GILSHENAN & LUTON
LEGAL PRACTICE



Queensland’s new sexual consent laws – effective from September 2024

Date: Sunday September 14, 2025

The law in Queensland regarding consent to sexual activity has been substantially amended. The new laws are already in effect and came into place on 23 September 2024.

In March 2024, as a result of the recommendations from the Women’s Safety and Justice Taskforce, Queensland introduced significant reforms to its sexual consent laws in the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*. These key changes, as they relate to sexual offences, are discussed below.

New laws introduce an “affirmative model of consent”

Queensland's new legal framework adopts the "affirmative model of consent", which requires that all parties involved in sexual activity actively and clearly communicate their agreement.

Previously, the law in Queensland was substantially different, where consent simply meant that a person was taken to have given consent if it was freely and voluntarily given (provided that person had the cognitive capacity to do so). Under the previous model of informed consent, there were often arguments raised about whether consent had been given in situations where the complainant (victim) had been silent/passive (not displaying any resistance) before and during the sexual activity.

This new **affirmative consent** model means that silence or the absence of resistance **does not** constitute consent. Instead, consent must be freely given, informed, and communicated through words or actions that indicate a mutual agreement to engage in the activity. A person cannot assume another person is consenting just because they have not expressly said ‘no’.

If a person engages in a sexual activity with another person, there is now an obligation to ensure that the other person is consenting on every occasion. Under this model, individuals are encouraged to check in with their partners regularly, ensuring that

consent is ongoing and can be withdrawn at any time. This approach emphasises that consent is a continuous conversation, not a one-time agreement, and that consent must be communicated on each occasion and is not to be assumed.

Changes to the definition of consent

The definition of consent now expressly states that a person cannot consent in a number of circumstances, including:

- if they do not have the cognitive capacity to do so (such as arising from an intellectual disability);
- if they are affected by alcohol or drugs as to be incapable of consenting to an act or withdrawing consent to an act;
- the person is unconscious or asleep;
- where the person gives consent due to the threat of force or harm, blackmail or intimidation, or based on fraudulent representations about the nature or purpose of the act;
- the person gives consent but is mistaken about the identity of the person engaging in the act (such as a person engaging in sexual activity believing it is with their partner, however it is in fact a different person).

Criminalisation of stealthing

The reforms include the explicit criminalisation of "stealthing" - the act of secretly removing or tampering with a condom during intercourse without the other party's consent. This behaviour is now classified as rape, a serious criminal offence under Queensland law.

This also includes where a person becomes aware that the condom is no longer effective, but continues with the sexual act regardless. This is not limited to the person wearing the condom, but can apply to either party.

Reforms to the 'mistake of fact' defence

Previously, defendants in sexual assault or rape cases could claim a "mistake of fact" defence, arguing they honestly and reasonably (although mistakenly) believed the other person consented.

Under the new laws, however, this defence is more narrowly defined, requiring that the defendant took reasonable steps to ascertain consent in order to rely on the defence. What is “reasonable” will be case-dependent.

Consent and physical harm

There are situations where issues of consent regarding sexual acts and physical harm might overlap. In cases involving consensual but risky sexual acts, questions arise about whether a person can legally consent to an act that causes serious injury.

Under the criminal law, causing ‘grievous bodily harm’ (“GBH”) is a serious criminal offence. It involves causing:

- the loss of a distinct part or organ of the body;
- serious disfigurement;
- any bodily injury of such a nature that, if left untreated, would be life-threatening or cause permanent injury.

Generally, the law relating to GBH provides that a person cannot consent to the infliction of GBH upon themselves, even if they appear to do so.

In the context of GBH inflicted during the course of a sexual activity, the law now provides that if a person suffers grievous bodily harm as a result of, or in connection with, a sexual activity, the grievous bodily harm suffered **is considered as evidence of the lack of consent on the part of the person**, unless the defendant proves the contrary.

For example, if someone engages in a sexual act involving choking and the other party suffers brain damage, the injured person is taken to **not** have consented to the conduct which caused that injury, unless the accused person proves otherwise.

Age of consent in Queensland

In Queensland, the legal age of consent for sexual activity is 16 years. This means that individuals aged 16 and over can legally engage in sexual activity, provided that all parties involved give clear and voluntary consent. It's important to note that consent laws apply equally to all forms of sexual activity, not just penetrative sex.

Get help from a criminal lawyer

Sexual assault is a serious offence, and it is crucial that expert legal advice be obtained at the earliest opportunity to best respond to such a charge.

Gilshenan &Luton offer expert advice and representation in all areas of criminal law, including in respect of offences of this nature.

Contacting Gilshenan &Luton Lawyers

07 3361 0222 (24/7)

gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.