

**2012**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES LEGISLATION AMENDMENT BILL 2012**

**SUPPLEMENTARY EXPLANATORY STATEMENT (No 2)**

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## **Crimes Legislation Amendment Bill 2012 (No 2)**

### **Outline of Government Amendments**

The Crimes Legislation Amendment Bill 2012 (No 2) amends a number of pieces of legislation to address a number of issues that have arisen and to make key improvements to the criminal justice system in the ACT.

On 29 November 2012, the Crimes Legislation Amendment Bill 2012 (No 2) (the Bill) was presented to the Legislative Assembly. The amendments proposed by the Bill impact a wide range of areas of criminal law including drug and property offences and sexual offences.

The explanatory statement accompanying the Bill provides a detailed explanation of the proposed amendments.

Government amendments to the Bill are required to address two issues that have arisen and which are outlined below.

1. Currently the *Crimes Act 1900* defines ‘sexual intercourse’ to include ‘the penetration, to any extent, of the vagina or anus of a *person*’. The Bill, intending to expand the definition of ‘sexual intercourse’, provides that ‘sexual intercourse’ instead includes ‘the penetration, to any extent, of the genitalia of a *female person* or the anus of any person’.

This new definition may have the unintended effect that any victim who does not identify, or is not identified by others, as a ‘female person’ would be excluded from relying on this definition to prove a sexual offence.

2. The Bill further provides that ‘female person includes a transsexual person with a surgically constructed vagina’. This proposed amendment to the *Crimes Act 1900* would have the unintended effect of excluding a person who has had surgically constructed or altered external genitalia but not a surgically constructed vagina.

In addition, the reference to ‘transsexual person’ in the definition that the Bill amended may act to exclude a person who is not transgender but who, for any number of reasons, may have a surgically constructed or altered vagina or genitalia from relying on the definition.

## Crimes Legislation Amendment Bill 2012 (No 2)

### Detail

#### Amendment 1 - Clause 5 Page 3, line 20

Amendment 1 amends the Bill so that the words ‘or anus of a person’ are not omitted from section 50(1)(a) and (b) of the *Crimes Act 1900* and only the words ‘the vagina’ are omitted from this section.

#### Amendment 2 - Clause 5 Page 3, line 22

Amendment 2 amends the Bill so that the words ‘the genitalia’ are substituted for ‘the vagina’ in section 50(1)(a) and (b) of the *Crimes Act 1900*.

The purpose of Amendments 1 and 2 is that section 50(1)(a) and (b) will refer to ‘the genitalia or anus of a person’ rather than ‘the genitalia of a female person or the anus of any person’ so that the section is applicable to victims who do not identify as a ‘female person’.

#### Amendment 3 - Clause 8 Page 4, line 9

Amendment 3 amends the Bill so that the new definition of *female person* inserted at section 50(2) of the *Crimes Act 1900* is no longer inserted. Instead, a new definition of *genitalia* is inserted: ‘*genitalia* includes surgically constructed or altered genitalia’. The purpose of Amendment 3 is to ensure that the definition applies to:

- victims who have surgically constructed or altered external genitalia, but not a surgically constructed vagina; and
- victims who are not transgender but who, for any number of reasons, may have a surgically constructed or altered vagina or genitalia.

### Human Rights impacted by the Government amendments

The Government amendments contained in the Bill – although minor – support the right to recognition and equality before the law at section 8 of the *Human Rights Act 2004*.

Section 8 of the *Human Rights Act 2004* provides for recognition and equality before the law and also provides that everyone is entitled to the equal protection of the law without discrimination.

The Government amendments ensure that the definition of ‘sexual intercourse’ for the purposes of sexual offences in the *Crimes Act 1900* applies to intersex and transgender people as well as any other people who have surgically constructed or altered genitalia.