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consultation draft

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**NOTE: THIS BILL DOES NOT REPRESENT GOVERNMENT POLICY, BUT HAS BEEN PREPARED FOR CONSULTATION ONLY.**



New South Wales

## **Crimes Amendment (Consent-Sexual Assault Offences) Bill 2007**

No. , 2007

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### **A Bill for**

An Act to amend the *Crimes Act 1900* to make further provision with respect to consent in sexual assault offences; and for other purposes.

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Clause 1 Crimes Amendment (Consent-Sexual Assault Offences) Bill 2007

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**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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act commence.
- (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.

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Crimes Amendment (Consent-Sexual Assault Offences) Bill 2007

Amendment of Crimes Act 1900

Schedule 1

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## Schedule 1 Amendment of Crimes Act 1900

(Section 3)

### [1] Section 61I

Omit the section. Insert instead:

#### **61I Sexual assault**

A person:

- (a) who has sexual intercourse with another person without the consent of the other person, and
- (b) who:
  - (i) knows that the other person does not consent to the sexual intercourse, or
  - (ii) is reckless as to whether the other person consents to the sexual intercourse, or
  - (iii) has no reasonable grounds for believing that the other person consents to the sexual intercourse,

is guilty of an offence.

Maximum penalty: imprisonment for 14 years.

### [2] Section 61J Aggravated sexual assault

Omit section 61J (1). Insert instead:

(1) A person:

- (a) who in circumstances of aggravation has sexual intercourse with another person without the consent of the other person, and
- (b) who:
  - (i) knows that the other person does not consent to the sexual intercourse, or
  - (ii) is reckless as to whether the other person consents to the sexual intercourse, or
  - (iii) has no reasonable grounds for believing that the other person consents to the sexual intercourse,

is guilty of an offence.

Maximum penalty: imprisonment for 20 years.

### [3] Section 61JA Aggravated sexual assault in company

Omit section 61JA (1). Insert instead:

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## Crimes Amendment (Consent-Sexual Assault Offences) Bill 2007

### Schedule 1 Amendment of Crimes Act 1900

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- (1) A person:
- (a) who has sexual intercourse with another person without the consent of the other person, and
  - (b) who:
    - (i) knows that the other person does not consent to the sexual intercourse, or
    - (ii) is reckless as to whether the other person consents to the sexual intercourse, or
    - (iii) has no reasonable grounds for believing that the other person consents to the sexual intercourse, and
  - (c) who is in the company of another person or persons, and
  - (d) who:
    - (i) at the time of, or immediately before or after, the commission of the offence, maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
    - (ii) at the time of, or immediately before or after, the commission of the offence, threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or
    - (iii) deprives the alleged victim of his or her liberty for a period before or after the commission of the offence,
- is guilty of an offence.
- Maximum penalty: imprisonment for life.

**[4] Section 61R**

Omit the section. Insert instead:

**61R 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) **Definition of lack of consent**

A person does not consent to sexual intercourse if the person:

- (a) does not have the capacity to agree to the sexual intercourse, or
- (b) has that capacity but does not have the freedom to choose whether to have the sexual intercourse, or

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Crimes Amendment (Consent-Sexual Assault Offences) Bill 2007

Amendment of Crimes Act 1900

Schedule 1

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- (c) has that capacity and freedom but does not agree to the sexual intercourse.

(3) **Reasonable belief that person consents**

In determining whether a person has reasonable grounds to believe that another person consents to having sexual intercourse with the person, regard is to be had to all the circumstances of the case:

- (a) including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, but
- (b) not including the personal opinions, values and general social and educational development of the person.

(4) **Consent vitiated if under mistaken belief**

A person is taken not to consent to sexual intercourse with another person if the person consents to sexual intercourse:

- (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
- (d) under any other mistaken belief induced by fraudulent means as to the nature of the sexual intercourse.

A person who knows that another person consents to sexual intercourse under such a mistaken belief is taken to know that the other person does not consent to the sexual intercourse.

(5) **Lack of physical resistance not necessarily consent**

A person who has sexual intercourse with another person and who does not offer actual physical resistance to the sexual intercourse is not, by reason only of that fact, taken to consent to the sexual intercourse.

(6) **Consent vitiated if violent threat or detention**

A person is taken not to consent to sexual intercourse with another person if the person submits to the sexual intercourse as a result of:

- (a) threats or terror, whether the threats are against, or the terror is instilled in, the person who submits to the sexual intercourse or any other person, or

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## Crimes Amendment (Consent-Sexual Assault Offences) Bill 2007

Schedule 1      Amendment of Crimes Act 1900

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(b) the unlawful detention of the person who submits to the sexual intercourse.

(7) **Non-violent threats**

A person who submits to sexual intercourse with another person as a result of intimidatory or coercive conduct, or other threat, which does not involve a threat of physical force, is not, by reason only of that fact, taken to have consented to the sexual intercourse.

(8) **Sexual intercourse while intoxicated not necessarily consent**

A person who has sexual intercourse with another person while intoxicated by alcohol or a drug is not, by reason only of that fact, taken to have consented to the sexual intercourse.

(9) **Other provisions**

Nothing in this section limits the grounds on which it may be established that consent to sexual intercourse is vitiated.

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

Omit the section.

**[6] Eleventh Schedule 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.