



Australian Capital Territory

Crimes (Consent) Amendment Act 2022

A2022-7

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Crimes (Consent) Amendment Act 2022*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Crimes Act 1900*.

4 New sections 50A to 50C

in part 3, before section 50, insert

50A Objects—pt 3

An object of this part is to recognise the following in relation to a sexual act:

- (a) consent to participate in a sexual act is not to be presumed;
- (b) every person has a right to choose not to participate in a sexual act;
- (c) a consensual sexual act involves ongoing and mutual communication and decision-making by the people participating in the sexual act.

50B Meaning of *consent*—pt 3

In this part:

consent, to a sexual act, means informed agreement to the sexual act that is—

- (a) freely and voluntarily given; and
- (b) communicated by saying or doing something.

Note See s 67 for when a person does not consent to an act.

50C Meaning of *sexual act*—pt 3

(1) In this part:

sexual act—

- (a) means—
 - (i) sexual intercourse; and
 - (ii) sexual touching; and
 - (iii) any other act in circumstances where a reasonable person would consider the act to be sexual; but
- (b) does not include an act carried out for a proper medical purpose or otherwise authorised by law.

(2) The matters to be taken into account in deciding whether a reasonable person would consider an act to be sexual include the following:

- (a) whether the area of the body involved in the act is a person's breasts, genital area or anal area;
- (b) whether the person carrying out the act does so for the purpose of sexual arousal or sexual gratification;
- (c) whether any other aspect of the act (including the circumstances in which it is carried out) makes it sexual.

- (3) In this section:

object—see section 50 (2).

sexual touching, by a person (the *first person*) means—

- (a) touching another person, including through something, with any part of the first person's body or with an object in circumstances where a reasonable person would consider the touching to be sexual; and
- (b) the continuation of sexual touching as defined in paragraph (a).

5 Section 67

substitute

67 When a person does not consent to an act

- (1) For a sexual offence consent provision, and without limiting the grounds on which it may be established that a person does not consent to an act mentioned in the provision, a person does not consent to an act mentioned in the provision if the person—
- (a) says or does something to communicate withdrawing agreement to the act either before or during the act; or
 - (b) participates in the act because of the infliction of violence or force on the person, or another person, an animal or property; or
 - (c) participates in the act because of a threat to inflict violence or force on the person, or another person, an animal or property; or
 - (d) participates in the act because of extortion, coercion, blackmail, intimidation or a fear of public humiliation or disgrace of the person or another person; or
 - (e) participates in the act because of a threat to mentally or physically harass the person or another person; or
 - (f) participates in the act because of force or fear; or

- (g) is incapable of agreeing to the act because of intoxication; or
 - (h) is mistaken about the identity of the other person; or
 - (i) participates in the act because of fraudulent misrepresentation of any fact made by someone else; or
 - (j) participates in the act because of an intentional misrepresentation by another person about the use of a condom; or
 - (k) participates in the act as a result of an abuse of—
 - (i) a relationship of authority, trust or dependence; or
 - (ii) a professional relationship; or
 - (l) does not have the capacity to agree to the act; or
 - (m) is unconscious; or
 - (n) is asleep; or
 - (o) is unlawfully detained or knows that another person is unlawfully detained.
- (2) A person also does not consent to an act with another person (the ***accused person***) only because the person—
- (a) does not say or do something to resist the act; or
 - (b) consented to—
 - (i) another act with the accused person; or
 - (ii) the same act with the accused person at a different time or place; or
 - (iii) the same act with a person other than the accused person; or
 - (iv) a different act with a person other than the accused person.

- (3) If it is established that an accused person who knows, or is reckless about whether, the consent of another person to an act mentioned in a sexual offence consent provision has been caused by any of the circumstances set out in subsection (1) (a) to (o), the accused person is taken to know that the other person does not consent to the act.
- (4) An accused person is taken to know that another person does not consent to an act mentioned in a sexual offence consent provision if any belief that the accused person has, or may have, that the other person consents to the act is not reasonable in the circumstances.
- (5) For subsection (4), without limiting the grounds on which it may be established that an accused person's belief is not reasonable in the circumstances, the accused person's belief is taken not to be reasonable in the circumstances if the accused person did not say or do anything to ascertain whether the other person consented.
- (6) In this section:
- intoxication*** means intoxication because of the consumption of alcohol, a drug or any other substance.
- sexual offence consent provision*** means any of the following:
- (a) section 54;
 - (b) section 55 (3) (b);
 - (c) section 60;
 - (d) section 61 (3) (b).

6 **Consent—pt 3A**
Section 72F (1)

omit

section 67 (1) (a) to (k)

substitute

section 67 (1) (a) to (o)

7 New section 442D

insert

442D Review—pt 3

- (1) The Minister must review the operation of this Act, as amended by the *Crimes (Consent) Amendment Act 2022*, in relation to part 3 (Sexual offences).
- (2) The review must be started as soon as practicable after the end of 2 years after this section commences.
- (3) The Minister must present a report of the review to the Legislative Assembly within 12 months after the day the review is started.
- (4) This section expires 3 years after the day it commences.

8 Dictionary, new definitions

insert

consent, for part 3 (Sexual offences)—see section 50B.

sexual act, for part 3 (Sexual offences)—see section 50C.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 February 2022.

2 Notification

Notified under the [Legislation Act](#) on 11 May 2022.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Consent) Amendment Bill 2022, which was passed by the Legislative Assembly on 5 May 2022.

Clerk of the Legislative Assembly

© Australian Capital Territory 2022