

# Dangerous sex as the state enters bedroom

*New rape laws introduced in NSW this year belittle women and could send innocent men to jail*

If you are a man, sex got a whole lot more dangerous. Consider this scenario. A woman meets a man in a bar or at a party. She likes the man. He likes the woman. She may not normally be a sex on the first night kind of girl. But they have a number of drinks. Fuelled by alcohol, they put aside their inhibitions. The woman goes home with the man. She says yes to sex. In the morning, the man makes it clear it was a one-night stand. The woman is deeply offended and regrets her drunken decision. She claims rape. Under new rape laws introduced in NSW this year, that man is likely to be convicted as a rapist. He is likely to go to prison.

Rape reform in NSW means that post-coital regrets can now be refashioned into rape claims that send innocent men to prison. That's why Gold Coast Titans footballer Anthony Laffranchi is a fortunate man. He walked free from a rape charge last week after the prosecution failed to establish lack of consent. He and his then Wests Tigers NRL teammates met a woman at the Sapphire Club in Kings Cross in September 2006 and continued to party at a teammate's apartment. The footballer said he had consensual sex. The woman, who was "significantly affected" by alcohol, claimed she was raped. Had Laffranchi met the woman after January this year, he would probably be a convicted rapist facing a long stint in prison.

Let us be clear. Rape is wrong. It is a crime that calls for imprisonment. It can destroy a victim's life. But let us be clear about something else. Wrongful claims of rape are made. And they can destroy a man's life. No one knows whether a rape occurred that night when Laffranchi had sex with the woman. But under the old laws of rape, the defendant's actual state of mind was critical. If the accused had an honest belief that sex was consensual, the rape charge

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failed. And when the evidence became a simple contest between "he said, she said", a reasonable doubt would lead to an acquittal. Criminal law says that is as it should be; we are talking about a serious crime and imprisonment.

Not anymore. Now the rules have changed. Now, in a contest between he said it was consensual and she said it was rape, a jury may be forced to convict the man of rape without any further corroborating evidence.

The new laws say that if a woman is "substantially affected" by alcohol, she may lack the capacity to consent to sex even if she says "yes" to sex.

**So how does a man navigate the consent nightmare? Bring a witness? Perhaps bring along a lawyer to guide him?**

More disturbing, even if a man honestly believes consent was given, his state of mind is now irrelevant. Now, the man is effectively deemed to have knowledge of lack of consent if there are no reasonable grounds for believing consent was given. And it gets worse. When asked to determine whether the man had no reasonable grounds for believing the woman gave consent, the jury must ignore the fact that the man was drunk.

In other words, the fact that the woman who says "yes" to sex is drunk is highly relevant; it may vitiate her consent. But the man's intoxication must be ignored when working out whether he had "reasonable grounds" for believing consent was given. It is a curious law that says

alcohol only affects the cognitive abilities of women.

These new rape laws degrade women. They treat them as helpless victims, stripping them of the power to make decisions about sex after consuming alcohol. Down a few too many Bacardi Breezers, and the law says you are no longer responsible for your actions. Is this really the message we want to send to young women?

And for men, it's even more serious. As the President of the NSW Bar Association, Anna Katzmann SC, has pointed out, these new laws mean that the intoxicated man will be treated just like "the true rapist, the aggressor who inflicts himself on his victim, knowing they do not consent". There is no gradation of penalties.

Why is this happening? Lawyers point to the perfect storm. The intoxicated man is trapped between a

relations. He fears that the new rape laws, in effect, can be used to criminalise those who merely treat others with disrespect after a night of sex. "And people will end up going to jail for long periods as a result." That is why his committee, made up of almost equal numbers of prosecutors and defence lawyers opposed the reforms.

So how does a man navigate the consent nightmare? Bring a witness into the bedroom? Perhaps bring along a lawyer to guide him through every stage of consensual sex from foreplay to orgasm to ensure that the final, breathless and drunken "yes, yes, yes" is genuine consent? Similar rape reforms in South Australia led independent MP Ann Bressington to suggest earlier this month that perhaps "parliament could devise a sex contract which men could carry around in their pocket, next to their condoms". Bressington is concerned that otherwise sensible rape reform has gone too far, leaving "very little room for a decent defence of a man who has been falsely accused".

False accusations are helped along, says Heather MacDonald in the winter edition of *City Journal*, by feminist victimology and rape industrialists intent on redefining drunken sex where a bloke wants to get inside a girl's knickers in terms of the classic case of domination rape by power-hungry men.

If you are a man, you are entitled to be frightened by the new order. While society is still committed to a 1960s model of sexual liberation, encouraging men and women to explore their sexual desires, the state is also entering the bedroom trying to educate us about appropriate sexual conduct. Unfortunately, we may discover that civility cannot be legislated by criminal sanction without innocent men going to prison.



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