

EXPOSURE DRAFT

Marisa Paterson

(Prepared by Parliamentary Counsel's Office)

Crimes (Consent) Amendment Bill 2021

A Bill for

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 2021*.

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 49F and 49G

in part 3, insert

49F Principles of consent

The principles of consent are the following:

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

49G Meaning of *consent*—pt 3

In this part:

consent, to an act, means freely and voluntarily saying or doing something to communicate agreement to the act, at the time of the act.

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

**5 Sexual relationship with child or young person under special care
Section 56 (10)**

omit

consent

substitute

agreement

**6 Course of conduct charge—child sexual offences
Section 66B (10) and (11)**

omit

consent

substitute

agreement

7 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) is overborne because of the infliction of violence or force on the person, or another person, an animal or property; or
 - (c) is overborne because of a threat to inflict violence or force on the person, or another person, an animal or property; or

- (d) is overborne because of extortion, coercion, blackmail, intimidation or a fear of public humiliation or disgrace of the person or another person; or
 - (e) is overborne because of a threat to mentally or physically harass the person or another person; or
 - (f) is overborne because of force or fear of anything else; or
 - (g) is incapable of agreeing to the act because of intoxication; or
 - (h) is mistaken about any element of the act; or
 - (i) is overborne because of fraudulent misrepresentation or deception of any fact in relation to the act made by someone else; or
 - (j) is overborne by abuse of a relationship of authority, trust or dependence, or a professional relationship; or
 - (k) does not have the capacity to agree to the act; or
 - (l) is unconscious; or
 - (m) is asleep; or
 - (n) is unlawfully detained or knows that another person is unlawfully detained.
- (2) A person also does not *consent* to an act only because the person—
- (a) does not say or do something to resist the act; or
 - (b) consented to—
 - (i) another act with the same person; or
 - (ii) the same act with the same person at a different time or place; or
 - (iii) the same act with a different person; or
 - (iv) a different act with a different person.

- (3) If it is established that a person who knows 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 (n), the person is taken to know that the other person does not consent to the act.
- (4) A person (the ***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).

**8 Consent—pt 3A
Section 72F (1)**

omit

section 67 (1) (a) to (j)

substitute

section 67 (1) (a) to (n)

9 New section 445

insert

445 Review of definition of *consent* for pt 3

- (1) The Minister must review the operation of this Act, as amended by the *Crimes (Consent) Amendment Act 2021*, 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 6 months after the day the review is started.
- (4) This section expires 3 years after the day it commences.

10 Dictionary, new definition of *consent*

insert

consent, for part 3 (Sexual offences)—see section 49G.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2021.

2 Notification

Notified under the [Legislation Act](#) on 2021.

3 Republications of amended laws

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