

Issues paper 4.1 –Should consent in sexual offences be defined as an agreement?

The WA and Queensland Criminal Codes provide that **consent for sexual offences must be freely and voluntarily given** and set out some circumstances in which that is not the case.

By contrast, all other Australian jurisdictions define consent in their legislation in terms of an agreement between the participants. Victoria and Tasmania define consent as **'free agreement'**; NSW, NT, SA and the new Victorian Act define consent in terms of **free and voluntary agreement**; the ACT defines consent in terms of the **'informed agreement' of the participants that is freely and voluntarily given**; Canada defines consent as **'voluntary agreement'** and England, Wales and Northern Ireland define consent as when a person **'agrees by choice, and has the freedom and capacity to make that choice'**.

One option for reform would be to adopt a similar approach and replace the phrase 'freely and voluntarily given' in the *Code*