

CRIMES AMENDMENT (CONSENT—SEXUAL ASSAULT OFFENCES) BILL

13th November 2007

The Hon. ROBYN PARKER [3.49 p.m.]: In contributing to debate on the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007 I echo the comments of the Hon. Helen Westwood in acknowledging the contributions of a great many people towards reform of our sexual assault legislation over the past few years. I acknowledge the ongoing and passionate work on behalf of women in particular as well as for all victims of sexual assault, whether they are men, women or children. I acknowledge Karen Willis, the Manager of the New South Wales Rape Crisis Centre for her work, and Dr Anne Cossins, from the Women's Legal Resource Centre, both of whom have been tireless in their representation. I acknowledge all those who have been involved in providing health and support services across the board to sexual assault victims, supportive people in the legal profession and in the police, and all those groups that have come into contact with them.

Sexual assault victims need our continued support. We must enact legislation that meets with community expectations, and that makes it easier for victims to come forward. After all, we want to achieve results that are fair to victims and to accused persons alike: we do not want to sway the legal position to such an extent that one side or the other is given undue support. Over the past few years, good and welcome legislative changes have been made, for example, closed-circuit television cameras, closed courts, and the availability of videotaped evidence. Recently we passed legislation to deal with the way in which alleged victims can present evidence. It is a horrendous ordeal and a deterrent for sexual assault victims who have suffered such violation of their persons to go through a legal system that could make them victims all over again.

This legislation, which will establish a statutory definition of "consent", goes some of the way towards resolving this problem—an issue about which I will talk later. I understand that judges are aware of the definition of "consent" and that jurors are presented with that information. However, it must be defined in legislation to ensure that the public are aware of our view and the view of society. I thank the *Daily Telegraph* for running a campaign on an issue that I believe has been kept out of the public arena for too long. Brave people such as Tegan Wagner, with the support of some media outlets, journalists and authors, have taken on the system and have said, "This is not good enough. We need to do better." I have received correspondence from a number of groups, but I will refer in particular to the comments of Dr Anne Cossins from the Women's Legal Resource Centre who had this to say about consent:

Consent will be defined as "free and voluntary agreement" where there is force, intimidation, abuse of authority, or unlawful detention by the accused, or where the complainant is intoxicated or otherwise lacks the capacity to consent there can be no free and voluntary agreement and no consent.

Most sexual assault cases involve the complainant's word against the word of the accused. The absence of a definition of "consent" in New South Wales has presented problems for juries, particularly when we know that jurors' decisions are affected by their own attitudes, beliefs and prejudice about sexual behaviour.

She goes on to state:

A definition of "consent" will give juries greater guidance when assessing the evidence and deciding whether or not the complainant actually did give their consent freely and voluntarily.

But the most important part of consent is that it is an educative tool. The new definition of "consent" states what we already know—that most reasonable people no longer consider appropriate predatory or opportunistic behaviour for gaining sexual intimacy. The new definition sends a message that sex gained by any means other than free or voluntary agreement is not acceptable in our society. It is no defence to state that someone was asleep, intoxicated, unconscious, or unable to resist. The law now recognises that people in that condition do not have the capacity to consent. If someone takes advantage of a person in that situation he or she is committing a criminal act.

It is wrong to believe that sexual assault will impact on only a few people in New South Wales. In 2006 there were 6,667 victims of sexual assault, and those are only the cases that were reported. The report rate is very small and it is something to which we must now direct our attention. Not every victim or alleged victim of sexual assault reports such an offence. The Government must allocate additional resources to tighten up legislation, to ensure that court conditions are more suitable and to ensure that cases are dealt with in a timely fashion and are concluded quickly. Rather than just fiddling around at the edges the Government must allocate additional resources to prevent the offence of sexual assault.

The task force report includes recommendations that encourage the Government to allocate resources for the provision of one-stop shops, caseworkers and specialised courts. I understand that the task force also recommends that the Government increase the number of forensic officers. However, I have heard nothing further about that. I ask the Minister, when replying to this debate, to clarify whether money has been allocated for the provision of additional forensic officers. The Government must take on board the recommendations of the task force. It should put its money where its mouth is and ensure that sexual assault cases do not drag on forever, that they are moved through the legal system quickly, and that more victims are encouraged to come forward and report cases of abuse. Judges and everyone else involved in sexual assault cases must continue to be trained, but that will require a significant allocation of resources. As I said earlier, we need real funding to back up the recommendations of the task force and to make these issues more public. Recommendation No. 7 of the task force states:

... further and directed funding prioritised to sexual assault and counselling services, health and relevant NGO funding, health in the form of training sexual assault nurse examiners, witness assistance services, enhancement of existing infrastructure and health and courts, and Aboriginal family health strategy sexual assault people.

This Government must pay attention to all those issues. It has tightened up some of its core and legal provisions—something that has been well received by the community—and if other provisions in this legislation need tightening, such as the area of consent, they should be reviewed in the future. We must do whatever we can to encourage victims to come forward to report instances of abuse. We must create an environment in which they feel safe and in which they receive justice. I support the inclusion in the legislation of a new provision that defines the term "consent" but I urge the Government to allocate additional resources to address the other issues that I have highlighted.

