

# MEDIA RELEASE



NEW SOUTH WALES  
BAR ASSOCIATION

## **CONSENT PROPOSALS COULD RESULT IN SIGNIFICANT INJUSTICE**

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The New South Wales Bar Association acknowledges that sexual assault is an abhorrent crime that should be dealt with by the full force of the law.

However, the proposals announced by the Attorney General today in relation to consent in sexual assault matters are likely to result in significant injustice, the President of the New South Wales Bar Association Michael McHugh SC said today.

“The Attorney General’s proposals would have the effect that, even in situations where a person consents to sexual activity but has not communicated that consent by words or actions at that time, the law would hold that there was no consent. This approach would potentially criminalise many consensual sexual relations” said Mr McHugh.

Frequently instances of consensual sexual intercourse occur in the absence of words where it cannot be said that such instances are problematic. “The Attorney General’s proposals would mean that many instances of sexual activity would be considered non-consensual and criminal sanctions for a wide range of unproblematic sexual activity would follow, particularly within established respectful relationships” Mr McHugh said.

“Further, the Attorney General’s proposals appear to provide that consent to one type of sexual activity is not on its own consent to another sexual activity. In other words, every single sexual touching and act in the course of a physical liaison will need positive consent in order to avoid criminalisation. For example, if a person is consensually having sexual intercourse with another, they will have to obtain affirmative consent prior to placing a hand on the breast or buttock of the other person. This too has significant ramifications in criminalising conduct within, in particular, established respectful relationships” said Mr McHugh.

The Association has also maintained that the unique circumstances of sexual encounters should be carefully considered rather than judged according to a narrow and somewhat artificial understanding of relationships. The Association is deeply concerned that the Attorney General’s proposed model would result in the criminalisation of behaviour which to all intents and purposes is consensual” said Mr McHugh.

The proposals would, if enacted, significantly diminish the status of the existing grave offence of sexual assault by reducing it to a crime that includes negligence, without adequate regard to gradations in an accused’s culpability, reflected in appropriately balanced maximum penalties.

“The New South Wales Bar Association calls upon the Government to reconsider the implications of this ill-considered proposal, which goes beyond the model recommended by the New South Wales Law Reform Commission in its recent report” said Mr McHugh.

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