



14 September 2012

Mr Laurie Glanfield  
Director General  
NSW Attorney General and Justice  
By email: [lpclrd@agd.nsw.gov.au](mailto:lpclrd@agd.nsw.gov.au)

Dear Mr Glanfield,

### Statutory Review: Consent provisions of the Crimes Act 1900

1. Women's Legal Services NSW (WLS NSW) thanks NSW Attorney General and Justice for the opportunity to comment on the statutory review of the consent provisions of the Crimes Act 1900.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. Our work in the area of sexual assault is primarily advising women who are complainants of sexual assault about the legal process including making statements to the police; advising women and service providers on the sexual assault communications privilege; and representing women in victims compensation claims arising from sexual assault.
4. The introduction of a statutory definition of consent by the Crimes Amendment (Consent – Sexual Offences Bill) 2007 was a very important part of modernizing sexual assault laws in NSW. The objective fault test, phrased in the positive rather than the negative, was a welcome change to the law - introduced after an extensive period of consultation. It was heralded as a clear statement that consent must be given freely and voluntarily. As well as providing clarity to the law, it was seen as an important educative tool.
5. We believe that the policy objectives of the amendment remain valid.
6. Through our work, we have not become aware of any problems in the operation of the definition of consent provided for in section 61HA of the *Crimes Act* and have no reason to believe that the terms of the amendment do not remain appropriate for securing those objectives.



WOMEN'S LEGAL SERVICES NSW

7. Although the modernization of the law is crucial, we also submit that the criminal justice system requires sufficient resources in order to ensure that attrition rates decrease and conviction rates increase in sexual assault matters to better ensure justice is delivered.
8. We further suggest that the efficacy of this policy initiative, which changed the definition of consent, may not be able to be fully assessed in isolation. We encourage support for research upon which to base continuous improvements to the criminal justice system response to sexual assault.
9. If significant concerns are raised by other stakeholders we would appreciate the opportunity to make further comment.
10. If you would like to discuss any aspect of this submission, please contact me or Liz Snell Law Reform and Policy Coordinator on 02 8745 6900.

Yours sincerely,  
Women's Legal Services NSW



Janet Loughman  
Principal Solicitor