



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SERVICES
Ms Elizabeth Lee MLA (Chair), Ms Bec Cody MLA (Deputy Chair)
Mr Michael Petterson MLA

Submission Cover Sheet

Crimes (Consent) Amendment Bill 2018

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The Committee Secretary
Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Committee Secretary

The AIDS Action Council of the ACT (the Council) welcomes the opportunity to provide support for the reform to the definition of sexual consent in ACT law. With experience serving both the LGBTIQ communities, people living with HIV and sex workers, the Council is aware that consent is important to individuals being able to live their lives safely and securely.

The Council is the ACT's leading community-based HIV organisation. The Council provides care and support to people living with and impacted by HIV and AIDS, as well as education, prevention and health promotion activities. One of the Council's primary population groups is lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) communities, and as such it provides current information, support and education on all aspects of health and welfare related issues affecting LGBTIQ people. The Council works with sex workers and supports sex workers rights through our Sex Worker Outreach Program.

Currently consent is defined in the ACT negatively, as something that is taken away from a person. We instead see consent as something positive, something that is both informed and freely and voluntarily given. We support reversing the question from a negative construct of "Is there evidence the person did not consent" to the more positive construct "is there clear evidence the person did consent". Consent is something to be given by a person, not doubted of a person.

Consent by its very nature must be a free, voluntary and informed act. Positive consent is not replaced or diminished by context. The context in which sexual activity takes place should not therefore be seen as a proxy for consent. For example, use of a dating or hook-up app should not be seen as consent for any or all sexual activity. The need to explicitly consent, without coercion and the maintenance of the right to withdraw consent should be not only be preserved but protected. This distinction should apply equally to all people engaging in sexual activity. A person's right to consent, or to not consent, should not be impacted if they engage in paid sex work. By engaging in paid sex work someone is not automatically giving consent to any or all sexual activity; consent can be denied at any time. The right of sex workers to both give and withdraw consent must be recognised equally and as equivocally as those not engaged in sex work.

There are a multitude of valid reasons a person may not wish to engage or continue with sexual activity or activities: they feel unsafe, they no longer are interested in sexual activity, they are happy to continue with some activity but not the activity suggested or encouraged by the other person, and/or they are being coerced or under duress.

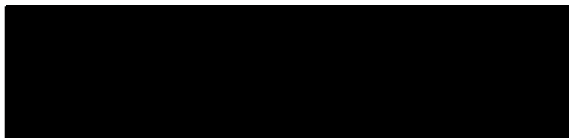
We therefore support a definition of consent based on free and voluntary agreement. Such a definition should ensure that consent is given free from coercion or incentive, that the consent is informed, that the individual is able to consent, and does so willingly and voluntarily. Positive consent cannot be given where a person is in fear, unable to provide consent because of the influence of substances, and where they are not accurately informed (for example where there is a mistake as to identity, where the activity initiated is not the activity they consented to).

The #metoo campaign has highlighted the change in community expectations and there is now broad support to define consent in a way that is positive, voluntary, informed and limited in scope. The Council supports the ACT revising the definitions of consent to be in line with community expectations respecting the bodily autonomy of individuals and the right to exercise the autonomy at their discretion.

The ACT is the only jurisdiction that does not have a positive definition of consent. It is time that the ACT changed its definition of consent to recognise that consent is something which must be given, rather than something which is removed. To this end the Council supports a definition of consent that requires a clear unambiguous “yes” to sexual activity.

The Council supports additional consideration of the needs of LGBTIQ communities and sex workers in refining and informing changes to consent laws and helping understand how a positive consent law could promote individual agency and respect for sexual and bodily autonomy.

Yours sincerely

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Philippa Moss
Executive Director

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