



Our ref: CLC:JBjf161225

16 December 2025

Mark Follett  
Executive Director  
Policy Reform and Legislation Branch  
Department of Communities and Justice

By email: [policy@dcj.nsw.gov.au](mailto:policy@dcj.nsw.gov.au)

Dear Mr Follett,

## STATUTORY REVIEW OF THE SEXUAL CONSENT REFORMS

The Law Society is grateful for the opportunity to provide feedback as part of the statutory review of the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021 (NSW)* (**Amending Act**). This submission is informed by comments from the Criminal Law and Indigenous Issues Committees.

### Question 1: Do the consent reforms contained in the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* meet the policy objective of clarity and certainty about consent, and consequently address misconceptions about consent in law and legal processes?

As set out in the Discussion Paper, the primary objective of the sexual consent reforms contained in the Amending Act was to address misconceptions about the circumstances of sexual assault and consent so as to improve criminal justice processes and outcomes in these matters.<sup>1</sup> At this time and from a legal perspective, we consider the Amending Act to adequately achieve that objective.

We emphasise, however, that limited time has passed since the sexual consent reforms came into effect. The new consent provisions have not been operative in many trials and there has been minimal appellate consideration of the provisions. To properly evaluate the appropriateness and impact of the sexual consent reforms, regular and ongoing stakeholder consultation will be necessary to ensure the reforms operate as intended and remain fit for purpose.

Members report that some clients remain unaware of the changes to sexual consent law in NSW, including the introduction of the affirmative model of consent, which may suggest increased and ongoing community education is required. The Law Society also supports the long-term extension of the “Make No Doubt campaign” to ensure widespread and ongoing education around sexual consent.

Lastly, the Discussion Paper suggests that the new sexual consent jury directions could be delivered by the judge after the relevant evidence is given by the witness, accompanied by an explanation of how the direction relates to that evidence.<sup>2</sup> The Law Society does not support this suggestion. We consider the suggested

<sup>1</sup> Discussion Paper, p 2.

<sup>2</sup> Discussion Paper, p 27.



process may inappropriately influence how jurors perceive the evidence, or may result in confusion, for example, where the judge gives the direction and explanation too early or too late in the trial. Noting that section 292(4) *Criminal Procedure Act 1986* (NSW) enables the judge to give a consent direction at any time during the trial, and give the same consent direction more than once, we consider it appropriate that judges retain this discretion rather than being required to give the direction at a specific time or in a certain manner.

**Question 2: Should any of the reviewable provisions be amended or updated, including the jury directions?**

We note that the statutory review of the consent law reforms is required to consider section 294CB of the *Criminal Procedure Act 1986* (NSW). In this regard, the Law Society supports consideration of the Australian Law Reform Commission's recommendation that NSW "should introduce a discretionary leave model for the admission of sexual history evidence, consistent with the approach adopted in all other jurisdictions".<sup>3</sup> We also support Proposal 3 of Appendix D, noted below.

We otherwise do not consider amendments or update to the reviewable provisions necessary. We support long-term and regular review of the sexual consent reforms to ensure they continue to achieve their policy objectives. We suggest that alongside review of the legislation, there must be ongoing community education about sexual consent.

**Question 3: Are any of the proposals at Appendix D supported?**

The Law Society supports Proposal 3, namely replacing "warning" with "direction" throughout Part 5 of the *Criminal Procedure Act 1986* (NSW), noting that the inconsistency appears to be a drafting oversight. The Law Society does not support the other proposals, as we are not persuaded there is a real need, or sound basis, to make the further amendments sought.

Thank you for the opportunity to comment. Questions at first instance may be directed to Jade Fodera, Policy Lawyer, at (02) 9926 0218 or [Jade.Fodera@lawsociety.com.au](mailto:Jade.Fodera@lawsociety.com.au).

Yours sincerely,

**Jennifer Ball**  
President

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<sup>3</sup> Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence*, Report 143 (2025) rec 45; Discussion Paper, p 29-30.