



## LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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### SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),  
Dr Marisa Paterson MLA

### ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

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Asked by Peter Cain MLA on Wednesday, 24 August 2022: Shane Drumgold, Director of Public Prosecutions took on notice the following question(s):

[Ref: Hansard Transcript Wednesday, 24 August 2022 [PAGE 126]]

In relation to:

**Mr Rattenbury:** Director, if you could indicate—Mr Cain is asking about the new stealthing provisions that came in under legislation last year. He wants to you know what impact they have had. And I feel the best answer to that might be, are you aware of any cases being prosecuted under that provision thus far?

**Mr Drumgold:** No. I am not aware, at this stage. But that does not mean there has not been any. It is encompassed in another provision. So it would be wrapped in a different charge. But I could do an examination and take that on notice.

**MR CAIN:** Thank you.

**SHANE RATTENBURY MLA:** The answer to the Member's question is as follows: –

The offence of sexual intercourse without consent is located in section 54 *Crimes Act 1900*.

Pursuant to section 67 *Crimes Act 1900*, ostensible consent under this provision can be negated through a number of means, including under section 67(1)(j) if the consent was based on an intentional misrepresentation about the use of a condom.

Accordingly, “stealthing” is not a discrete offence, rather it is a means of negating the consent element for the offence of engaging in sexual intercourse without consent under section 54 of the *Crimes Act 1900*.

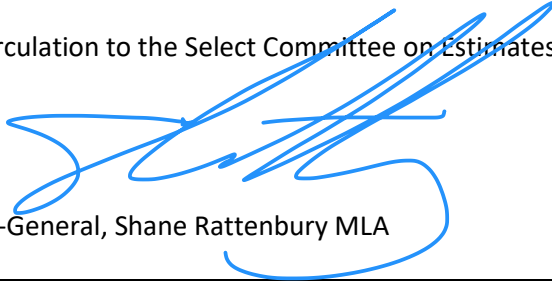
Whilst the DPP records the number of offences under section 54 *Crimes Act 1900*, it does not record micro-legal data such as the alleged means of consent negation.

Accordingly, we hold no statistics on the use of section 67(1)(j) known more commonly as the stealthing provision.

A recent enquiry of all prosecutors in the office however has revealed no instances of prosecutions by this means, since the inclusion of section 61(1)(j) *Crimes Act 1900* via the *Crimes (Stealthing) Amendment Act 2021* on 13 October 2021.

Approved for circulation to the Select Committee on Estimates 2022-2023

Signature:

A handwritten signature in blue ink, appearing to be 'S. Rattenbury', written over a horizontal line.

Date:

1/9/22

By the Attorney-General, Shane Rattenbury MLA