



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SERVICES
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Submission Cover Sheet

Crimes (Consent) Amendment Bill 2018

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To the Standing Committee on Justice and Community Safety,

Re: Crimes (Consent) Amendment Bill 2018

“Would you like to kiss?”

“Do you want me to undo your bra?”

“How about some sex?”

Consent is simple. When two people want to have sex with each other, it's quite easy to communicate and be explicit about. When consent is not established, sex shouldn't happen. It should be a crime to have sex with someone who hasn't consented, and our law should be updated to reflect this.

Thank you for the opportunity to comment on this bill. I am responding not as a legal authority by any means but as a citizen of the ACT who wants to see our community become safer for all its members.

When I read the current definition of consent, I was appalled. It is archaic that this is the definition we are currently using. The definition currently in the Crimes Act is an anachronism. It doesn't reflect existing community expectations, let alone what we should aspire to.

When I read the proposed definition, I was surprised by how reasonable it was. Particularly given the concerns framed in the Terms of Reference, I was expecting something burdensome or onerous. Instead, all I saw was that consent is something that must be established, and it must be given freely and voluntarily.

This is hardly revolutionary and yet it is still so important. I strongly support efforts to update the definition of consent and believe that the proposed definition is preferable to the current definition.

Specifically, I support the shift from a negative formulation of consent towards 'positive consent'. The onus should not be on the survivor to demonstrate that consent was *not* provided. Instead, the onus in legal cases should be on the accused to demonstrate that consent was established, freely and voluntarily. (Or, as the legislation notes, that there were reasonable grounds to be satisfied this was the case). Simply, silence does not equal consent, and the law should insist upon positive evidence of consent as the standard in these matters, not just the absence of rejection.

I think this change is important not only for how cases are tried in the ACT. It is also symbolically important both to show how attitudes have already changed *and* to assist with continuing to change attitudes. As a 27-year old man, I wish that I had been more aware of consent when I was growing up. I also have a young brother and, while I know he is a good guy, I also know that plenty of good guys do things that can leave women traumatised, bearing psychological scars for the rest of their life. I want to live in a world in which all men understand that, instead of looking for sexual encounters that don't involve opposition, we

should be seeking out sexual encounters that involve active, enthusiastic, and positive consent.

Rape culture is pervasive. It is destructive. It harms all of us, regardless of our gender. And it's a system. It's not going to go away overnight. But this bill still matters because we need to begin dismantling rape culture, bit by bit, and this is part of that effort.

Sincerely,

Joel Dignam

