

Crimes Amendment (Rape) Act 2007

No. 57 of 2007

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Victoria

Crimes Amendment (Rape) Act 2007[†]

No. 57 of 2007

[Assented to 27 November 2007]

The Parliament of Victoria enacts:

1 Purpose

The purpose of this Act is to amend the **Crimes Act 1958** to further provide for—

- (a) the offence of rape and certain other sexual offences that require the prosecution to prove that the accused was aware that the victim was not consenting or might not have been consenting to a sexual act; and
- (b) the use of jury directions on consent and on the accused's awareness in trials relating to charges for such offences.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act comes into operation on a day to be proclaimed.
- (2) Sections 8 and 9 come into operation on the day after the day on which this Act receives the Royal Assent.
- (3) If a provision of this Act does not come into operation before 1 January 2008, it comes into operation on that day.

3 Section 37 substituted

For section 37 of the **Crimes Act 1958** substitute—

"37 Jury directions

- (1) If relevant to the facts in issue in a proceeding the judge must direct the jury on the matters set out in sections 37AAA and 37AA.
- (2) A judge must not give to a jury a direction of a kind referred to in section 37AAA or 37AA if the direction is not relevant to the facts in issue in the proceeding.
- (3) A judge must relate any direction given to the jury of a kind referred to in section 37AAA or 37AA to—
 - (a) the facts in issue in the proceeding; and
 - (b) the elements of the offence being tried in respect of which the direction is given—

so as to aid the jury's comprehension of the direction."

See:
Act No.
6231.
Reprint No. 19
as at
1 December
2006 and
amending
Act Nos
16/2004,
97/2005,
23/2006,
48/2006,
50/2006 and
32/2007.
LawToday:
www.
legislation.
vic.gov.au

4 New sections 37AAA and 37AA inserted

After section 37 of the **Crimes Act 1958** insert—

"37AAA Jury directions on consent

For the purposes of section 37, the matters relating to consent on which the judge must direct the jury are—

- (a) the meaning of consent set out in section 36;
- (b) that the law deems a circumstance specified in section 36 to be a circumstance in which the complainant did not consent;
- (c) that if the jury is satisfied beyond reasonable doubt that a circumstance specified in section 36 exists in relation to the complainant, the jury must find that the complainant was not consenting;
- (d) that the fact that a person did not say or do anything to indicate free agreement to a sexual act at the time at which the act took place is enough to show that the act took place without that person's free agreement;
- (e) that the jury is not to regard a person as having freely agreed to a sexual act just because—
 - (i) she or he did not protest or physically resist; or
 - (ii) she or he did not sustain physical injury; or

-
- (iii) on that or an earlier occasion, she or he freely agreed to engage in another sexual act (whether or not of the same type) with that person, or a sexual act with another person.

37AA Jury directions on the accused's awareness

For the purposes of section 37, if evidence is led or an assertion is made that the accused believed that the complainant was consenting to the sexual act, the judge must direct the jury that in considering whether the prosecution has proved beyond reasonable doubt that the accused was aware that the complainant was not consenting or might not have been consenting, the jury must consider—

- (a) any evidence of that belief; and
 - (b) whether that belief was reasonable in all the relevant circumstances having regard to—
 - (i) in the case of a proceeding in which the jury finds that a circumstance specified in section 36 exists in relation to the complainant, whether the accused was aware that that circumstance existed in relation to the complainant; and
 - (ii) whether the accused took any steps to ascertain whether the complainant was consenting or might not be consenting, and if so, the nature of those steps; and
 - (iii) any other relevant matters."
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5 Rape

(1) For section 38(2)(a) of the **Crimes Act 1958**
substitute—

"(a) he or she intentionally sexually penetrates
another person without that person's
consent—

(i) while being aware that the person is not
consenting or might not be consenting;
or

(ii) while not giving any thought to whether
the person is not consenting or might
not be consenting; or".

(2) For section 38(4)(b) of the **Crimes Act 1958**
substitute—

"(b) while—

(i) being aware that the victim is not
consenting or might not be consenting;
or

(ii) not giving any thought to whether the
victim is not consenting or might not be
consenting.".

6 Compelling sexual penetration

For section 38A(3)(b) of the **Crimes Act 1958**
substitute—

"(b) while—

(i) being aware that the victim is not
consenting or might not be consenting;
or

(ii) not giving any thought to whether the
victim is not consenting or might not be
consenting.".

7 Indecent assault

In section 39(2) of the **Crimes Act 1958**, for "circumstances while being aware that the person is not consenting or might not be consenting."

substitute—

"circumstances—

- (a) while being aware that the person is not consenting or might not be consenting;
or
- (b) while not giving any thought to whether the person is not consenting or might not be consenting."

8 Incest

In section 44(6A) of the **Crimes Act 1958**, for the expression commencing "in that act—" and ending at the end of the subsection **substitute** "in that act without the victim's consent."

9 New section 609 inserted

After section 608 of the **Crimes Act 1958** **insert—**

"609 Transitional provision—Crimes Amendment (Rape) Act 2007

- (1) An amendment made to this Act by section 3, 4 or 8 of the **Crimes Amendment (Rape) Act 2007** applies to any trial that commences on or after the commencement of that section of that Act, irrespective of when the offence to which the trial relates is alleged to have been committed.
- (2) An amendment made to this Act by section 5, 6 or 7 of the **Crimes Amendment (Rape) Act 2007** applies only to offences alleged to have been committed on or after

the commencement of those sections of that Act.

- (3) For the purposes of subsection (1), a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.
- (4) For the purposes of subsection (2), if an offence is alleged to have been committed between two dates, one before and one after the commencement of sections 5, 6 and 7 of the **Crimes Amendment (Rape) Act 2007**, the offence is alleged to have been committed before the commencement of those sections of that Act."

10 Repeal of Act

This Act is **repealed** on 1 January 2009.

ENDNOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 22 August 2007

Legislative Council: 20 September 2007

The long title for the Bill for this Act was "A Bill for an Act to amend the **Crimes Act 1958** to further provide for the offence of rape and certain other sexual offences and for the use of jury directions in trials for such offences and for other purposes."