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MEDIA RELEASE

Wednesday, 20 October 2021

COMMON SENSE CONSENT REFORMS CLOSER TO BECOMING NSW LAW

Common sense reforms to make sexual consent laws easier to follow and ensure more effective prosecutions of sexual offences will be introduced to NSW Parliament today.

Attorney General and Minister for Prevention of Domestic and Sexual Violence Mark Speakman said the proposed Bill will reinforce the basic principle of common decency that consent is a free choice involving mutual and ongoing communication, and that consent should not be presumed.

“Today brings us another step closer to implementing these important reforms that will set clearer boundaries for consensual sex and better support victim-survivors who courageously come forward to report sexual assault,” Mr Speakman said.

“If you want to have sex with someone, then you need to do or say something to find out if they want to have sex with you too – under our reforms, it’s that simple.

“We have listened to calls for change and consulted on these reforms with victim-survivors and legal experts to introduce the best possible Bill to Parliament that will simplify our laws and help to address rates of sexual violence.”

The Bill builds on legislative drafting suggested as part of the [NSW Law Reform Commission \(LRC\) Report 148](#), and will also make clear that a person doesn’t consent to sexual activity unless they said or did something to communicate consent.

An accused’s belief that consent existed will not be reasonable in the circumstances unless the accused said or did anything – within a reasonable time before or at the time of the sexual activity – to find out whether the other person consents to the sexual activity. This requirement will not apply to an accused person who had a cognitive or mental health impairment that caused them not to say or do anything to ascertain consent.

“This affirmative model of consent is not onerous. It does not require a written or video agreement or a script, or stifle spontaneity, as some have suggested,” Mr Speakman said.

Survivor Advocate and Director from Rape & Sexual Assault Research & Advocacy, Saxon Mullins, said today was a momentous win for victim-survivors and experts who’ve contributed to this cause for years, using their voices to advocate for an affirmative consent model.

“These reforms mean so much to so many survivors who understand firsthand the difference this bill can make,” Ms Mullins said.

“It has been three years since I came forward to share my own story, and while progress can feel slow, I know this bill is a huge leap forward and will see NSW leading the way in consent law around the country.”

NSW Police Commissioner Mick Fuller said a clear definition of consent was vital when dealing with sexual assault matters, to ensure effective prosecutions.

“Victims of sexual assault who courageously come forward need to know that they are fully supported – both at the investigative stage but also through the judicial process,” Commissioner Fuller said.

“Reforms which provide clarity in a legal sense about consent are welcomed by police. As a frontline agency that often sees the devastating impact of these crimes firsthand, I fully support the Government’s reforms to consent laws which will improve victim outcomes and boost confidence in the judicial process.”

Minister for Education Sarah Mitchell said that all school sectors were committed to tackling the issues of consent and sexual assault, demonstrated through a shared Statement of Intent to deliver greater engagement with students, staff, police and parents.

“Schools and parents can play a powerful role in supporting these reforms and helping to promote greater communication between young people, around the dinner table, and at school about consent and healthy relationships,” Ms Mitchell said.

“We’ve improved resources in the classroom for teachers and students, and supports for parents and carers to build greater understanding of these critical issues.”

The full suite of reforms also includes:

- clarification that a person does not consent unless, at the time of the sexual activity, they freely and voluntarily agree to the sexual activity;
- five new jury directions available for judges to give at trial to address common misconceptions about sexual assault and behavioural responses, and to ensure the evidence of complainants is assessed fairly;
- targeted education programs for judges, legal practitioners and police;
- a research project to improve our understanding of victim-survivor experiences with the criminal justice process; and
- community awareness campaigns that will build on the success of [#MakeNoDoubt](#).

A Bill to give effect to the reforms will be introduced to NSW Parliament today. The reforms are then expected to become law in mid-2022. Once the Bill has been introduced in NSW Parliament, you can read more about it [here](#).

If you or someone you know has experienced sexual assault, support is available from those who are trained to help: call [1800RESPECT](#) on 1800 737 732 or [NSW Rape Crisis](#) on 1800 424 017.

The NSW Government's Bill to reform consent law

Factsheet

The NSW Government will introduce a Bill to Parliament to simplify and strengthen consent law.

Why is the NSW Government reforming consent law?

In [May 2018](#), the Attorney General requested the [NSW Law Reform Commission](#) review sexual consent laws and report on whether the laws should be simplified or modernised. The NSW Law Reform Commission consulted widely over two and half years and received extensive feedback, including nearly 200 written submissions and nearly 3,900 survey responses.

[Report 148: Consent in relation to sexual offences](#) was tabled in NSW Parliament on 18 November 2020. It made 44 recommendations, including:

- 40 recommendations for legislative amendments to the *Crimes Act 1900* and to the *Criminal Procedure Act 1986*;
- three non-legislative recommendations for education, communication and ongoing research; and
- one recommendation for a statutory review of the amended legislation.

The NSW Government supports, or supports in principle, all 44 recommendations. The NSW Government is introducing a Bill to enact the reforms in October.

What are the key changes the NSW Government is proposing?

The proposed reforms go further than the NSW Law Reform Commission's recommendations in one important way. The Bill will reinforce the basic principle of common decency that consent is a free choice involving mutual and ongoing communication and that consent should not be presumed.

Currently in NSW, it's a crime for a person to have sexual intercourse with another person, sexually touch another person, or engage in a sexual act towards another person without their consent, if the person knows that the other person does not consent. An accused "knows" the other person does not consent if the accused has actual knowledge, is reckless or has "no reasonable grounds for believing" the other person consents.

The Bill will make clear that a person doesn't consent to sexual activity unless they said or did something to communicate consent.

An accused's belief that consent existed will not be reasonable in the circumstances unless the accused said or did anything – within a reasonable time before or at the time of the sexual activity – to find out whether the other person consents to the sexual activity.

This strengthens the affirmative model of consent and addresses issues and grey areas that have arisen in sexual offence trials over whether an accused's belief that consent existed was actually reasonable. This will also better recognise the common "freeze"

response where a person freezes in fear and can't communicate their lack of consent.

This requirement will not apply to an accused person who had a cognitive or mental health impairment that caused them not to say or do anything to ascertain consent.

While the Crown still bears the onus of proving beyond reasonable doubt that the accused person's belief in consent was not reasonable in the circumstances, anyone who seeks to rely on the exception will need to prove on the balance of probabilities that they had a cognitive or mental health impairment that caused them not to take steps to ascertain consent. The reforms also:

- affirm a person's right to withdraw consent at any point;
- make clear that if someone consents to one sexual act, it doesn't mean they've consented to other sexual acts;
- clarify the definitions of "sexual intercourse", "sexual touching" and "sexual act"; and
- clarify that a defendant cannot rely on self-induced intoxication to show they were mistaken about consent.

The reforms propose five new jury directions available for judges to give at trial to address common misconceptions about consent and ensure a complainant's evidence is assessed fairly. The directions will clarify that:

- sexual assault can occur in many different situations, including between acquaintances or people who are married or in a relationship;
- sexual offences aren't always accompanied by violence, threats or physical injuries;
- there is no normal or typical response to being sexually assaulted, and juries must not rely on preconceived ideas about how people respond to a sexual assault;
- trauma may affect people differently, which means some people may show signs of emotional distress when giving evidence and some may not; and

- it should not be assumed that a person consented because of their behaviour, such as the way a person is dressed or the fact that they have consumed alcohol or drugs.

The NSW Government will produce targeted education programs for judges, lawyers and police about changes to consent law.

The NSW Government is funding research into the experience of complainants of sexual offences within the criminal justice system. The research, led by the NSW Bureau of Crime Statistics and Research (BOCSAR), seeks to understand why many complaints to police about sexual offences do not result in criminal proceedings or are withdrawn early during proceedings.

A Research Advisory Group is overseeing the BOCSAR research and is made up of NSW Government agencies, academics and representatives from victim advocacy groups. A consultant with expertise in victim engagement will ensure there is a trauma-informed approach to the research.

What do the reforms aim to achieve?

The reforms aim to:

- strengthen, clarify and enhance consent law;
- address misconceptions about consent in trial proceedings;
- improve the justice system's response to allegations of sexual offending;
- ensure fairer and more effective prosecutions of sexual offences;
- improve victims-survivors' experiences of the justice system;
- improve jurors' understanding of the complexities of sexual offending and its reporting through the introduction of new jury directions; and
- improve community understanding of consent.

When will the reforms be implemented?

The Bill is expected to commence six months after it passes Parliament. A statutory review five years after commencement will ensure a comprehensive evaluation of the impact of the reforms.