



Mark Speakman
Attorney General

MEDIA RELEASE

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AFFIRMATIVE CONSENT BECOMES LAW IN NSW

New affirmative consent reforms that simplify, strengthen and modernise the laws around sexual consent come into effect in New South Wales today.

Attorney General Mark Speakman said the new laws make it clear that if you want to engage in sexual activity with someone, then they need to do or say something to show consent, or you need to do or say something to seek consent.

"These laws set clearer boundaries for consensual sex, reinforce the basic principle of common decency that consent is a free choice involving mutual and ongoing communication, and reinforce that consent should not be presumed," Mr Speakman said.

Under the new affirmative consent laws:

- You can't assume someone is consenting because they don't say no. Silence is not consent.
- Consent is an ongoing process. A person can change their mind and withdraw their consent at any time.
- A person can't consent if they're so intoxicated that they can't choose or refuse to participate.
- Consent can only be given freely and voluntarily. If you force or coerce your partner into sex, it's not consensual.
- Consent must be present for every sexual act. If someone consents to one sexual act, it doesn't mean they've consented to others.
- A person can't consent if they're asleep or unconscious.

Mr Speakman said the reforms are only one part of tackling sexual violence in the community.

"The consent reforms are not just about holding perpetrators to account, but changing social behaviour with clearer rules of engagement to drive down the rate of sexual assaults," he said.

"The NSW Government is committed not just to ensuring our laws are fit for purpose, but also to ensuring all members of community have the knowledge, understanding and skills they need to develop and maintain respectful relationships.

“The law reforms are accompanied by education campaigns to assist this, including phase 3 of the NSW Government’s [“Make No Doubt”](#) campaign which was launched on 25 May 2022.”

Mr Speakman said the NSW Government has worked with agencies over the last six months to ensure judicial officers, prosecutors, defence lawyers and police are well-informed about the changes to consent law.

Resources for lawyers and judges include the NSW Judicial Commission’s Criminal Trial Courts Bench Book, which is being updated to include the reforms. Five new jury directions will be available for judges to give at trial to address common misconceptions about consent, to 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 reforms follow a comprehensive review by the NSW Law Reform Commission, involving extensive community consultation and more than 190 submissions. The NSW Government undertook further consultation on the drafting with more than 20 stakeholders, including service providers, prosecutors, defence lawyers, experts and academics to avoid any unintended consequences for the legal system.

“The NSW Government will take an active and engaged approach to implementation and monitoring of the reforms,” Mr Speakman said.

“The Act includes specific provisions requiring a statutory review to be conducted three years after the commencement of the reforms.

“The three-year review will be supported by a Bureau of Crime Statistics and Research analysis of key criminal justice markers, which may include policing outcomes, court outcomes, appeals, sentences, time to justice, and the characteristics of victims and defendants.”

The reforms will apply to an offence committed, or alleged to have been committed, on or after 1 June 2022. Amendments to criminal procedure will apply to proceedings that commence on or after 1 June 2022.