

Thursday, 25 October 2007

MAJOR CHANGES TO RAPE LAWS GO TO PARLIAMENT

The biggest changes to South Australia's laws on rape and sexual assault in more than thirty years were announced today by Minister for the Status of Women Jennifer Rankine and Attorney-General Michael Atkinson.

The Attorney-General will give Parliament notice of the *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007* and *Statutes Amendment (Evidence and Procedure) Bill 2007* today.

The Ministers say that, after further extensive public consultation, the laws have been strengthened to provide a clearer definition of offences and what constitutes consent.

Mr Atkinson says that this is the one area in which cases often fail before the courts.

"Fewer than 20% of cases that reach the court result in a conviction so there may be something wrong with how we define what is a rape or a sexual assault. That's unacceptable so we are changing it," Mr Atkinson says.

The Attorney-General says that, after further consultation, the Government has decided to also define as rape a situation in which a woman withdraws her consent after initially agreeing to sexual intercourse and the other party continues regardless.

"Until now there has been a degree of ambiguity in how the court views such situations. This change should end that ambiguity."

Mr Atkinson says the reforms will require a person's agreement to sexual activity to be **free and voluntary**. Sexual activity will be non-consensual if agreement to it was obtained:

- by force or threats of force to the alleged victim or anyone else;
- by threats to degrade or disgrace the alleged victim or anyone else;
- while the alleged victim was asleep or unconscious;
- while the alleged victim was too intoxicated to be capable of agreeing;
- when the alleged victim was affected by a physical or mental disability that made him or her incapable of agreeing;
- when the alleged victim was mistaken about or unable to understand the nature of the sexual activity;
- when the alleged victim was mistaken about the identity of the person she was having sex with; and
- while the alleged victim is unlawfully detained.

The new laws require a judge to direct the jury, in relevant cases, that consent to sexual activity should not be assumed merely because the alleged victim:

- didn't say or do anything to indicate she did not consent;
- did not protest or physically resist;
- was not physically injured by the activity; and
- had had consensual sex with the accused person or anyone else before.

The reforms will also make it an offence to make another person, against his or her will, have sex with a person or animal. Compelled sexual intercourse or bestiality will be rape, with a penalty of life imprisonment. Any other kind of compelled sexual activity will be an offence of compelled sexual manipulation, carrying a maximum penalty of 15 years imprisonment if aggravated.

The law will also be changed on:

- Offences of unlawful sexual intercourse;
- Offences of persistent sexual abuse;
- Incest laws; and
- Offences with animals.

Minister for the Status of Women Jennifer Rankine says the new laws will also ensure that the criminal justice system is more sensitive to the needs of victims of rape and sexual assault.

“Judges, for example, will be prevented from giving what could be deemed as inappropriate warnings about the value of evidence regarding an alleged rape or sexual assault victim, just because of the time it took to make the complaint or due to evidence being uncorroborated.

“For many victims it takes time and courage to bring a case to court. That should not be undermined by directions given by a judge to a jury about any delay,” Ms Rankine says.

“Another change as a result of our further consultation is a requirement for the courts to give priority to cases involving sexual offences against children over all other cases unless there are exceptional circumstances.

“These are very vulnerable young victims. They should not suffer any further by having their ordeal prolonged by the criminal-justice system.

“We will also require courts to make special arrangements for victims of rape and sexual assaults giving evidence, prevent the accused from personally cross-examining the alleged victim, and protect victims from improper, harassing or humiliating questioning.

“These are landmark reforms that have been broadened to encompass a range of behaviours that now constitute an act of sexual assault.

“I hope they'll assist women who are victims of such callous crimes and will also offer further support and protection when giving evidence before a court, which can be a terrifying and harrowing experience,” Ms Rankine says.