

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Caroline Le Couteur)

Crimes (Consent) Amendment Bill 2018

A Bill for

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Crimes (Consent) Amendment Act 2018*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see [Legislation Act](#), s 75 (1)).

7 **3 Legislation amended**

8 This Act amends the *Crimes Act 1900*.

9 **4 Grooming and depraving young people**
10 **Section 66 (5)**

11 *omit*

12 It is not a defence

13 *substitute*

14 Subject to section 66A, it is not a defence

15 **5 New section 66A**

16 *insert*

17 **66A Consenting young people—exception to s 64, s 65 and**
18 **s 66 offences**

19 (1) This section applies to an offence under the following provisions:

20 (a) section 64 (1);

21 (b) section 64 (3);

22 (c) section 65 (1);

23 (d) section 66 (1);

24 (e) section 66 (3).

- 1 (2) The provision does not apply to a person if—
- 2 (a) the child or young person the subject of the offence was
- 3 10 years old or older at the time of the offence; and
- 4 (b) there is not more than 2 years difference in age between the
- 5 person and the child or young person; and
- 6 (c) the child or young person consented to the act constituting the
- 7 offence.

8 *Note* For offences against s 64 and s 65 (1), the defendant has an evidential

9 burden in relation to the above matters (see [Criminal Code](#), s 58).

10 **6 Section 67 heading**

11 *substitute*

12 **67 Meaning of *consent*—sexual offence consent provisions**

13 **7 Section 67 (1)**

14 *omit everything before paragraph (a), substitute*

- 15 (1) For a sexual offence consent provision, *consent* of a person to an act
- 16 mentioned in a sexual offence consent provision by another person
- 17 means—
- 18 (a) the person gives free and voluntary agreement; and
- 19 (b) the other person—
- 20 (i) knows the agreement was freely and voluntarily given; or
- 21 (ii) is satisfied on reasonable grounds that the agreement was
- 22 freely and voluntarily given.
- 23 (1A) Without limiting the grounds on which it may be established that
- 24 consent is negated, the consent of a person to an act mentioned in a
- 25 sexual offence consent provision is negated if that consent is
- 26 caused—

1 **8 Section 67 (2) and (3)**

2 *substitute*

3 (2) For section 54 and section 55 (3) (b), a person who does not offer
4 actual physical resistance to sexual intercourse must not, by reason
5 only of that fact, be regarded as consenting to the sexual intercourse.

6 (3) If it is established that a person who knows the consent of another
7 person to an act mentioned in a sexual offence consent provision has
8 been caused by any of the circumstances set out in subsection (1A)
9 (a) to (j), the person is taken to know that the other person does not
10 consent to the act.

11 (4) In this section:

12 *sexual offence consent provision* means any of the following:

- 13 (a) section 54;
14 (b) section 55 (3) (b);
15 (c) section 60;
16 (d) section 61 (3) (b);
17 (e) section 66A (2) (c).

18 **9 Consent—pt 3A**
19 **New section 72F (1A)**

20 *before subsection (1), insert*

21 (1A) For this part, *consent* of a person to the distribution of an intimate
22 image of the person by another person (the *offender*) means—

- 23 (a) the person gives free and voluntary agreement; and

- 1 (b) the offender—
2 (i) knows the agreement was freely and voluntarily given; or
3 (ii) is satisfied on reasonable grounds that the agreement was
4 freely and voluntarily given.

5 **10 Section 72F (1)**

- 6 *omit*
7 another person (the *offender*)
8 *substitute*
9 the offender

10 **11 Dictionary, new definition of *consent***

- 11 *insert*
12 ***consent***—
13 (a) for sections 54, 55 (3) (b), 60, 61 (3) (b) and 66A (2) (c)—see
14 section 67 (1); or
15 (b) for part 3A (Intimate image abuse)—see section 72F (1A).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 April 2018.

2 Notification

Notified under the [Legislation Act](#) on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2018