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MEDIA RELEASE

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CONSENT LAW REFORM

Sexual consent laws will be strengthened and simplified under NSW Government reforms designed to protect victim-survivors and educate the community.

Attorney General Mark Speakman acknowledged the growing calls across the community for reforms to respond more effectively to the scourge of sexual violence in this country.

“No law can ever erase the trauma of sexual assault, but we can send the message that survivors’ calls for reform have been heard,” Mr Speakman said.

The key reforms include stipulating that:

- (a) a person does not consent to sexual activity unless they said or did something to communicate consent, and
- (b) an accused person’s belief in consent will not be reasonable in the circumstances unless they said or did something to ascertain consent.

[The reforms](#) respond to recommendations made in [NSW Law Reform Commission \(LRC\) Report 148](#). In May 2018, Mr Speakman asked the LRC to review consent laws. The LRC’s final report was published in November 2020, following significant community engagement with this issue.

The LRC received 110 preliminary submissions, 36 submissions in response to its Consultation Paper, and 51 submissions in response to its draft proposals. Almost 3900 people accessed its online survey.

The Government is supporting, or supporting in principle, all 44 of the LRC’s recommendations, except to go further by clarifying that an accused person’s belief in consent will not be reasonable in the circumstances unless they said or did something to ascertain consent.

“This means we will have an affirmative model of consent, which will address issues that have arisen in sexual offence trials about whether an accused’s belief that consent existed was actually reasonable,” Mr Speakman said.

“No one should assume someone is saying ‘yes’ just because they don’t say ‘no’ or don’t resist physically. Steps should be taken to make sure all parties are consenting.

“I particularly thank survivor Saxon Mullins for her extraordinary bravery in sharing her story and tireless advocacy for victim-survivors, which have contributed to this historic reform.”

Survivor Advocate and Director from Rape & Sexual Assault Research & Advocacy, Saxon Mullins, welcomed the proposed reforms, which she described as a huge leap forward for consent laws in NSW.

“After so many years fighting for this, it’s almost hard to believe we’ll actually have affirmative consent laws in NSW,” Ms Mullins said.

“I know there’s so much more to do in this space, but this is a huge win for survivors, and I’m so grateful for all the survivors and academics who’ve paved the way for this to happen.

“I thank the Attorney General for going the extra step to ensure affirmative consent will be law in NSW.”

NSW Police Commissioner Mick Fuller said police are committed to preventing sexual assaults and supporting victims who come forward.

“As police, our primary role is to support victims who courageously come forward to police to report sexual assault and any reform that improves confidence in the judicial process is supported,” Commissioner Fuller said.

“I have already stated publicly that I have real concerns about low prosecution rates for sexual assault matters, and a clear definition of consent is integral to improving better outcomes for victims.

“I support the Government’s reforms to consent laws, which will provide certainty to victims and police as we embark upon prosecutions of these degrading and violent crimes.”

Amongst other changes, the reforms also introduce five new jury directions available for judges to give at trial to address common misconceptions about consent.

“These directions will support complainants by ensuring their evidence will be assessed fairly and impartially, and that juries will be able to better understand the experiences of sexual assault survivors,” Mr Speakman said.

“I thank the Law Reform Commission and lead Commissioner, the Honourable Acting Justice Carolyn Simpson AO, for a thorough and thoughtful report.”

Minister for Education Sarah Mitchell said that schools and parents play significant roles in changing societal attitudes and will be important partners in supporting these reforms.

“All school sectors have committed to tackling the issue of consent through a Statement of Intent, promising increased engagement with students, staff, police and parents on the challenges of sexual assault and consent for young people,” Ms Mitchell said.

“The Government will improve the resources available for teachers and students, updating both the curriculum and the resources used to support students’ understanding, to reflect the changes brought about by these legal reforms.

“We will also work with parents and carers to develop specific resources so that families are part of the solution as we continue towards a culture where sexual violence is never acceptable.”

Minister for Women Bronnie Taylor said while anyone can be a victim of sexual violence, [statistics](#) show that women and girls are far more likely than men and boys to experience sexual offences.

“Women and girls are more likely to experience sexual violence and this is particularly the case for women with disability, Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse communities and those in regional NSW,” Mrs Taylor said.

“Today marks a turning point for our State. We have a chance to address the systemic issue of sexual violence and improve access to justice for all victim-survivors across NSW.”

The NSW Government today also committed to fund a research project designed to improve our understanding of victim experiences with the criminal justice process, and a targeted education program for judges, legal practitioners and police.

Another public education campaign is also under development to commence later this year, which will build on the success of the Government’s [#makenodoubt campaigns](#).

A Bill to give effect to the reforms will be introduced to NSW Parliament later this year.

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

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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](#).