



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Ms Elizabeth Lee MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Michael Petterson MLA

MEDIA RELEASE

CRIMES (CONSENT) AMENDMENT BILL 2018

COMMITTEE TABLES ITS REPORT TO THE ASSEMBLY

The Standing Committee on Justice and Community Safety of the Legislative Assembly has today tabled its [report on the Crimes \(Consent\) Amendment Bill 2018](#).

The Bill is a Private Member's Bill introduced into the Assembly by Caroline Le Couteur MLA in April 2018.

The Bill was referred to the Standing Committee on JACS in May 2018 for report today.

The JACS Committee makes 10 recommendations regarding the Bill, a copy of which is attached to this release.

In examining the Bill, the JACS Committee had regard to comments made by the JACS (Scrutiny of Legislation) Committee (the Scrutiny Committee); discussions held with Ms Le Couteur MLA and the ACT Bar Association, and to the submissions received by the Committee and to evidence taken at hearings in late September and early October.

The JACS Committee addresses the principal matter proposed as amendment to current ACT Criminal Law in the Bill: the definition and application of the defence of consent in sexual offences committed in the ACT.

The JACS Report's recommendations are attached.

The Committee's recommendations call for several matters:

- As foreshadowed in comments to the Committee by Ms Le Couteur MLA, the Bill should not proceed in its present form due to provisions which has a risk of potentially altering the burden of proof in sexual offences – an element which the committee believes must remain with the Prosecution.
- The Committee believes the intention and scheme in the Bill, which would allow consideration for a positive definition of consent in legislation, is timely.
- The Committee supports – as did all submissions – that there is a need to provide and support education programs regarding the importance and need for sexual relations to be treated with care and that consent must be clear and clearly understood by the parties in a relationship.
- The Committee has accepted an assurance from the Attorney-General that the Bill's proposals will be considered following the publication of a report on Consent in Relation to Sexual

Offences currently the subject of a major inquiry and report by the NSW Law Reform Commission. The Committee supports this approach.

The Committee is of the view that it has addressed the matter raised by the Bill and has recommended courses of action which will enable the important and timely changes that are in Ms Le Couteur's Bill be considered.

STATEMENT ENDS—Wednesday 31 October 2018

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RECOMMENDATIONS

Recommendation 1

That the *Crimes (Consent) Amendment Bill 2018* as introduced into the Legislative Assembly on 11 April 2018 not be proceeded with in its current form.

Recommendation 2

The Committee recommends that the ACT not consider or enact legislative change to introduce a definition of affirmative consent until the report from the current NSW Law Reform Commission inquiry in relation to sexual offences is presented.

Recommendation 3

The Committee recommends that, any legislative changes under ACT law proposing a definition of consent in relation to sexual offences, not include any element that requires proof that a perpetrator knew or should have known consent was given.

Recommendation 4

The Committee recommends that a definition of consent based on a concept of free and voluntary agreement, and affirmative and communicative consent be considered for enactment into ACT law.

Recommendation 5

The Committee recommends that in Section 67 of the *Crimes Act 1900*, a provision that consent is not negated if a person does not say or communicate consent be included.

Recommendation 6

The Committee recommends that any legislative changes retain the fundamental presumption of innocence until proven guilty in that the burden of proof beyond reasonable doubt must remain with the prosecution.

Recommendation 7

The Committee recommends that legal advice be sought on the potential impacts of legislatively removing the current common law defence of 'honest mistake' ('the Morgan defence').

Recommendation 8

The Committee recommends that, in conjunction with legislative change and amendment, that a complementary education program on consent be put in place. The Committee also recommends that such a campaign especially focus on young people.

Recommendation 9

The Committee recommends that the ACT Government establish a cross-government, cross-sector working group, which includes representations from women's organisations, sexual assault and domestic violence services and the legal fraternity, or alternatively, that the ACT Government utilise an already existing group to provide advice on how the government can improve prosecution outcomes for victims of sexual assault, specifically with regards to consent.

Recommendation 10

The Committee recommends that all law reform must provide scope to deliver the best possible outcome for victims of sexual assault as well as the community.