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Dr Marisa Paterson MLA
Member for Murrumbidgee
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Via email: paterson@parliament.act.gov.au

Dear Dr Paterson

Sexual Consent Law Reform

Thank you for inviting feedback on the exposure draft of the Crimes (Consent) Amendment Bill 2021, ACT Council of Social Service welcomes the opportunity to speak on this matter, given our advocacy on consent and sexual assault law reform.

We appreciate the proposed legislative amendments and the introduction of a new statutory definition of consent based on free and voluntary agreement. Successful implementation of this legislation, combined with effective community education will make a substantive difference in people's lives.

The ACT urgently needs a communicative model of consent. Sexual assault trials and conviction rates have dropped significantly over the last five years, despite increases in reports to victim services and police.¹

ABS data from 2020 shows that only 2.8% of sexual assault investigations are finalised with an offender proceeded against within the first 30 days.² Nationally, less than 40% of finalised cases result in a guilty verdict.³ Countless other assaults are

¹ Bladen, Lucy, [Fears over drop in sexual assault trial numbers](#), ABC News, March 2021, accessed 12 July 2021.

² Australian Bureau of Statistics (ABS), [Recorded Crime: Victims](#), ABS, 2021, accessed 12 July 2021.

³ Australian Institute of Health and Welfare (AIHW), [Sexual assault in Australia](#), AIHW, 2020, accessed 12 July 2021.

never reported, due to actual and perceived difficulty of prosecution. The redrafting of sexual consent legislation will do some work to address these harmful gaps.

As you will know, sexual violence most commonly affects women (in 2020, 87% of ACT victims were women⁴), and Aboriginal and/or Torres Strait Islander women, women with a disability and culturally and linguistically diverse (CALD) women are significantly more vulnerable. Members of LGBTIQ+ communities are assaulted at similar if not higher rates than the general population, and in particular, transgender women from CALD backgrounds are more than ten times as likely to be subject to sexual harassment and assault.⁵

ACTCOSS supports the proposed draft yet suggests further clarity, research and community consultation in relation to some of the items in proposed section 67 (1) of the Bill as follows:

- (h) a person does not consent to an act if they are mistaken about any element of the act. The explanatory statement details that this could include being mistaken about the identity of the other person.
- (i) states that a person does not consent if they are overborne because of fraudulent misrepresentation or deception of any fact in relation to the act made by someone else.

ACTCOSS is concerned that members of the LGBTIQ+ community or men who sleep with men (MSM) could be captured under these provisions if they do not disclose their sexual or gender identity or history prior to sex acts.

There is evidence that similar legislation has been used to prosecute and incarcerate several transgender men in the United Kingdom.⁶ It would be problematic if this Bill could be weaponised toward homophobic or transphobic ends.

As consent legislation is moved towards an affirmative and communicative model, the Government needs to examine necessary mitigations to avoid unintended and potentially harmful consequences. The Bill must also be future-proofed and continue to protect vulnerable people in the face of potentially shifting community standards and expectations around gender and sexual identities.

In Australia, rates of intimate partner harassment and violence are especially high for transgender people and bisexual and pansexual people. More than half of bisexual and pansexual people have experienced verbal abuse from a partner, with a third of

⁴ ABS, *Recorded Crime*, 2021.

⁵ Ussher, J. et al, [Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically \(CALD\) diverse backgrounds in Australia](#), Australia's National Research Organisation for Women's Safety (ANROWS), June 2020, accessed 12 July 2021.

⁶ Sharpe, A., 'The Ethicality of the Demand for (Trans)parency in Sexual Relations' *Australian Feminist Law Journal*, 2017, Vol 43(2), pp. 161-183.

pansexual people experiencing sexual and physical violence as well.⁷ Given these high rates of intimate partner violence, we need to ensure amendments to consent legislation protect LGBTIQ+ Canberrans, rather than expose them to new, albeit unintended risks.

While we are not aware of prosecutions arising from non-disclosure of other inherent characteristics like chronic illness or disability, the Government also needs to examine the potential for unintended consequences here.

We would also note the need to define what constitutes consent for people with disabilities and that there are a range of complex considerations here, including for people with intellectual and cognitive disabilities, so that new laws do not negate people's ability to give consent while providing protections against sexual violence. We understand Advocacy for Inclusion are making a submission to you and would also refer you to their [Response to the Inquiry into the Crimes \(Consent\) Amendment Bill 2018](#).

Further, In Australia, more than 70% of women with a disability have experienced sexually violent encounters, and 90% of women with an intellectual disability have experienced sexual abuse.⁸ The new legislation and the accompanying explanatory statement must be provided in Easy English, to make them as accessible and understandable as possible for current and potential future victims of sexual violence.

Again, I would like to reiterate our support for the proposed legislative changes which aim to restructure consent and criminalise stealthing. A communicative consent model will bring the ACT in line with other states and territories and make it easier to address the harms of assault.

Yours sincerely,



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⁷ Hill, A., Bourne, A., McNair, R., Carman, M., Lyons, A., [Private Lives 3: The health and wellbeing of LGBTIQ people in Australia](#), Australian Research Centre in Sex, Health and Society, 2020, accessed 12 July, 2021.

⁸ Frohmader, C., Dowse, L., Didi, A. [Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective](#), Women With Disabilities Australia (WWDA), January 2015, accessed 12 July, 2021.