



Crimes Amendment (Consent-Sexual Assault Offences) Bill 2007 (Proof)

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Ms PRU GOWARD (Goulburn) [9.48 p.m.]: I speak on the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007 and support the Government's decision to review the bill in four years time. I acknowledge also the presence in the gallery of Karen Willis from the New South Wales Rape Crisis Centre. I thank her for her advice and guidance. It stands as one of the few black marks against the status of women in Australia today that rape and sexual assault remain such unreported crimes and that there is a widespread view amongst women in this State that it is not worth reporting a crime that is so awful and destructive—a view that is often shared by husbands, fathers and male friends. In other words, there is a general view in the community that the reporting of sexual assault is not supported by the criminal justice system.

The New South Wales Rape Crisis Centre has provided significant statistics regarding rape. The proportion of reported incidents that lead to convictions is currently around 1 per cent. About 90 per cent of sexual assault incidents reported to police are accepted for investigation. Of the 90 per cent of cases reported, only 65 per cent lead to a person being identified. In 20 per cent of cases investigated, legal proceedings are commenced by police. Where legal proceedings are commenced, 40 per cent of cases are withdrawn by the police prosecutor. Of the cases that proceed to court 80 per cent of defendants plead guilty, but usually to a lesser charge. The conviction rate at a trial is 35 per cent compared with over 70 per cent in all other criminal matters. At each stage the victim, still alive, lives through the nightmare again.

It is a black mark against this State that a fundamental human right—the right to live in safety and security—is perceived to be poorly protected. Clearly, change is in order. No-one on this side of the House denies the fact that sexual assault and prosecution need to be better addressed and reformed. Clearly, there is a view in the community that the under-reporting and under-conviction rates for rape are a reflection of an anti-female culture within the criminal justice system, particularly poor practice by police and the courts, and laws and regulations which disadvantage the victim, who is usually a woman.

There also needs to be greater support for victims as they go through the various stages of prosecution—support that enables them not only to persist with their evidence, under the pressure of cross-examination, but to literally remain sane. I am sure all members know of women in their electorates who have suffered incredible mental stress and distress as a result of having to give evidence in a sexual assault trial. As the Law Society and the Bar Association have sought to identify, the Parliament needs to be cautious when it amends the law in this way, particularly when it seeks to modify the principle of mens rea, or the guilty mind. The principle of mens rea has governed criminal prosecutions, which carry harsh sentences, for several hundred years, and we must have respect for the principle.

We have to ask ourselves: Will the bill solve the problem of under-reporting, under-conviction, and lack of confidence in the criminal justice system's determination to protect the rights of women? It is a serious question, and it is one the Opposition has considered very carefully. We need to be confident that the amendments we pass in this House will not only enable a jury to more confidently convict, without producing unsafe outcomes, but also ensure that the law retains the confidence of the people. I am particularly pleased that the Government has now agreed to a four-year review of the legislation, as many of us on this side of the House have wished and certainly as my consultations with relevant women's groups suggested was acceptable to them. We have proposed a similar review, although over a shorter duration, and the member for Epping has clearly outlined our reasoning for this course.

I would hate the bill to make no difference, as has been suggested to me by some lawyers. I would hate women to have their expectations raised by the passing of the bill and then be let down. I believe there is a serious risk of that if we do not also pursue changes in court resourcing, procedures and practices. We also need to change public attitudes to violence against women, both sexual and domestic. Sexual assault is of concern at all levels of government. While the Howard Government has committed some \$75.7 million to addressing violence against women, the State's court-based system and social justice forums also need to actively promote the notion that violence against women is not acceptable, that a person who abuses women will be prosecuted and the time that person spends in prison will be long and arduous.

Will this bill mean that more women will report the crime? Will the reported crimes lead to more prosecutions and more convictions? The number of convictions at the moment as a result of complaints seems so low that, as has been said, many women do not want to go through the process of making a complaint. We must ensure that we do not make mistakes in this respect. We need to make sure that any changes we make to the system will lead, firstly, to fewer incidents. Prevention of this nightmare must be our first priority. We must also make sure that where incidents have occurred, they are more likely to be reported to police, and that when they are reported they lead to a prosecution and, if the facts are proven, to conviction. Every sexual assault case that does not lead to a conviction is a miscarriage of justice. A caller to the New South Wales Rape Crisis Centre was quoted as saying:

I was sexually assaulted eight years ago. I have been through two court hearings and three appeals, and it is not over yet. If I knew then what I know now I would have gone home, had a shower and never told anyone what had happened.

The woman was 32 years old. The question we must ask is: Will the bill ensure that in future women will not have to suffer that nightmare? It is a disgrace that a woman should come to the conclusion, regarding her own safety and the crime against her, that silence would have been better. I am sure that Government members would agree. The question to be asked is: Will the bill make the conviction process simpler, as the court system now works through a number of definitions of sexual assault? Are there sufficient resources to support women in these cases, to ensure that evidence is carefully taken and that court resources are sufficient to protect women from long and offensive cross-examination? One of the benefits of the bill may be that there will now be more focus on the behaviour, attitudes and motivations of the accused, not just the victim. It is about time that occurred.

It would be a terrible outcome for the women of New South Wales if these changes to the law are made, with some fanfare, and then there are insufficient resources and insufficient procedural change instituted to ensure that the changes have the opportunity to work without either unfairly and wrongly imprisoning men or ending up with the same delays, the same repetitious and unfair cross-examination, the same difficulties at the Court of Appeal stage, where evidence becomes less relevant, and the same demeaning processes that will result in women still being unwilling to come to the police and pursue their legal rights through the courts.

This bill is an important and very new step for the law and for our criminal justice system. It will need to be monitored carefully and handled wisely. I welcome the Government's acceptance of the need for a review, although, as we have said, to leave it for four years is to leave it for too long. What this Parliament must primarily want from these amendments is that justice is more likely to be done and seen to be done. The liberty of the people is only as strong as their belief in the rule of law. If these amendments are seen to have either failed women, failed men or been irrelevant, not only will victims continue to suffer and reject recourse to the law but confidence in the rule of law will also have been eroded. That must not happen, and for this reason it is vital that not only does the Government proceed with its review but it also ensures that the criminal justice system has sufficient resources—in other words, more police, more support for victims, more judges, fewer delays, better training, tougher control of cross-examination, and even specialist courts. When we start to see the Government committing to some of these additional components of sexual assault reform, perhaps then the Opposition—and myself particularly—will believe that the Government is sincere in its wish to do better for the women of this State.
