

DR MARISA PATERSON MLA SPEECH

5 May 2022

Crimes (Consent) Amendment Bill 2021 – Debate close

Thank you, Madame Speaker.

I would like to start by thanking colleagues for their contributions to the debate; and to note that I am happy to close debate on the in-principle stage of the Crimes (Consent) Amendment Bill 2022.

I take this opportunity to table a Revised Explanatory Statement to the Bill.

I am proud to stand here today, representing the people of Murrumbidgee, and Canberra more broadly, to effect positive change for our community.

I firstly want to thank my colleagues who have spoken and expressed their support for the Bill. This Bill is not about politics, it's about ending violence in our community and it's about respect and that is why it was so important that it received the tri-partisan support it deserves. I thank everyone in the Assembly for their positive contribution to help bring about legislative reforms to introduce a communicative model of consent into the Crimes Act.

Bill's history

It has long been recognised that the ACT needs to introduce a communicative model of consent. I want to firstly recognise all the advocates and service providers, community groups and organisations, victim-survivors that have fought for this change for a long time. This Bill today is a reflection of that work. This Bill is the product of that hard fight. And I am so proud to be the one to stand here today to bring this reform to fruition – this is a moment of justice.

However, the people that I stand here today that I really want to recognise are victim-survivors - those people who have been sexually assaulted in our community. Again, I want to say how deeply sorry I am for what happened to you. I am so sorry if you have to live in silence. I am so sorry if you never found justice. I am so sorry if your darkest, quietest moments are haunted by a deep pain. I hope you can find some reprieve that I stand here – to represent you, and to bring about change that will work to stop this violence. I stand here to put it into law that ‘every person has a right, a right, to choose NOT to participate in a sexual act. I stand here today to put into law – that a consensual sexual act involves ongoing and mutual communication and decision making’. I stand here to put into law that consent to a sexual act is free and voluntary.

Legislative reform is ‘one step’ in the long road to end sexual violence. However, I view it as a very important step. I believe we can have all the best-practice, evidence-based education programs in the world, but if the

law does not reflect those teachings, then I do not believe we can fully progress to a point of cultural change. I feel confident the law now provides the clarity that is needed in the community around what is consent and when consent cannot be given.

Acknowledgements/thanks

I want to reiterate that I will continue to work hard alongside services, advocates, victim-survivors and my Assembly colleagues to end sexual violence in this community. I will continue to be a strong advocate on this issue and will continue to use my position of influence to achieve positive and constructive outcomes for public good.

Madame Speaker, I want to acknowledge Ms Yvette Berry MLA, as Minister for Women and Minister for the Prevention of Domestic and Family Violence, for all the work she, her team and Directorate undertake. I specifically want to thank key members of Minister Berry's staff: Mr David Ferguson, Ms Melanie Walker and Ms Gabriela Falzone for their support through this process. I also want to thank the Attorney-General, Mr Rattenbury, and his office – especially Mr Lewis Pope, for support along the way. I also commend the professionalism and workmanship of the drafters at Parliamentary Counsel's Office who have been an absolute pleasure to work with throughout this process and who have gone above and beyond their call of duty.

I would most like to thank my office staff, Anna Gurnhill and Rhys Thompson for supporting me with this very challenging reform. I particularly would like to acknowledge Anna, who has worked with me from the moment we first discussed this, every step of the way. Aside from this Bill being incredibly legally complex, it has meant that for over a year, Anna and I have intensively interrogated, investigated, and worked to understand every aspect of sexual assault – Anna's unwavering commitment to this work and to support me is demonstrated in what we have achieved today.

I would like to acknowledge the ACT Government's Sexual Assault Prevention and Response Program and all who worked together on the Sexual Assault Prevention and Response Steering Committee in 2021, chaired by Ms Renee Leon, that such a light has been shone on this issue in the ACT.

I want to thank all our frontline services, who are there to listen, support and take action for and with victim-survivors and those that fight to see perpetrators held to account. We have so many important organisations working in this space in the ACT – to name just a few: The ACT Victims of Crimes Commissioner; Canberra Rape Crisis Centre; Canberra Hospital - Forensic and Medical Sexual Assault Care; ACT Police; ACT Human Rights Commissioner; Director of Public Prosecutions; Women's Legal Centre ACT; Domestic Violence Crisis Service; YWCA Canberra; Legal Aid ACT; Meridian Community Health Action; Women with Disabilities ACT; ACTCOSS; ACT Law Society; Women with Disabilities ACT; and Advocacy for Inclusion.

To all of these organisations and individuals – thank you.

What the Bill does

This Bill shifts the objectives of consent to a sexual act from something that is presumed and can be negated, to something that is unassumed and must be given. This model of consent is underpinned by principles of agency, autonomy and responsibility and is based upon a culture of healthy, respectful relationships.

The Bill will focus trials of sexual offences on whether there was positive communication between the parties about the sexual act, rather than whether the victim-survivor resisted the sexual act.

Madame Speaker, this Bill ensures that every person in our community has a right to choose whether or not to participate in a sexual act. This is an incredibly empowering piece of legislation.

Revised Explanatory Statement

Madame Speaker, I have just tabled a revised Explanatory Statement which I wish to briefly speak to.

The revisions reflect comments made by the JACS Scrutiny Committee and in the Government's response.

I have included further consideration and explanation against Sections 8, 22 and 28 of the *Human Rights Act 2004* – the right to recognition and equality before the law; presumed innocence; and limitations on human rights.

I note in the revised Explanatory Statement the ACT's existing criminal laws and their relevance to circumstances where there is no criminal responsibility and, specifically in the context of this Bill, related to an accused person's cognitive or mental health impairment.

Regarding the presumption of innocence, I wish to clarify that there is no element in the Bill which is required to be proven by an accused person or which requires that an accused person needs to introduce evidence to establish their innocence.

The change introduced by this Bill is that an honest but unreasonable belief that an accused person had about the other person's consent to a sexual act is no longer acceptable if the accused person did not say or do anything to obtain consent. An accused person's failure to do anything at all to ascertain consent will not be acceptable as a defence. This is in line with growing community expectations about consent and aligns with recent law reform in New South Wales.

This is a proportionate reform, taking into account what, if anything, an accused person said or did to obtain consent in assessing the reasonableness of an accused person's belief that consent was given.

Regarding limitations imposed on human rights, it may be argued the Bill limits a person's rights in so far as an accused person must have done

something in order to avoid a criminal liability. I wish to reassure the Assembly this is not the case.

The policy intent for this Bill is to introduce a communicative model of consent, and to hold perpetrators to account. The Objects – part 3, together with the meaning of consent at section 50B, establish that a sexual act requires informed, free and voluntary agreement by the people participating that is communicated by saying or doing something.

A recent legislative review in Ireland found that a proportionate reform for sexual consent would be for the trial to take into account what, if anything, an accused person did to ascertain consent as part of assessing the reasonableness of the accused person's belief in consent.

This Bill introduces provision that an accused person cannot rely on silence and inaction to claim that they reasonably believed another person consented. Section 67 (subsection 5) makes provision that a jury must take into account what, if anything, an accused person said or did to ascertain consent as part of assessing the reasonableness of an accused person's belief that consent was given, and in considering whether the accused person's knowledge about consent was reasonable in the circumstances.

The limitations are considered reasonable, justifiable and the least restrictive means to achieve their purpose – introducing a communicative model of sexual consent.

Madame Speaker, I believe the provisions of the Bill are proportionate to achieve this outcome.

On other revisions to the Explanatory Statement, I have revised language from 'trans-gender' to a broader and more inclusive language which reflects persons of diverse gender identity and expression. This is consistent with the *Discrimination Act 1991* and other ACT laws.

I have included specific reference to the freeze and surrender responses of sexual violence. These are the two most commonly reported incidents of sexual violence in our community. By naming them clearly and providing distinct reference, this will help change community attitudes, and will validate victim-survivor's experiences in situations of freezing or surrender as sexual violence, empowering them to report the assault.

I have provided further explanation at Section 67 (subsection 1) (g) to make it clear that this Bill does not introduce a higher test for a victim-survivor's level of intoxication than is the case in current legislation.

Community education

As noted in the report of the Sexual Assault Prevention and Response Steering Committee late last year, law reform is a critical component of more healthy, respectful relationships. As is community education.

To quote the report, it states: “The legislative reforms proposed in this report must therefore support and be supported by educative and social measures focused on primary prevention and cultural change, as outlined earlier in this report, that explains how the model of affirmative consent fits within a framework of equal and respectful relationships”. Unquote.

I understand the ACT Government is currently working through each of the report’s recommendations, and carefully considering how to design, develop, deliver and prioritise a comprehensive educational program.

I also note and welcome the Committee’s recommendations about the important role of training and ongoing education for all frontline workers involved with various aspects of sexual violence and those working in the criminal justice system; resourcing for an ACT Policing Sexual Assault and Child Abuse Team; expanding restorative justice programs; the review of justice procedures; and further recommended areas of law reform - related to penalties, sentencing, bail, workplace and personal protection orders.

I look forward to the Government’s response to that report, and its assessment and prioritising of a suite of programs, activities, policies and resources to combat sexual violence.

Thank you.

ENDS.

DETAIL STAGE

Thank you, Madame Speaker.

Pursuant to standing order 182A (b) and (c), I seek leave to move amendments to this Bill which are minor and technical in nature and in response to comments raised by the Scrutiny Committee.

Thank you, Madame Speaker. I seek leave to move Amendments numbered one to three circulated in my name together and table a Supplementary Explanatory Statement to the amendments.

Madame Speaker, Amendment number one is a technical amendment to the heading at Clause 4 to align with other Amendments which introduce a proposed new section 50C – meaning of sexual act. It has been necessary to amend the heading at Clause 4 to recognise not only proposed new sections 50A and 50B, but also the amendment for proposed new section 50C.

Amendment number two amends the title of Section 50A from ‘Principles of consent’ to ‘Objects - part 3’.

This provision clearly articulates that an object of part 3 (Sexual offences) applies to the sexual offence provisions at Part 3 of the *Crimes Act 1900*.

The objects of consent for a sexual act are intended to guide the interpretation and application of the sexual offence provisions at Part 3 of the *Crimes Act 1900*.

This is a technical amendment which strengthens and clarifies the policy intent.

Amendment number three introduces proposed new section 50C, which makes provision for a definition of sexual act, as requested in the Government's Response to the Bill tabled. The definition is a technical amendment to avoid interpretive difficulties, to create clarity, and avoids leaving open any possible gaps in the interpretation of sexual act for the purposes of sexual offences at Part 3 of the *Crimes Act 1900*.

The definition aligns with that of comparable New South Wales legislation.

Thank you.

I seek leave to move Amendments numbered four to seven_circulated in my name together.

I move amendments numbered four to seven circulated in my name together.

Amendment number four at proposed new section 67 (subsection 2) omits the subsection to substitute with a proposed new subsection which creates clarity that the 'same person' is the 'accused person'. This amendment in language will avoid interpretive difficulties.

Amendments number five and six both create clarity for the purposes of section 67 (subsection 3) that the 'same person' is the 'accused person'. This clarity of language will avoid any interpretive difficulties.

Amendment number seven creates clarity and consistency in language for the purposes of section 67 (subsection 4) that 'a person' is 'an accused person'.

I seek leave to move Amendments numbered eight to nine circulated in my name together.

I move amendments numbered 8 and 9 circulated in my name together.

Amendment number eight is a technical amendment which changes the heading of proposed new section 442D about the review of the provisions of the Bill.

Amendment nine affects proposed new section 442D (subsection 3) and requires that the Minister must present a report of the review of the operation of this Act to the Legislative Assembly within 12 months after the day the review is started. The Bill, as tabled in February, had a six-month timeframe.

The Government's Response to my Bill recommended this be amended to 12 months to allow an appropriate amount of time to undertake the review including any public consultation, meet Cabinet timelines and table the report, and allow for a more comprehensive review.

I move Amendment number 10 circulated in my name.

This is a technical amendment only which gives effect through the Dictionary to the new definition of sexual act at Amendment 3.

Thank you, Madame Speaker.

CLOSING

Madame Speaker, in closing, I want to state again that I welcome the comments and tri-partisan support for this Bill and the debate we've had here today.

This Bill is a moment for justice for victim-survivors in the ACT. And it is a significant step on our journey to end sexual violence in our community.

Thank you, Madame Speaker and colleagues.

Ends