



THE LAW SOCIETY
OF NEW SOUTH WALES

27 June 2018

Mr Alan Cameron AO
Chairperson
NSW Law Reform Commission
GPO Box 31
SYDNEY NSW 2001

By email: nsw-lrc@justice.nsw.gov.au

Dear Mr Cameron,

Consent in relation to sexual assault offences

Thank you for the opportunity to provide input into this very important area of potential reform.

The current view of the Law Society is that section 61HA does not require amendment, for the reasons set out below. However, if in due course, the Law Reform Commission proposes options for reform, the Law Society would welcome the opportunity to provide detailed comments on any proposed amendments to the legislation.

In 2005, the Criminal Justice Sexual Offences Taskforce did not recommend that NSW should introduce a statutory definition of "consent" in its report *Responding to sexual assault: the way forward*. Notwithstanding, section 61HA was introduced in 2007.

From a criminal justice perspective, we consider that section 61HA strikes the right balance between the complainant, who states she/he did not consent (to a sexual act) and the accused, who states he did not know that the complainant was not consenting.

The Law Society strongly supports standards which reflect the reasonable views of contemporary society and which promote respect and communication in relation to the issue of consent. In our view, section 61HA effectively provides the capacity for the trier of fact to apply such standards, in particular through the inclusion of the 'reasonable grounds' aspect of the test and the requirement for the trier of fact to take into account 'any steps taken by the person to ascertain whether the other person consents'.

To the extent that there are concerns about community attitudes towards violence against women and the issue of consent, we submit that meaningful and wide reaching community education which promotes communication in relation to consent and respectful and responsible behaviour in sexual relationships is the most effective way to achieve long term change.

Further, it is submitted that ongoing judicial education and attention to the difficulties which juries face understanding complex directions are also areas which require attention to ensure consistent and fair outcomes in sexual assault trials. We note that the NSW District Criminal Trial Bench Book is regularly updated with the intent that judges are kept abreast of the latest decisions that may affect the directions to be given to juries.

The Law Society contact for this matter is [REDACTED]

Yours sincerely,

[REDACTED]

Doug Humphreys OAM
President