



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), Ms Nicole Lawder MLA
Mr Chris Steel MLA

Crimes (Consent) Amendment Bill 2018

Introduction

The Standing Committee has been referred this Bill by the Legislative Assembly for inquiry and report.

The Committee is to report to the Assembly on the Bill by the end of October 2018

The Bill is a Private Member's Bill (PMB) introduced on 11 April 2018 by Ms Caroline Le Couteur MLA.

The Bill

- The Bill link is – https://www.legislation.act.gov.au/b/db_57900/default.asp
- The Bill Explanatory Memorandum link is – https://www.legislation.act.gov.au/View/es/db_57901/current/PDF/db_57901.PDF
- Ms Le Couteur's speech on introduction of the Bill on 11 April, 2018 link is - <http://www.hansard.act.gov.au/hansard/2018/pdfs/20180411a.pdf>
- The Bill, as with all Bills introduced to the Legislative Assembly was subject of comment and report by the Scrutiny of Bills Committee of the Assembly. The Scrutiny of Bills Committee comment and observations on the Bill are also attached. These are in Scrutiny of Bills Report of the Assembly in its Report No 17 for the Ninth Assembly.
- The link to the Scrutiny of Bills report is – https://www.parliament.act.gov.au/data/assets/pdf_file/0011/1196084/Report-17-Final.pdf

Referral of the Bill to this Committee link is at [Minutes of the Assembly, page 804, Tuesday, 8 May 2018](#).

Matters to be considered by the Committee

A relevant reference in the inquiry is the ALRC Report on family violence:

<https://www.alrc.gov.au/publications/27.%20Evidence%20in%20Sexual%20Assault%20Proceedings/relevance-and-consent>

Another is to the current NSW LRC reference on Consent in Criminal Matters, which has received a number of preliminary submissions:

http://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_current_projects/Consent/Preliminary-submissions.aspx

There are a number of points the Committee wants to further consider, and is seeking views on these points. They relate to clauses 5 to 9 of the Bill which seek to amend parts of sections 66 Section 67 of the *Crimes Act 1900* (ACT).

Detailed questions to be considered by the Committee

1. What will be the effect of the proposed definition (as drafted) of consent applying under the sexual offence provisions of the *Crimes Act 1900* (ACT)?
 - i. How will a standard definition of consent operate with regard to each applicable sexual offence?
 - ii. Is this definition of consent preferable to the current statutory/common law formulations, in particular s67 of the *Crimes Act 1900* (ACT)?
2. The Committee understands that one of the intentions of the Bill is to propose an 'affirmative community model' for consent. Will the Bill effectively deliver this model, and are there any preferred alternatives to achieve the same intended outcome?
3. The Committee has been advised that the Bill, as currently drafted, effectively *reverses the onus of proof*. This places an onus upon the person accused (rather than the prosecution), not just to prove an honest belief that consent was given, but to prove a higher standard of proof; that the accused either *knows* or 'is *satisfied on reasonable grounds* that the agreement was freely and voluntarily given'.
 - i. Does the Bill reverse the onus of proof, and what is the effect of the *reverse onus of proof*?
 - ii. Does the Bill raise the burden of the onus of proof to a standard that is too high?
 - iii. What is the effect of a higher standard of proof that the accused *knows* or 'is satisfied on *reasonable grounds* that the agreement was freely and voluntarily given'?
 - iv. What is the effect of the test of *reasonableness*; that the accused is *satisfied on reasonable grounds* that the agreement was freely and voluntarily given? Is this objective approach appropriate or is a subjective approach to consent preferred?
 - v. In relation to the separate or combined effect of the above, what the implications for the victim and the accused, including the human rights implications, such as the presumption of innocence?
4. What are the implications of the Bill in prosecuting sexual offences and conviction rates in the ACT?
5. In 2010 the Family Violence - A National Legal Response (ALRC Report 114) recommended:
Recommendation 25–4 Federal, state and territory sexual offence provisions should include a statutory definition of consent based on the concept of free and voluntary agreement.

Does the Bill successfully implement the recommendation of the ALRC and are there any preferred alternatives which may also implement the recommendation?

6. The Committee notes the Tasmanian model and the New South Wales model (and the current NSW Law Reform Commission Review into consent for sexual offences). What can we learn from other jurisdictions in legislating for consent?
7. What are the social implications of the Bill?
 - i. What measures may be required to effectively implement the intentions of the Bill in addition to a change to the law?
 - ii. How will the Bill impact personal and sexual relationships?
8. Are there any other matters the Committee should be aware of?

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