

The NSW Government's proposed changes to consent laws

Factsheet

The NSW Government will strengthen and simplify consent laws under reforms designed to protect victims and educate the community.

Why is the NSW Government reforming consent law?

In [May 2018](#), the Attorney General requested the NSW Law Reform Commission (LRC) review sexual consent laws and report on whether the laws needed to be amended to better protect victims. The LRC 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 immediate legislative amendments to the *Crimes Act 1900* and to the *Criminal Procedure Act 1986*.
- Three non-legislative recommendations for education, communication and ongoing research.
- One recommendation for other legislative reform to be deferred until a statutory review of the amended legislation is undertaken.

The NSW Government supports, or supports in principle, all 44 recommendations.

The NSW Government intends to introduce a Bill to enact the reforms later this year.

What are the major changes the NSW Government is proposing?

The proposed reforms go further than the LRC's recommendations in one important way, by clarifying that an accused person's belief in consent at the time of sexual activity will not be reasonable in the circumstances if the accused did not say or do anything to ascertain consent.

This strengthens the affirmative model of consent and better recognises the 'freeze response', where a person freezes due to fear and is unable to communicate their lack of consent to sexual activity.

The reforms also:

- retain the current meaning of consent as a free and voluntary agreement, while adding that it must be present at the time of the sexual activity;
- 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 victim's evidence is assessed fairly and impartially. 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, meaning some people may show signs of emotional distress when giving evidence and some may not; and
- it can't be assumed that the way a person is dressed, or the fact that they have consumed alcohol or drugs, indicates their consent.

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

The NSW Government will fund 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), will seek 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 will oversee the project. The Group will include 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 and enhance the affirmative model of consent;
- 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' 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
- change community behaviour.

When will the reforms be implemented?

The NSW Government intends to introduce a Bill to Parliament in the 2021 Spring session. Governance will be established to guide implementation and monitoring of the reforms.

A statutory review five years after commencement will ensure a comprehensive evaluation of the impact of the reforms.

For more information on the Consent Review and its recommendations, including a copy of Report 148 and key stakeholder submissions, please visit the [Law Reform Commission website](#).