 377–393. doi: 10.1177/1363460709363136.

Beres, M. A., Senn, C. Y. and McCaw, J. (2014) 'Navigating Ambivalence: How Heterosexual Young Adults Make Sense of Desire Differences', *The Journal of Sex Research*, 51(7), pp. 765–776. doi: 10.1080/00224499.2013.792327.

Bernau, A. (2007) *Virgins: a cultural history*. London: Granta.

Blatterer, H. (2007) *Coming of Age in Times of Uncertainty*, Oxford and New York: Berghahn Books

Board of Studies (2003) *Personal development, health and physical education: syllabus years 7-10*. Sydney: Board of Studies NSW.

Boots, T. (2015) *Rethinking Sex Ed In Australia: Is It Time To Bring Porn To The Classroom?*, Junkee. Available at: <http://junkee.com/rethinking-sex-ed-in-australia-is-it-time-to-bring-porn-to-the-classroom/56170> (Accessed: 13 July 2015).

Boxall, H., Tomison, A. and Hulme, S. (2013) 'Historical review of sexual offence and child sexual abuse legislation in Australia: 1788 - 2013 research paper', *Royal Commission Research Paper*

Brett, N. (1998) 'Sexual Offences and Consent', *Canadian Journal of Law and Jurisprudence*, 11, p. 69. Available at: <http://heinonline.org/HOL/Page?handle=hein.journals/caljp11&id=71&div=&collection=journals>.

Burkett, M. and Hamilton, K. (2012) 'Postfeminist sexual agency: Young women's negotiations of sexual consent', *Sexualities*, 15(7), pp. 815–833. doi: 10.1177/1363460712454076.

Buttner, C. (2007) *Justice failing rape victims*. Available at: <http://www.lawyersweekly.com.au/news/1051-justice-failing-rape-victims> (Accessed: 28 September 2015).

Cameron-Lewis, V. and Allen, L. (2013), 'Teaching Pleasure "and" Danger in Sexuality Education', *Sex Education: Sexuality, Society and Learning*, 13(2), pp. 121-132, doi. 10.1080/14681811.2012.697440.

Carey, T. (2015) *Perfect son who admits internet porn warped my attitude towards women*, Mail Online. Available at: <http://www.dailymail.co.uk/femail/article-3080409/Perfect-son-admits-watching-explicitinternet-porn-child-warped-attitude-women-left-feeling-depressed-anxious-mentally-disturbed.html> (Accessed: 14 May 2015).

Carmody, M. (2003) 'Sexual Ethics and Violence Prevention', *Social & Legal Studies*, 12(2), pp. 199–216. doi: 10.1177/0964663903012002003.

Carmody, M. (2006) 'Preventing Adult Sexual Violence through Education?', *Current Issues in Criminal Justice*, 18(2), pp. 342–356.

Carmody, M. and Ovenden, G. (2013) 'Putting ethical sex into practice: sexual negotiation, gender and citizenship in the lives of young women and men', *Journal of Youth Studies*, 16(6), pp. 792–807. doi: 10.1080/13676261.2013.763916.

Carmody, M., Evans, S., Krogh, C., Flood, M., Heenan, M., & Ovenden, G. (2009) *Framing best practice: National Standards for the primary prevention of sexual assault through education*, National Sexual Assault Prevention Education Project for NASASV. University of Western Sydney, Australia

Chung, D (2007), 'Making Meanings of Relationships: young women's experiences and understandings of dating violence', *Violence Against Women*, 13(12), pp. 1274-1295, Sage Publications.

Clark, H. (2010) *Insights into sexual assault perpetration : giving voice to victim/survivors' knowledge / Haley Clark and Antonia Quadara*. Melbourne, Vic: Australian Institute of Family Studies (Research report (Australian Institute of Family Studies); no. 18).

- Communities, N. D. of E. and (2014) *Frequently Asked Questions*. Available at: <http://www.schools.nsw.edu.au/leavingschool/schoolleaveage/faqs.php> (Accessed: 8 July 2015).
- Connell, R. (2007) *Education, change and society / Raewyn Connell ... [et al.]*. South Melbourne, Vic: Oxford University Press.
- Connell, R. (2013) 'INTRODUCTION: Master Builders: Research on Men and Masculinities and Directions for Australian Theory and Practice', *Australian Feminist Studies*, 28(75), pp. 7–13. doi: 10.1080/08164649.2012.758079.
- Connell, R. W. (1995) *Masculinities / R.W. Connell*. StLeonards, NSW: Allen & Unwin.
- Criminal Justice Sexual Offences Taskforce, Babb, L. and Attorney General's Department (2005) *Responding to sexual assault: the way forward*. Sydney, N.S.W.: Attorney General's Dept.
- Deputy Director-General, S. (2013) *Controversial Issues in Schools*. Available at: https://www.det.nsw.edu.au/policies/curriculum/schools/cont_issue/PD20020045.shtml (Accessed: 27 August 2015).
- Dworkin, A. (1974) *Woman hating*. New York: Dutton.
- Dwyer, T., Easteal, P. and Hopkins, A. (2012) 'Did she consent?: Law and the media in New South Wales', *Alternative Law Journal*, 37(4), pp. 249–253.
- Evans, S., Krogh, C. and Carmody, M. (2009) 'Time to get cracking', 11. Available at: http://www.iiav.nl/eazines/IAV_607373/IAV_607373_2009_11.pdf (Accessed: 5 August 2015).
- Faust, B. (1995) 'Child Sexuality and Age of Consent Laws: The Netherlands Model', *Gay and Lesbian Law Journal*, 5(1995), pp. 78–85.
- Flood, M. (2006) 'Changing Men: Best Practice in Sexual Violence Education', *Women Against Violence: An Australian Feminist Journal*, (18), pp. 26–36.
- Flood, M. (2013) 'MALE AND FEMALE SLUTS: Shifts and Stabilities in the Regulation of Sexual Relations Among Young Heterosexual Men', *Australian Feminist Studies*, 28(75), pp. 95–107. doi: 10.1080/08164649.2012.758024.
- Flood, M. and Pease, B. (2009) 'Factors Influencing Attitudes to Violence Against Women', *Trauma, Violence, & Abuse*, 10(2), pp. 125–142. doi: 10.1177/1524838009334131.
- Ford, C. (2015a) *Schools should teach girls pleasure not shame, Daily Life*. Available at: <http://www.dailylife.com.au/news-and-views/dl-opinion/schools-should-teach-girls-pleasure-notshame-20150601-gheg9n.html> (Accessed: 1 August 2015).
- Ford, C. (2015b) *The different way men and women are treated when they publicly oppose sexism, Daily Life*. Available at: <http://www.dailylife.com.au/news-and-views/dl-opinion/the-one-thing-thatll-change-the-way-a-sexism-complaint-will-be-received-20150813-giyj5r.html> (Accessed: 9 September 2015).

- Funnell, N. and Marson (2015) *What if teenagers helped write their own sex ed curriculum?*, *Daily Life*. Available at: <http://www.dailylife.com.au/life-and-love/love-sex-and-relationships/what-if-teenagershelped-write-their-own-sex-ed-curriculum-20150623-ghvf5j.html> (Accessed: 24 June 2015).
- Galvin, H. R. (1985) 'Shielding Rape Victims in the State and Federal Courts: A Proposal for the Second Decade', *Minnesota Law Review*, 70, p. 763. Available at: <http://heinonline.org/HOL/Page?handle=hein.journals/mnlr70&id=777&div=&collection=journals>.
- Grubb, A. and Turner, E. (2012) 'Attribution of blame in rape cases: A review of the impact of rape myth acceptance, gender role conformity and substance use on victim blaming', *Aggression and Violent Behavior*, 17(5), pp. 443–452. doi: 10.1016/j.avb.2012.06.002.
- Harris, A., Honey, N., Webster, K., Diemer, K. and Politoff, V. (2015) *Young Australians' attitudes to violence against women: Findings from the 2013 National Community Attitudes towards Violence Against Women Survey for respondents 16–24 years*, Victorian Health Promotion Foundation, Melbourne, Australia
- Hickman, S. E. and Muehlenhard, C. L. (1999) "'By the semi-mystical appearance of a condom": How young women and men communicate sexual consent in heterosexual situations', *The Journal of Sex Research*, 36(3), pp. 258–272. doi: 10.1080/00224499909551996.
- Higgins, E., Thatham, L. and Banks, S. (2008) 'Criminal law: An honest but mistaken belief in London legislation? Consent, controversy and sexual offence reform in new South Wales.', *The Law Teacher*, 42(2), pp. 228–235. doi: 10.1080/03069400.2008.9959780.
- Hillier, L., Harrison, L. and Warr, D. (1998) "'When you carry condoms all the boys think you want it": negotiating competing discourses about safe sex', *Journal of Adolescence*, 21(1), pp. 15–29. doi: 10.1006/jado.1997.0126.
- Hlavka, H. R. (2014) 'Normalizing Sexual Violence Young Women Account for Harassment and Abuse', *Gender & Society*, 28(3), pp. 337–358. doi: 10.1177/0891243214526468.
- Howell, J. L., Egan, P. M., Giuliano, T. A. and Ackley, B. D. (2011) 'The Reverse Double Standard in Perceptions of Student-Teacher Sexual Relationships: The Role of Gender, Initiation, and Power', *The Journal of Social Psychology*, 151(2), pp. 180–200. doi: 10.1080/00224540903510837.
- Hsieh, H.-F. and Shannon, S. E. (2005) 'Three Approaches to Qualitative Content Analysis', *Qualitative Health Research*, 15(9), pp. 1277–1288. doi: 10.1177/1049732305276687.
- Humphreys, T. (2007) 'Perceptions of Sexual Consent: The Impact of Relationship History and Gender', *Journal of Sex Research*, 44(4), pp. 307–315. doi: 10.1080/00224490701586706.
- Hunter, I. Q. (2014) 'Naughty Realism: The Britishness of British Hardcore R18s', *Journal of British Cinema and Television*, 11(2-3), pp. 152–171. doi: 10.3366/jbctv.2014.0201.
- Jacobs, K. (2010) 'Discourse analysis / Keith Jacobs.' South Melbourne: Oxford University Press.
- Jewkes, R., Flood, M. and Lang, J. (2015) 'From work with men and boys to changes of social norms and reduction of inequities in gender relations: a conceptual shift in prevention of violence against women and girls', *The Lancet*, 385(9977), pp. 1580–1589. doi: 10.1016/S0140-6736(14)61683-4.

- Jewkes, R., Fulu, E., Roselli, T. and Garcia-Moreno, C. (2013) 'Prevalence of and factors associated with non-partner rape perpetration: findings from the UN Multi-country Cross-sectional Study on Men and Violence in Asia and the Pacific', *The Lancet Global Health*, 1(4), pp. e208–e218. doi: 10.1016/S2214109X(13)70069-X.
- Jozkowski, K. N., Peterson, Z. D., Sanders, S. A., Dennis, B. and Reece, M. (2014) 'Gender Differences in Heterosexual College Students' Conceptualizations and Indicators of Sexual Consent: Implications for Contemporary Sexual Assault Prevention Education', *The Journal of Sex Research*, 51(8), pp. 904–916. doi: 10.1080/00224499.2013.792326.
- Kanagasbapathy, K. (2011) *The Age of Consent: a law reform proposal*, North and North West Community Legal Service.
- Kimmel, M. S. (2008) *Guyland : the perilous world where boys become men / Michael Kimmel*. 1st ed. New York: Harper.
- Kirkby, D. (1995) *Sex power and justice : historical perspectives on law in Australia / edited by Diane Kirkby*. Melbourne: Oxford University Press.
- Klettke, B. and Mellor, D. (2012) 'At What Age Can Females Consent to Sexual Activity? A Survey of JuryEligible Australians', *Psychiatry, Psychology and Law*, 19(2), pp. 198–208. doi: 10.1080/13218719.2011.559901.
- Krahé, B., Scheinberger-Olwig, R. and Kolpin, S. (2000) 'Ambiguous Communication of Sexual Intentions as a Risk Marker of Sexual Aggression', *Sex Roles*, 42(5), pp. 313–337. doi: 10.1023/A:1007080303569.
- Kreager, D. A. and Staff, J. (2009) 'The Sexual Double Standard and Adolescent Peer Acceptance', *Social Psychology Quarterly*, 72(2), pp. 143–164. doi: 10.1177/019027250907200205.
- Lacey, N. (1998) 'Unspeakable Subjects, Impossible Rights: Sexuality, Integrity and Criminal Law', *Canadian Journal of Law and Jurisprudence*, 11, p. 47. Available at: <http://heinonline.org/HOL/Page?handle=hein.journals/caljp11&id=49&div=&collection=journals>.
- Lievore, D. (2004) 'Victim credibility in adult sexual assault cases.', *Trends and Issues in Crime and Criminal Justice*, (288), pp. 1–6.
- Mackinnon, C. A. (1987) *Feminism unmodified : discourses on life and law*. Cambridge, Mass: Harvard University Press.
- MacKinnon, C. A. (2003) 'A Sex Equality Approach to Sexual Assault', *Annals of the New York Academy of Sciences*, 989(1), pp. 265–275. doi: 10.1111/j.1749-6632.2003.tb07311.x.
- Margolin, L. (1990) 'Gender and the stolen kiss: The social support of male and female to violate a partner's sexual consent in a noncoercive situation', *Archives of Sexual Behavior*, 19(3), pp. 281–291. doi: 10.1007/BF01541553.
- Maurer, T., (2015), 'Perceptions of Incapacitated Heterosexual Sexual Assault Influences of Relationship Status, Perpetrator Intoxication, and Post-Assault Sleeping Arrangements', *Violence Against Women*, 1(18), pp. 1-18. doi: 10.1177/1077801215612599.

McMahon, S. (2015) 'Participation in High School Sports and Bystander Intentions, Efficacy to Intervene, and Rape Myth Beliefs', 30(17), pp. 2980–2998. doi: 10.1177/0886260514555009.

McNeilage, A. (2013) *Sex education draft 'dreadful'*, *The Sydney Morning Herald*. Available at: <http://www.smh.com.au/national/education/sex-education-draft-dreadful-20130806-2rdjd.html> (Accessed: 4 June 2015).

Mitchell, A., Kent, P., Heywood, W. and Pitts, M. (2014) *5th national survey of Australian secondary students and sexual health 2013*, *Australian Policy Online*. Available at: <http://apo.org.au/research/national-survey-australian-secondary-students-and-sexual-health-2013> (Accessed: 25 May 2015).

Moulton, E. (2015) *Furore over classrooms 'promoting radical sexual experimentation'*, *NewsComAu*. Available at: <http://www.news.com.au/lifestyle/parenting/christian-lobby-groups-claim-radical-sexualexperimentation-is-being-promoted-in-schools/story-fngqim8m-1227456527511> (Accessed: 25 July 2015).

Muehlenhard, C. L. and Rodgers, C. S. (1998) 'TOKEN RESISTANCE TO SEX', *Psychology of Women Quarterly*, 22(3), pp. 443–463. doi: 10.1111/j.1471-6402.1998.tb00167.x.

News.com.au (2013) *Christian Schools Australia defend abstinence, suggest kids try burping contests instead of sex*, *NewsComAu*. Available at: <http://www.news.com.au/lifestyle/relationships/christianschools-australia-defend-abstinence-suggest-kids-try-burping-contests-instead-of-sex/story-fnet0gt31226667861872> (Accessed: 6 October 2015).

News.com.au (2015) *Danish sexologist believes children should be taught to critique porn in the classroom, will it catch on?*, *NewsComAu*. Available at: <http://www.news.com.au/lifestyle/parenting/danish-sexologist-believes-children-should-be-taught-to-critique-porn-in-the-classroom-will-it-catch-on/story-fngqim8m-1227293329261> (Accessed: 6 April 2015).

Nicholls, S. (2015) *'It is totally inappropriate for a Christian ministry to be lecturing my daughter about sex without my consent'*, *The Sydney Morning Herald*. Available at: <http://www.smh.com.au/nsw/gymea-technology-high-school-parents-left-in-the-dark-about-sexeducation-by-shirelive-church-20150911-gjk6sf.html> (Accessed: 30 September 2015).

Nicoll, F. (2001) *From diggers to drag queens: configurations of Australian national identity* / by Fiona Jean Nicoll. Sydney: Pluto Press; London.

'Politics of Slutwalk' (2011) *Eureka Street*, 21(10), pp. 29–30.

Potthoff, E. F. (1943) 'Functionalism in General Education', *The Journal of Higher Education*, 14(3), pp. 148–152. doi: 10.2307/1975092.

Powell, A. (2007) 'Sexual pressure and young people's negotiation of consent', *ACSSA Aware*, 14, pp. 8–16. Available at: https://www3.aifs.gov.au/acssa/pubs/newsletter/n14pdf/n14_4.pdf (Accessed: 21 July 2015).

- Ralston, N. (2015) *Rapist Luke Andrew Lazarus had 'inflated sense of entitlement'*, *The Sydney Morning Herald*. Available at: <http://www.smh.com.au/nsw/luke-andrew-lazarus-says-his-life-has-beendestroyed-after-his-conviction-for-kings-cross-sexual-assault-20150326-1m8k73.html> (Accessed: 8 July 2015).
- Rees, S. (2001) *The floating brothel: the extraordinary story of the Lady Julian and its cargo of female convicts bound for Botany Bay / Siân Rees*. Sydney: Hodder Headline Australia.
- Relyea, M. and Ullman, S. E. (2015) 'Measuring Social Reactions to Female Survivors of Alcohol-Involved Sexual Assault', *Journal of Interpersonal Violence*, 30(11), pp. 1864–1887. doi: 10.1177/0886260514549054.
- Robinson, K. H. (2012) "'Difficult citizenship': The precarious relationships between childhood, sexuality and access to knowledge', *Sexualities*, 15(3-4), pp. 257–276. doi: 10.1177/1363460712436469.
- Rusciano, E. (2015) *It's time to have THAT awkward conversation*, *NewsComAu*. Available at: <http://www.news.com.au/lifestyle/parenting/you-need-to-talk-to-your-kids-about-porn/story-fnjco7gt1227294342234> (Accessed: 7 April 2015).
- Ryan, K. M. (2011) 'The Relationship between Rape Myths and Sexual Scripts: The Social Construction of Rape', *Sex Roles*, 65(11-12), pp. 774–782. doi: 10.1007/s11199-011-0033-2.
- Sanders, B. (2001) *How Dangerous Men Think: And How to Stay Safe for Life*. Random House Australia.
- Sauers, J. (2007) *Sex lives of Australian teenagers / Joan Sauers*. Milsons Point, NSW: Random House Australia.
- Shaw, A. G. L. (1966) *Convicts and the colonies: a study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire / A.G.L. Shaw*. London: Faber.
- Simon, W. and Gagnon, J. H. (1984) 'Sexual scripts', *Society*, 22(1), pp. 53–60. doi: 10.1007/BF02701260.
- Simpson, R. (Rachel H., Figgis, H. and New South Wales. Parliamentary Library Research Service (1997) *The age of consent / by Rachel Simpson and Honor Figgis*. [Sydney]: NSW Parliamentary Library Research Service (Briefing paper (New South Wales. Parliamentary Library Research Service) ; no. 21/97.).
- Singleton, R. (2010) *Approaches to social research / Royce A. Singleton, Jr., Bruce C. Straits*. 5th ed. New York: Oxford University Press.
- Smith, R. (2015) *Girls are presenting to doctors with sex-related injuries*, *NewsComAu*. Available at: <http://www.news.com.au/lifestyle/relationships/boner-garage-posts-a-window-into-the-world-ofsexualised-young-women-online/story-fnet0gt3-1227378480882> (Accessed: 1 June 2015).
- Summers, A. (1994) 'Damned Whores and God's Police / Anne Summers.' Ringwood: Penguin.
- Taylor, N. (2007) 'Juror attitudes and biases in sexual assault cases.', *Trends and Issues in Crime and Criminal Justice*, (344), pp. 1–6.
- Tolman, D. L. (1994) 'Doing Desire: Adolescent Girls' Struggles for/with Sexuality', *Gender and Society*, 8(3), pp. 324–342.

Townsley, L. and Dobinson, I. R. (2008) 'Sexual assault law reform in New South Wales: Issues of consent and objective fault.' Available at: <https://opus.lib.uts.edu.au/research/handle/10453/10447> (Accessed: 8 July 2015).

Warner, K. (2012) 'Setting the boundaries of child sexual assault: consent and mistake as to age defences', *Melbourne University Law Review*, 36(3), p. 1009.

Warrick, C. (2011) 'Not in Our Right Minds: The Implications of Reason and Passion in the Law', *Politics & Gender*, 7(2), pp. 166–192. doi: 10.1017/S1743923X11000043.

Weber, R. P. (1990) *Basic content analysis / Robert Philip Weber*. 2nd ed. Newbury Park, Calif: Sage Publications (Sage university papers series. Quantitative applications in the social sciences ; no. 07-049).

White, J. W. and Smith, P. H. (2004) 'Sexual Assault Perpetration and Reperpetration: From Adolescence to Young Adulthood', *Criminal Justice and Behavior*, 31(2), pp. 182–202. doi: 10.1177/0093854803261342.

Wilson, L. (2015) *Rosie Batty wants compulsory domestic violence prevention lessons for all school kids*, *NewsComAu*. Available at: <http://www.news.com.au/national/rosie-batty-wants-compulsory-domesticviolence-prevention-lessons-for-all-school-kids/story-fncynjr2-1227443257569> (Accessed: 5 August 2015).

Zelizer, V. (1995) *Pricing the Priceless Child: The Changing Social Value of Children*, Princeton: Princeton University Press.