

167. Rape s 347 (now repealed) **(For offences occurring prior to 27 October 2000)**

167.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 347](#) - Rape

167.2 Commentary

[Last reviewed: March 2025]

The definition of rape was substantially widened on and after 27 October 2000 by the *Criminal Law Amendment Act 2000* (Qld). A definition of consent was also inserted in these amendments in s 348 of the *Criminal Code*.

Prior to these amendments, the offence of rape was contained in s 347 of the *Code* in Chapter 32, which was then titled 'Assaults on females – abduction'. Section 347 stated that:

'Any person who has carnal knowledge of another person without that person's consent or with that person's consent if it is obtained by force, or by means of threats or intimidation of any kind, or by exercise of authority, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married female, by personating her husband, is guilty of a crime, which is called "rape."

'Carnal knowledge' was defined in s 1 of the *Code* to include sodomy. Section 6 of the *Code* further clarified that '[i]f carnal knowledge is used in defining an offence, the offence, so far as regards that element of it, is complete on penetration to any extent'.

Section 347(2) defined 'married female' as including 'a female living with a man as his wife though not lawfully married to him and "husband" has a corresponding meaning'.

There was no statutory definition of consent at this time. In a case in which there is an issue as to consent, or if it is alleged that consent was obtained by force, it may be useful for the trial judge to adapt the words at 646 of *R v Shaw* [\[1996\] 1 Qd R 641](#):

'Under 347 consent refers to a subjective state of mind on the part of the complainant at the time when penetration took place. It is not in law necessary that the complainant should manifest her dissent, or strictly even that she should say in evidence at the trial that she did not consent to sexual intercourse.'

In most cases, it will not be necessary for the judge to use these words in directing the jury. It may arise, for example, in a case in which the evidence establishes that the Complainant said or did nothing prior to and during intercourse.

In *R v Mrzljak* [\[2005\] 1 Qd R 308](#) it was held that a Complainant's intellectual impairment will be a relevant matter for the jury to consider when determining whether or not the Complainant had the necessary cognitive capacity. Intellectual impairment itself does not deprive the Complainant of the cognitive capacity to give or withhold consent.

167.3 Suggested Direction

[Last reviewed: March 2025]

The prosecution must prove beyond reasonable doubt that the Defendant:

1. Had carnal knowledge of the Complainant.

The prosecution must prove that the Defendant penetrated the genitalia of the Complainant with his penis. Any degree of penetration is sufficient. It is not necessary for the prosecution to prove that the Defendant ejaculated.

2. Without the Complainant's consent. Consent is a common word in everyday use. When it is used in the context of sexual activity it means consciously permitting the act of sexual intercourse to occur. Consent may be defined as the agreement to, or the acquiescence in, the act of sexual intercourse by the complainant. The Defendant does not have to prove the Complainant consented; the prosecution must prove that the Complainant did not.