

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (CONSENT) AMENDMENT BILL 2022

SUPPLEMENTARY EXPLANATORY STATEMENT

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Member for Murrumbidgee
2 May 2022**

CRIMES (CONSENT) AMENDMENT BILL 2022

This Supplementary Explanatory Statement relates to the Crimes (Consent) Amendment Bill 2022.

This Supplementary Explanatory Statement does not form part of the Bill and has not been endorsed by the Assembly. The statement is to provide assistance to the reader of the Bill and is to be read in conjunction with the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

These amendments have not been submitted to the Scrutiny Committee as the vast majority have been made in response to comments raised by the Scrutiny Committee in its report of 15 March 2022. The remaining amendments are of a minor or technical nature and are a result of comments made by the ACT Government's Response to the Crimes (Consent) Amendment Bill 2022.

CLAUSE NOTES

Amendment 1

CLAUSE 4 heading

Page 2, line 9

Amendment 1 omits the heading of proposed new sections 50A and 50B; to substitute with 'New Sections 50A to 50C'. This is a technical amendment which is necessary to give effect to Amendment 3 which introduces a meaning of *sexual act*.

Amendment 2

CLAUSE 4 Proposed new section 50A

Page 2, line 11

50A Objects – pt 3

Amendment 2 omits proposed new section 50A and substitutes amended wording.

The title of Section 50A has been amended from 'Principles of consent' to 'Objects - pt 3'. This amendment strengthens and clarifies the Bill's policy intent in response to the JACS Scrutiny Committee report.

This clarifies that the ‘objects’ of sexual consent apply to sexual offences in accordance with Part 3 of the *Crimes Act 1900*. The objects of Part 3 are intended to guide the interpretation and application of the sexual offence provisions of Part 3 of the *Crimes Act 1900*.

Proposed new sections 50A (a), (b) and (c) are not amended and remain as presented in the Bill tabled in February 2022.

Amendment 3

CLAUSE 4 Proposed new section 50C

Page 3, line 7

50C Meaning of *sexual act* – pt 3

Section 50C is a technical amendment – as requested in the Government Response – to provide a definition of sexual act for the purposes of this Bill, and for the purposes of the sexual offence provisions at Part 3 of the *Crimes Act 1900*.

This definition creates clarity and avoids interpretive difficulties. It further ensures the Bill does not give rise to any gaps, inconsistencies or unintended consequences relating to sexual offence provisions and the communicative model of sexual consent introduced through this Bill. The definition aligns with recent comparable law reforms in New South Wales.

This definition includes common law and past interpretations of all existing sexual assault provisions. Any sexual act that can be the subject of those offences is intended to be captured by this definition.

Amendment 4

CLAUSE 5 Proposed new section 67 (2)

Page 4, line 15

The amendment at proposed new section 67 (2) omits the subsection to substitute it with a proposed new subsection which creates clarity that the ‘same person’ is the ‘accused person’. This amendment in language will avoid interpretive difficulties in accordance with the Government Response.

Amendment 5

CLAUSE 5 Proposed new section 67 (3)

Page 4, line 23

The amendment at proposed new section 67 (3) creates clarity that the 'same person' is the 'accused person' to avoid interpretive difficulties.

Amendment 6

CLAUSE 5 Proposed new section 67 (3)

Page 4, line 26

The amendment at proposed new section 67 (3) creates clarity that the 'same person' is the 'accused person' to avoid interpretive difficulties.

Amendment 7

CLAUSE 5 Proposed new section 67 (4)

Page 5, line 1

The amendment at proposed new section 67 (4) creates consistency in language of 'an accused person' to avoid interpretive difficulties.

Amendment 8

CLAUSE 7 Proposed new section 442D, heading

Page 6, line 3

This is a technical amendment which changes the heading of Section 442D regarding review of the operation of the Act, in accordance with other amendments.

Amendment 9

CLAUSE 7 Proposed new section 442D (3)

Page 6, line 10

This provision amends the review period from 6 to 12 months to allow an appropriate amount of time to undertake the review including any public consultation, meet Cabinet timelines and table the report; allow for a more comprehensive review, as requested in the Government response.

Amendment 10

CLAUSE 8 Dictionary, new definitions

Page 6, line 12

Amendment 10 gives effect to the new definition of sexual act for part 3 (sexual offences) at Amendment 1. Amendment 10 is a technical amendment only.