

DR MARISA PATERSON MLA SPEECH

8 February 2022

Crimes (Consent) Amendment Bill 2022

I present the Crimes (Consent) Amendment Bill 2022 together with its Explanatory Statement.

I move that this Bill be agreed to in principle.

Thank you, Madame Speaker.

I believe that today is a very important day in the ACT, I believe that there is some justice for survivors of sexual assault in this law reform that I am bringing to the Assembly today. For all the victim-survivors of sexual violence in the ACT, to everyone of you – I am so sorry what you have experienced. I am so sorry for the burden, for the weight that you carry.

Scott Morrison talks about ‘quiet Australians’ - well there is an awful, sickening number of silent Australians – people, women, children who have been subjected to sexual violence in our community. These silent Australians, silent Canberrans, mostly women, live with the trauma of their experiences on a daily basis. And because of a plethora of reasons - personal, cultural and structural - these people stay silent.

In 10 months last year, from January to October, ACT Policing received 262 reports of sexual assault. 262 people in our community were subjected to some form of sexual violence. In a similar timeframe (July 2020/June 2021), 13 sexual offences went to trial in the Supreme Court in the ACT – 4 had a guilty verdict. Based on those figures, if you are a victim of sexual assault, you have a 4% chance of your case going to trial and a 1% likelihood of a guilty verdict. So the vast number of those 262 people that attended a police station in the last year walk back out into the community and live with the fact they were raped, sexually assaulted, sexually violated for the rest of their lives with no justice.

And then what of those people, those women, who never went to the police station. Who perhaps are one of the thousands of calls that the Canberra Rape Crisis Centre receives each year. In our lovely, beautiful city, that we all hold so dear to our hearts – there is a deep undercurrent of violence, sexual violence, rape that hurts us all that it exists. And that is why we must all do everything we can to stop this.

The sick part of this discussion is that for every one of those 262 reports (or more) of sexual assault in our community – there is a perpetrator. There are at least 262 men in our community last year that raped, violated, assaulted someone. I am highly conscious of how uncomfortable the gendered nature of this is to talk about. In 2020, 87% of sexual assault victims in the ACT were women. Further to this, in the ACT Aboriginal and Torres Strait Islander women, women with a disability and culturally and linguistically diverse women, transgender women experience sexual assault at disproportionate rates to the rest of the community.

These perpetrators, predominately men, attack the most vulnerable of people in our community, when they are most vulnerable, in the most violating way.

This is why it is the job of all of us to stop this, to educate our children and young people. To make a stand when we see bad behaviour, to work as a community, a network, a friendship group, a family – to stop this sexual violence.

We need to instil that consent to a sexual act – is free and voluntary, consent is not presumed. Every person has the right to choose NOT to participate in a sexual act. A consensual sexual act involves ongoing and mutual communication and decision – making by the people participating.

This is not complicated. In every other part of our lives, ongoing and mutual communication and decision making is 101 of how we function as a society. That is why it is critically important that our justice system, that our law – convicts people who actively perpetrate such a deep violence, such trauma, on victims.

It is why I stand here so proud today to present this Bill. I want to see justice for survivors of sexual violence in our ACT community.

I have to acknowledge here that a criminal justice response is not what every victim/survivor wants. But my desire is to see a system that allows for survivors to make informed choices, to be supported, to be believed, if they do decide to take legal action, then to have a system and a law that will provide fair and just outcomes. This pervasive silence needs to end.

In the ACT we have been on this journey of law reform for at least the past four years.

In 2018, Ms Caroline Le Couteur introduced an Amendment Bill to the Legislative Assembly. A subsequent inquiry was conducted by the Justice and Community Safety Committee.

The key recommendations from the Committee's Inquiry into the Bill included that the ACT not consider or enact legislative change until the NSW Law Reform Commission inquiry into sexual offences was presented.

Further recommendations of the ACT Committee's inquiry included:

- that a definition of consent be based on a concept of free and voluntary agreement;
- that affirmative and communicative consent be considered for enactment into ACT law; and
- that legislative change retains the fundamental presumption of innocence until proven guilty.

In 2018 the ACT Government provided their response to the Bill, noting agreement to the Inquiry's recommendations, and also:

- that there was a technical issue with the definition of consent as proposed; and
- the need for a substantial community educational/awareness campaign.

Similarly to the ACT, New South Wales has been on a journey of sexual consent law reform since 2018.

In May of that year, the TV documentary, *Four Corners*, aired the very distressing story of Saxon Mullins, and her lived experience of reporting sexual violence through the criminal justice system in NSW. That same month, the Honourable Mark Speakman MP asked the NSW Law Reform Commission (NSWLRC) to conduct a review into consent in relation to sexual offences in NSW.

That review culminated in a report presented to the New South Wales Government in November 2020, followed by the Government's response which gave support or in-principle-support for all 44 recommendations. The NSW Government recommended the introduction of an affirmative model of consent.

Late last year, legislative reform for sexual consent provisions was passed by both houses of parliament in New South Wales, with the provisions to commence in May this year.

Late last year, members of the Victorian Parliament also announced their intent to introduce sexual consent legislative reform in 2022.

Soon after being elected to this role in October 2020, I undertook detailed review and stakeholder consultation to better understand the ACT's existing legislation, previously

proposed legislation and the barriers to it being passed, as well as other available evidence and research.

In June 2021, I released an Exposure Draft Bill for public comment. During this period, I received 14 detailed written submissions; there was a wealth of social media and online commentary; and I met with key stakeholders and survivors to discuss the provisions of the draft Bill.

Overwhelmingly, support was provided for the introduction of an affirmative model of consent.

During the period of public consultation, I engaged with stakeholders about complex, sensitive and ethical considerations particularly regarding the potential impact of the legislation on people with a disability and transgender people to ensure that the Bill is inclusive of the unique needs and considerations of these people in our community.

In March last year, Minister Berry announced that the Sexual Assault Prevention and Response Program would be established to bring together government and non-government experts to make recommendations to government about sexual assault reforms in the ACT, a Steering Committee was established. I presented this draft Bill to that Steering Committee for consideration.

On 6 December last year, Ms Renee Leon – on behalf of the ACTs Sexual Assault Prevention and Response Steering Committee – presented the Committee’s final report to the ACT Government. The Committee’s Working Group on Law Reform reviewed my draft Bill carefully and, in their final report, gave their support and also provided recommendations to strengthen the Bill I present today.

I want to talk just briefly about the provisions of this Bill.

It differs to that put forward in the last term of Government by retaining the fundamental right of an accused person to be presumed innocent until proven guilty. It achieves this by clearly separating provisions about the definition of consent from fault elements.

In doing so, this Bill overcomes the key technical issue which prevented the ACT Government from supporting the Bill put forward in 2018.

The purpose of the proposed legislative amendments outlined in this Bill is to introduce a new statutory definition of consent in line with contemporary community standards and expectations – one that is based on free, voluntary and informed agreement.

The amended principles and meaning bring about a more nuanced definition of consent, shifting it from the position of non-consensual sexual activity being something that is presumed and can be negated, to something that is unassumed and must be given.

This is a communicative, or affirmative, model of consent.

The amendments shift the current legislation from the point of sexual assault being a violent act, to a much more nuanced and defined set of parameters around what consent is and what it is not.

The Bill:

1. outlines the **principles of consent** – consent is not to be presumed; every person has a right to choose whether or not to participate in a sexual act, and it involves ongoing and mutual communication and decision-making between the people participating;
2. provides a **meaning of consent** – informed agreement that is freely and voluntarily given; and which is communicated verbally or non-verbally by saying or doing something;
3. clearly articulates a set of **circumstances under which consent is not deemed given**. This is a non-exhaustive list that has been updated from the current *Crimes Act 1900*. ; and
4. introduces the concept of **reasonable belief** – the current legislation provides that an accused person is guilty of an offence if they know another person does not consent to a sexual act or are reckless as to consent. These are subjective standards. This Bill introduces the principle that any belief an accused person may hold about another person's consent must be reasonable under all the circumstances, according to an objective standard. In cases where an accused person does nothing to ascertain another person's consent, they will not be able to rely on a defence of genuinely but mistakenly having believed the other person consented.

This Bill offers improved protection and support for some of these most vulnerable and marginalised people in our community.

It will also help support a cultural paradigm shift – to one where would-be perpetrators will think again before committing an act of sexual violence; and to a community that has an improved understanding of what constitutes healthy, respectful relationships.

The proposed changes will help break down the stigma and shame that is often associated with sexual violence victimisation.

Through this Bill, greater clarity is provided to help victim-survivors identify a matter of sexual assault and to feel confident in reporting this crime. The proposed legislation makes it very clear what consent is, and what it is not.

Historically, sexual abuse, sexual assault and rape are in the category of the least reported crimes, not least because of society's tendency to blame the victim-survivor.

Victim-survivors often fear coming forward because:

- the criminal justice system is a traumatic and harrowing journey;
- they are often not believed;
- many are asked how they contributed to the offence; or
- their actions (such as the clothes they are wearing) are analysed and judged and may be considered to have contributed to the assault.

I hope and anticipate that the changes introduced through this legislation will:

- reduce the number of sexual assaults occurring within our community;
- encourage more people to come forward to report instances of sexual assault;
- improve the experience of victim-survivors in the criminal justice system;
- make sexual violence cases easier to prosecute; and
- hold perpetrators to account through a greater number of successful prosecutions.
- And provide a framework and basis for improved community education.

These laws will make it clear that as a community, we expect people to actively seek consent and importantly, that victim-survivors did not have an obligation to say or do anything to refuse consent.

As recommended by the Committee Inquiry and the ACT Government in 2018, as well as the final report of the ACT Government's Sexual Assault Prevention and Response Steering Committee in December last year, a strong community education program is critical to support legislative reform.

A holistic approach that incorporates community education about the nature and evidence of gender-based violence and respectful relationships; together with targeted training for ACT Policing, legal practitioners and judiciary, and consent education in schools, is needed.

As stated just last week in the New South Wales' Law Society's Online Journal by Liz Snell of the Women's Legal Service in New South Wales: "This training needs to be developed and delivered by sexual, domestic and family violence and abuse experts

including people with lived experience, cultural safety experts, disability experts, non-binary, trans and gender diverse experts”.

Accordingly, I welcome the important work being undertaken by Minister Berry, in her facilitation and coordination of the ACTs Sexual Assault Prevention and Response Program.

I thank all those who have given their time and provided advice, expertise and feedback; all of which I have considered in detail and worked with legislative drafters to develop the most robust provisions to effect meaningful, positive change in the Bill I’m tabling today.

In closing, I’d like to thank the many people and organisations who have helped me in the journey to be able to table this important piece of legislation – Victims of Crime Commissioner, Ms Heidi Yates; Dr Vanita Parekh of The Canberra Hospital; Ms Chrystina Stanford of the Canberra Rape Crisis Centre; Mr Shane Drumgold, Director of Public Prosecution; ACTCOSS; Meridian; A Gender Agenda; Advocacy for Inclusions; Women with Disabilities ACT; YWCA Canberra; Dr Helen Watchirs OAM, ACT Human Rights Commissioner; Minister Yvette Berry MLA, Minister Rattenbury and my Labor and Green colleagues.

I also wish to thank Grace Tame, Saxon Mullins and Brittany Higgins for their support of this Bill and for their tireless advocacy for change.

And finally, to victim – survivors, today won’t change the past, but I have every hope and with every intention I introduce this Bill today with the view to change the future.

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