

2022

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Marisa Paterson)

Crimes (Consent) Amendment Bill 2022

A Bill for

An Act to amend the *Crimes Act 1900*

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

- 1 **1 Name of Act**
- 2 This Act is the *Crimes (Consent) Amendment Act 2022*.
- 3 **2 Commencement**
- 4 This Act commences on the day after its notification day.
- 5 *Note* The naming and commencement provisions automatically commence on
- 6 the notification day (see [Legislation Act](#), s 75 (1)).
- 7 **3 Legislation amended**
- 8 This Act amends the *Crimes Act 1900*.
- 9 **4 New sections 50A and 50B**
- 10 *in part 3, before section 50, insert*
- 11 **50A Principles of consent**
- 12 The principles of consent, in relation to a sexual act, are the following:
- 13 (a) consent to participate in a sexual act is not to be presumed;
- 14 (b) every person has a right to choose not to participate in a sexual
- 15 act;
- 16 (c) a consensual sexual act involves ongoing and mutual
- 17 communication and decision-making by the people participating
- 18 in the sexual act.

1 **50B** **Meaning of *consent*—pt 3**

2 In this part:

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

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

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

8 **5** **Section 67**

9 *substitute*

10 **67** **When a person does not consent to an act**

11 (1) For a sexual offence consent provision, and without limiting the
12 grounds on which it may be established that a person does not consent
13 to an act mentioned in the provision, a person does not consent to an
14 act mentioned in the provision if the person—

- 15 (a) says or does something to communicate withdrawing agreement
16 to the act either before or during the act; or
17 (b) participates in the act because of the infliction of violence or
18 force on the person, or another person, an animal or property; or
19 (c) participates in the act because of a threat to inflict violence or
20 force on the person, or another person, an animal or property; or
21 (d) participates in the act because of extortion, coercion, blackmail,
22 intimidation or a fear of public humiliation or disgrace of the
23 person or another person; or
24 (e) participates in the act because of a threat to mentally or
25 physically harass the person or another person; or
26 (f) participates in the act because of force or fear; or
27 (g) is incapable of agreeing to the act because of intoxication; or

- 1 (h) is mistaken about the identity of the other person; or
2 (i) participates in the act because of fraudulent misrepresentation of
3 any fact made by someone else; or
4 (j) participates in the act because of an intentional
5 misrepresentation by another person about the use of a condom;
6 or
7 (k) participates in the act as a result of an abuse of—
8 (i) a relationship of authority, trust or dependence; or
9 (ii) a professional relationship; or
10 (l) does not have the capacity to agree to the act; or
11 (m) is unconscious; or
12 (n) is asleep; or
13 (o) is unlawfully detained or knows that another person is
14 unlawfully detained.
- 15 (2) A person also does not *consent* to an act only because the person—
16 (a) does not say or do something to resist the act; or
17 (b) consented to—
18 (i) another act with the same person; or
19 (ii) the same act with the same person at a different time or
20 place; or
21 (iii) the same act with a different person; or
22 (iv) a different act with a different person.
- 23 (3) If it is established that a person who knows, or is reckless about
24 whether, the consent of another person to an act mentioned in a sexual
25 offence consent provision has been caused by any of the
26 circumstances set out in subsection (1) (a) to (o), the person is taken
27 to know that the other person does not consent to the act.

- 1 (4) A person (the *accused person*) is taken to know that another person
2 does not consent to an act mentioned in a sexual offence consent
3 provision if any belief that the accused person has, or may have, that
4 the other person consents to the act is not reasonable in the
5 circumstances.
- 6 (5) For subsection (4), without limiting the grounds on which it may be
7 established that an accused person's belief is not reasonable in the
8 circumstances, the accused person's belief is taken not to be
9 reasonable in the circumstances if the accused person did not say or
10 do anything to ascertain whether the other person consented.
- 11 (6) In this section:
- 12 *intoxication* means intoxication because of the consumption of
13 alcohol, a drug or any other substance.
- 14 *sexual offence consent provision* means any of the following:
- 15 (a) section 54;
16 (b) section 55 (3) (b);
17 (c) section 60;
18 (d) section 61 (3) (b).

19 **6 Consent—pt 3A**
20 **Section 72F (1)**

- 21 *omit*
22 section 67 (1) (a) to (k)
- 23 *substitute*
24 section 67 (1) (a) to (o)

1 **7 New section 442D**

2 *insert*

3 **442D Review of definition of *consent* for pt 3**

- 4 (1) The Minister must review the operation of this Act, as amended by
5 the *Crimes (Consent) Amendment Act 2022*, in relation to part 3
6 (Sexual offences).
- 7 (2) The review must be started as soon as practicable after the end of
8 2 years after this section commences.
- 9 (3) The Minister must present a report of the review to the Legislative
10 Assembly within 6 months after the day the review is started.
- 11 (4) This section expires 3 years after the day it commences.

12 **8 Dictionary, new definition of *consent***

13 *insert*

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

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

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

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