

EXPOSURE DRAFT

Caroline Le Couteur

(Prepared by Parliamentary Counsel's Office)

Crimes (Consent) Amendment Bill 2018

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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 Name of Act

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

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Crimes Act 1900*.

**4 Using the Internet etc to deprave young people
Section 66 (4)**

omit

It is not a defence

substitute

Subject to section 66A, it is not a defence

5 New section 66A

insert

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

- (1) This section applies to an offence under the following provisions:
- (a) section 64 (1);
 - (b) section 64 (3);
 - (c) section 65 (1);

- (d) section 66 (1);
 - (e) section 66 (2).
- (2) The provision does not apply to a person if—
- (a) the child or young person the subject of the offence was 10 years old or older at the time of the offence; and
 - (b) there is not more than 2 years difference in age between the person and the child or young person; and
 - (c) the child or young person consented to the act constituting the offence.

Note For offences against s 64 and s 65 (1), the defendant has an evidential burden in relation to the above matters (see [Criminal Code](#), s 58).

6 Section 67 heading

substitute

67 Meaning of *consent*—sexual offence consent provisions

7 Section 67 (1)

omit everything before paragraph (a), substitute

- (1) For a sexual offence consent provision, ***consent*** of a person to an act mentioned in a sexual offence consent provision by another person means—
- (a) the person gives free and voluntary agreement; and
 - (b) the other person—
 - (i) knows the agreement was freely and voluntarily given; or
 - (ii) is satisfied on reasonable grounds that the agreement was freely and voluntarily given.

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- (1A) Without limiting the grounds on which it may be established that consent is negated, the consent of a person to an act mentioned in a sexual offence consent provision is negated if that consent is caused—

8 Section 67 (2) and (3)

substitute

- (2) For section 54 and section 55 (3) (b), a person who does not offer actual physical resistance to sexual intercourse must not, by reason only of that fact, be regarded as consenting to the sexual intercourse.
- (3) If it is established that a person who knows the consent of another person to an act mentioned in a sexual offence consent provision has been caused by any of the circumstances set out in subsection (1A) (a) to (j), the person is taken to know that the other person does not consent to the act.
- (4) In this section:
- sexual offence consent provision*** means any of the following:
- (a) section 54;
 - (b) section 55 (3) (b);
 - (c) section 60;
 - (d) section 61 (3) (b);
 - (e) section 66A (2) (c).

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

before subsection (1), insert

- (1A) For this part, **consent** of a person to the distribution of an intimate image of the person by another person (the **offender**) means—
- (a) the person gives free and voluntary agreement; and
 - (b) the offender—
 - (i) knows the agreement was freely and voluntarily given; or
 - (ii) is satisfied on reasonable grounds that the agreement was freely and voluntarily given.

10 Section 72F (1)

omit

another person (the **offender**)

substitute

the offender

11 Dictionary, new definition of **consent**

insert

consent—

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 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.

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