

Passed by both Houses



New South Wales

Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2007

Clerk of the Parliaments



New South Wales

Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007

Act No , 2007

An Act to amend the *Crimes Act 1900* to deal with consent in relation to sexual assault offences.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 61HA

Insert after section 61H:

61HA Consent in relation to sexual assault offences

(1) **Offences to which section applies**

This section applies for the purposes of the offences under sections 61I, 61J and 61JA.

(2) **Meaning of consent**

A person *consents* to sexual intercourse if the person freely and voluntarily agrees to the sexual intercourse.

(3) **Knowledge about consent**

A person who has sexual intercourse with another person without the consent of the other person knows that the other person does not consent to the sexual intercourse if:

- (a) the person knows that the other person does not consent to the sexual intercourse, or
- (b) the person is reckless as to whether the other person consents to the sexual intercourse, or
- (c) the person has no reasonable grounds for believing that the other person consents to the sexual intercourse.

For the purpose of making any such finding, the trier of fact must have regard to all the circumstances of the case:

- (d) including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, but
- (e) not including any self-induced intoxication of the person.

(4) **Negation of consent**

A person does not consent to sexual intercourse:

- (a) if the person does not have the capacity to consent to the sexual intercourse, including because of age or cognitive incapacity, or
- (b) if the person does not have the opportunity to consent to the sexual intercourse because the person is unconscious or asleep, or

- (c) if the person consents to the sexual intercourse because of threats of force or terror (whether the threats are against, or the terror is instilled in, that person or any other person), or
 - (d) if the person consents to the sexual intercourse because the person is unlawfully detained.
- (5) A person who consents to sexual intercourse with another person:
- (a) under a mistaken belief as to the identity of the other person, or
 - (b) under a mistaken belief that the other person is married to the person, or
 - (c) under a mistaken belief that the sexual intercourse is for medical or hygienic purposes (or under any other mistaken belief about the nature of the act induced by fraudulent means),
- does not consent to the sexual intercourse. For the purposes of subsection (3), the other person knows that the person does not consent to sexual intercourse if the other person knows the person consents to sexual intercourse under such a mistaken belief.
- (6) The grounds on which it may be established that a person does not consent to sexual intercourse include:
- (a) if the person has sexual intercourse while substantially intoxicated by alcohol or any drug, or
 - (b) if the person has sexual intercourse because of intimidatory or coercive conduct, or other threat, that does not involve a threat of force, or
 - (c) if the person has sexual intercourse because of the abuse of a position of authority or trust.
- (7) A person who does not offer actual physical resistance to sexual intercourse is not, by reason only of that fact, to be regarded as consenting to the sexual intercourse.
- (8) This section does not limit the grounds on which it may be established that a person does not consent to sexual intercourse.

[2] Section 61R Consent

Omit the section.

[3] Section 65A Sexual intercourse procured by intimidation, coercion and other non-violent threats

Omit the section.

[4] Schedule 11 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Crimes Amendment (Consent—Sexual Assault Offences) Act 2007

Application of amendments

An amendment made by the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* applies only in respect of an offence committed after the commencement of the amendment.

Review of amendments

- (1) The Minister is to review the amendments made to this Act by the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* to determine whether the policy objectives of the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* remain valid and whether the terms of the amendments made by that Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 4 years from the date of commencement of section 61HA (as inserted by the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007*).
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 4 years.