

Friday, 20 November 2008

NEW SEX ABUSE LAWS: CONSENT MUST BE CLEAR

Attorney-General Michael Atkinson and Minister for the Status of Women Gail Gago have announced that landmark changes to rape and sexual assault laws take effect this weekend.

“These laws will better protect victims of sex crimes and ensure that offenders face the full force of the law. There’s no longer wriggle-room for perpetrators of rape and sex abuse,” Mr Atkinson said.

“This marks the start of a fresh push to change the attitudes of South Australians about rape and sexual assault. These laws are a milestone for this generation and future generations,” Ms Gago said.

The new laws remove ambiguity about what constitutes consent to sexual activity.

“For too long perpetrators have taken advantage of legal loopholes to escape conviction. Victims of sexual abuse deserve better and that’s what the Rann Government is delivering,” Mr Atkinson said.

There are two pieces of legislation. The *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008* clarifies and expands what constitutes rape and tightens laws on the sexual exploitation of children.

Under the new laws, which take effect on Sunday, it is clear that sexual activity is not consensual if:

- obtained by force or threats;
- the victim is asleep or unconscious;
- the victim is too intoxicated to agree;
- the victim was unable to understand the nature of sexual activity;
- the victim was mistaken about the identity of the person they were having sex with; or
- the victim was being unlawfully detained.

“The law requires a person to agree to sexual activity freely and voluntarily. It clearly states that consent to sex must be given, not assumed.

“If sexual activity is initially agreed to, but consent is later withdrawn, if the offender persists – that’s rape,” Mr Atkinson said.

The *Statutes Amendment (Evidence and Procedure) Act 2008* changes the way evidence is taken from children and vulnerable witnesses and is more sensitive to the needs of alleged victims.

Under the laws, judges will have to explain to juries that consent to sexual activity should not be assumed just because the victim did not say anything, did not protest or resist or had previously

consented to sex with the alleged offender. From Sunday, courts will also be required to give priority listing to trials of sexual offences where the victim is a child.

The laws also govern how witnesses may be questioned, how judges direct juries about evidence given by children and access to sensitive material by the defendant (such as explicit photographs of a victim).

“The changes will afford greater consideration in the courtroom to alleged victims of sex crimes, guarding against any intimidation, bullying or ridicule of victim-witnesses,” Ms Gago said.

Changes governing how evidence is taken from vulnerable witnesses will take effect early next year when new audio-visual equipment is installed in courts and other buildings. This includes new laws obliging courts to make special arrangements for victims of sex abuse and other serious offences. Examples may include pre-recorded evidence or testimony via video-link from another room.

Minister for the Status of Women Gail Gago said that the laws aim to reduce the secondary trauma that victims of sexual abuse often experience going through the court process and giving evidence.

“By providing tighter rules on questioning of victims and witnesses and restricting the distribution of evidence, such as explicit photographs, I hope we can encourage more victims to pursue their cases.

“It takes enormous courage and determination from a victim to bring these cases to court. Only about 10% of sex crimes reported to police result in a conviction. If we can limit stress on victims we can ensure justice is delivered to more perpetrators,” Ms Gago said.

Ms Gago said the Rann Government has pledged more than \$860,000 over the next four years to educate the police, legal profession and the public about the new laws and to change public attitudes about violence.

“South Australia has come a long way in stamping out sexual violence, but there’s more to do. These new laws give us a platform to drive home the message that non-consensual sex won’t be tolerated.”

For more information about the new laws visit www.justice.sa.gov.au.