

NSW Affirmative Consent laws

A guide for community workers

In 2022, following powerful advocacy from victim-survivors, New South Wales changed the law on sexual consent. The new Affirmative Consent laws aim to make it very clear that a person gives sexual consent when they **freely and voluntarily** agree to sexual activity.

What do the new laws say about sexual consent?

The new Affirmative Consent laws:

- highlight that consent can never be presumed
- confirm that consent to one sexual act does not mean open consent to other acts
- strengthen laws about the right to withdraw consent during sexual activity
- address misunderstandings about sexual assault.

How are the laws different?

The new laws recognise that **consent can't be presumed**. For example, a person cannot assume consent to sexual activity because the other person is silent and does not say "No".

This means the laws require clear **consent which is communicated before (and during) sexual activity**. An accused can raise a defence that they had a 'reasonable belief' that the other person consented. The accused must show they did or said something to get consent.

Has anything else changed?

New jury directions will also be introduced, meaning juries will be given different instructions in criminal trials of sexual assault. The aim is to improve the experience of victim-survivors seeking justice in the criminal justice system.

Many of the jury directions are intended to dispel many myths surrounding sexual assault. For example, depending on the circumstances, the jury might be directed that:

- a person does not consent to sexual activity based on their clothing or appearance
- sexual assault can occur within a marriage.

There will also be a public education campaign and training for police and legal professionals.

When do the laws take effect?

The legislation took effect on **1 June 2022**. The new law applies to any sexual assault occurring after that date. Sexual assault that occurred before 1 June 2022 will still be governed by the old laws. The new jury directions will apply regardless of when the alleged crime was committed.

How might these new laws affect my clients?

1. It is hoped that these reforms will create long-term cultural change and empower victim-survivors to report sexual violence. Procedures for reporting sexual violence to the Police or via [SARO](#) (Sexual Assault Reporting Option) remain unchanged.
2. If your client makes a disclosure of historical sexual violence (predating 1 June 2022), you should let them know the old law still applies to their situation. If the matter goes to a criminal trial, the accused will be charged under the old law, but the jury will be provided with the new jury directions.
3. If you are supporting a victim-survivor through a criminal trial, you might like to let them know about the changes in jury directions.
4. The new laws also make “stealthing” (non-consensual condom removal) a crime. Before the reforms, the law on this was unclear. If your client chooses, they can make a police complaint about this.
5. Your client may be eligible to make an application to the [Victims Support Scheme](#) for sexual assault by stealthing, which was not previously captured by the Scheme.
6. Even though the laws place an obligation on the accused to take steps to establish consent, the burden of proof remains the same in criminal trials. This means the prosecution must still prove the offence beyond reasonable doubt.
7. The reforms are intended to improve victim experience of the justice system after advocates highlighted criminal trials for sexual offences were extremely invasive and traumatic for victim-survivors. However, the full effects of the reforms are yet to be seen.

Disclaimer: This factsheet gives general information only and only applies in New South Wales. It is not legal advice. If you have a legal problem, always get advice from a lawyer.

Information is accurate as of October 2022.

I am supporting an accused person:

- If you have a client that is accused of or charged with sexual assault, you should refer them for legal advice as soon as possible (see this page for contact details).
- If they need other support (such as counselling or information), you can refer them to the [Men's Referral Service](#) (1300 766 491).

For more information:

- [Affirmative consent: What the 'common sense' NSW law reforms mean](#), Law Society of NSW Journal, 31 January 2022
- NSW Government ['Make No Doubt' campaign](#)
- New South Wales Law Reform Commission, [Consent in Relation to Sexual Offences](#), (Report No 148 September 2020)
- [Second Reading Speech - New South Wales, Parliamentary Debates, Legislative Council, 20 October 2021, 51 \(Mark Speakman, Attorney-General\)](#)

Where to get support:

Justice Support Centre

Call during our intake hours to arrange for your client to speak to a lawyer for free legal advice over the phone.

Phone: (02) 9601 7777

When to call (intake hours):

Tuesday: 11.30am - 1.30pm

Thursday: 11.30am - 1.30pm

Email: info@justicesupportcentre.org.au

Our phone lines are very busy. We aim to call you back within 7 days.

You can also contact [LawAccess](#) for legal help: 1300 888 529

Other support services:

- NSW Sexual Violence Helpline ([Full Stop Australia](#)): 1800 424 017 and online information for victim-survivors of sexual, domestic or family violence.
- [1800 RESPECT](#): 1800 737 732
- [NSW Health Sexual Assault Services](#)



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