

Victoria Legislation applicable to the offence of Rape

- Offences between 1.4.1959 and 28.2.1981 – the “original” *Crimes Act*
- Offences between 1.3.1981 and 4.8.1991 – the *Crimes (Sexual Offences) Act 1980*
- Offences between 5.8.1991 and 31.12.1991 – the *Crimes (Sexual Offences) Act 1991*
- Offences between 1.1.1992 and 30.6.2015 – the *Crimes (Rape) Act 1991*

Detail of significant amendments from 2000

Applicable date range	Amending Legislation & Second reading speech	Elements to be proven by P (rape charge)	What was amended
22 November 2000 – 31 December 2007	<i>Crimes (Rape) Act 1991</i>	<ol style="list-style-type: none"> 1. The accused sexually penetrated the complainant in the way alleged 2. The accused did this intentionally 3. The complainant did not consent to the penetration 4. The accused was aware either that the complainant was not consenting, or that the complainant might not be consenting. 	Amendments in 2000 included first legislative definition of compelled rape
1 January 2008 – 30 June 2015	<p><i>Crimes (Sexual Offences) Act 2006</i></p> <ul style="list-style-type: none"> - Compelled rape definition modified (gender neutral), s38(3) <p><i>Crimes Amendment (Rape) Act 2007</i></p> <p>“The bill has been deemed necessary to avoid a situation where the accused can use as a defence the claim that they were unaware of non-consent.”</p> <p>https://hansard.parliament.vic.gov.au/isysquery/148a813b-d37c-4155-a616-1c1f73e17fcc/1/doc/</p> <p>The 2006 - 2007 amendments were in response to the Victoria Law Reform Commission Final Report – Sexual Offences Law & Procedure</p>	<ol style="list-style-type: none"> 1. The accused sexually penetrated the complainant in the way alleged 2. The accused did this intentionally 3. The complainant did not consent to the penetration 4. The accused had one of the following three states of mind about the complainants consent: <ol style="list-style-type: none"> a. The A was aware that the C was not consenting, or b. The A was aware that the C might not be consenting, or c. The A was not giving any thought to whether the C was or might not be consenting 	<p>S37 Crimes Act, definition of consent. Requirement that juries directed in a particular way where consent has been raised as an issue in the trial – reasonableness of accused’s alleged belief.</p> <p>Rape and compelled rape definitions expanded (introducing new fault element based on non-advertence to the complainant’s state of mind. S38(2)(a);s38(4)</p> <p>Four distinct forms of rape existed:</p> <ol style="list-style-type: none"> 1. Intentional penetration without consent, while being aware that person is or might not be consenting or not giving any thought to consenting 2. after sexual penetration failing to withdraw from a person who is not

	https://hansard.parliament.vic.gov.au/isysquery/6d48efb7-b2f5-4262-9ca9-3168eedb2f69/9/doc/		<p>consenting on becoming aware that no longer consenting</p> <ol style="list-style-type: none"> 3. compelling a person to sexual penetrate the offender or another person 4. compelling a person who has sexually penetrated the offender or another person, not to withdraw.
1 July 2015 – 30 June 2017	<p>Crimes Amendment (Sexual Offences and Other Matters) Act 2014</p>	<ol style="list-style-type: none"> 1. The accused intentionally sexually penetrated the complainant in the way alleged. 2. The complainant did not consent to the sexual penetration 3. The accused did not reasonably believe that the complainant consented to the sexual penetration 	<p>New legislative definitions of rape and compelled rape (including a new fault element of no reasonable belief in consent). Down to three elements of proof.</p> <p>Substituted new subdivision (8A) in Div 1 of Part 1 of the Crimes Act and a new definition of consent in section 34C.</p> <p>Consent definition “free agreement”</p>
1 July 2017 to 30 June 2023	<p>Crimes Amendment (Sexual Offences) Act 2016</p> <p>“Reform to our sexual offence laws comes at a time when our society is fully recognising the devastating, long-lasting effects of sexual offending. Reviews and inquiries have highlighted the need for a concerted effort to address sexual abuse and exploitation. Response and prevention is multi-faceted. Clear, modern and effective sexual offence laws play an integral role in this effort by improving substantive justice in individual cases and reducing appeals and retrials.”</p> <p>https://hansard.parliament.vic.gov.au/isysquery/134ec55f-77c1-42c4-a5a4-879ca6dc1e98/5/doc/</p>	<ol style="list-style-type: none"> 1. the accused intentionally sexually penetrated the complainant. 2. the complainant did not consent to the sexual penetration. 3. the accused did not reasonably believe that the complainant consented to the sexual penetration. 	<p>Definition of consent moved to s36</p> <p>Ss38 & 39 of the Crimes Act created the two distinct offences of rape and rape by compelling sexual penetration (compelled rape). Now separate offence.</p> <p>New legislative definition of sexual penetration and compelled rape reclassified some conduct from rape to compelled rape. Penetration defined to include failure to withdraw. S35A expands way penetration can occur including introduction of any body part or any object into mouth, anus, vagina/ and or the keeping of it there.</p> <p>Legislation was aimed at addressing numerous sexual offences, not just rape. Made changes to consent, reasonable belief in consent and jury directions.</p> <p>Note s54D Jury Directions Act inserted – re direction on differences in complainant’s account (going to credibility & reliability)</p>

<p>From 1 July 2023 - present</p>	<p><i>Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022</i></p> <p>“Legislation in response to Victorian Law Reform Commission’s (VLRC) report Improving the Justice System Response to Sexual Offences, this bill adopts an affirmative consent model, which means a person must confirm they have received consent, shifting scrutiny from the actions of the victim-survivor to those of the accused. Consent must be communicated; it cannot be assumed.”</p> <p>“This bill also amends laws to make it explicit that stealthing—that is, removing a condom without the other person’s consent—is also a crime. An underlying factor that plays a critical role in the occurrence of stealthing is gender and power. Stealthing breaches trust. It jeopardises people’s sexual and reproductive health. It can cause significant harm and trauma, including sexually transmitted diseases, unplanned pregnancies and psychological distress.”</p> <p>https://hansard.parliament.vic.gov.au/isysquery/a09d0a79-5ffc-4ad3-989c-a0f9e50691ad/12/doc/</p>	<ol style="list-style-type: none"> 1. The accused intentionally sexually penetrated the complainant <ol style="list-style-type: none"> a. “Consciously, voluntarily & deliberately” 2. The complainant did not consent to the sexual penetration 3. The accused did not reasonable believe that the complainant consented to the sexual penetration 	<p>Consent is a state of mind – “affirmative consent”</p> <p>Consent means “free and voluntary agreement”. The definition applies to both 2nd & 3rd elements.</p> <p>P must prove that the C did not freely and voluntarily agree to be sexually penetrated by A.</p> <ul style="list-style-type: none"> - Consent can only be given if they are capable of consenting - May be withdrawn <p>Note the list of situations where a person is regarded as not having given free agreement (s34C(2)). Directions can be sought accordingly – see Division 1 JDA, Part 5 re Sexual Offences.</p> <p>Further examples – where it is regarded that no reasonable believe in consent is given - are set out in s36(2) and s36AA</p> <p>Note that penetration of vagina, includes the outer labia / external genitalia</p> <p>Further note JDA</p> <p>s54E-H Jury Directions Act - Continuation of Relationship or communication after sexual offence – post offence relationship directions.</p> <p>S54K – Direction on complainant being distressed or emotional while giving evidence</p> <p>Requirement to consider early directions in sexual offence matters.</p>
-----------------------------------	--	--	---