

## **DRAFT SECOND READING SPEECH**

**HON. MATTHEW GROOM MP**

### ***Criminal Code Amendment (Sexual Assault) Bill 2017***

*\*check Hansard for delivery\**

Madam Speaker, this Bill makes a number of amendments to the *Criminal Code Act 1924* to modernise the law of rape in Tasmania so as to reflect modern community standards.

This Bill will amend the definition of 'sexual intercourse' in the *Criminal Code* to extend the operation of the crime of rape to all forms of non-consensual sexual penetration.

In 2010, the Australian Law Reform Commission (ALRC) in its Report 114: *Family Violence: A National Legal Response* recommended that Australian jurisdictions should amend their criminal laws so that the definition of sexual intercourse (applicable to the crime of rape) should be broad and not gender-specific. To that end, the ALRC recommended a definition intended to shift away from historically gendered and restrictive definitions of sexual intercourse.

In Tasmania, the crime of rape has not been reconsidered since 1987 when amendments were made that abolished a husband's immunity from prosecution, replaced 'carnal knowledge' with 'sexual intercourse' and widened the definition to include penetration of the mouth and anus by the penis. These amendments also updated consent provisions to clarify the law in relation to valid consent and defined the crime of rape in gender neutral terms.

The same Bill introduced the crime of aggravated sexual assault to provide for sexually penetrative offences involving a body part other than the penis or an inanimate object.

While the current crime of rape is not gender-specific, the current discrimination between sexual penetration involving a penis with other forms of sexual penetration does not reflect modern society and modern concepts of sexual intercourse or adequately reflect the seriousness of other crimes of sexual violence.

In Tasmania, sentencing data demonstrates that the courts have historically sentenced offenders who commit non-consensual acts of sexual penetration involving objects or body parts other than a penis, that is crimes of aggravated sexual assault, significantly less seriously than offenders who commit the crime of rape.

The proposed amendments to the *Criminal Code* will bring Tasmania into line with the approaches in other Australian jurisdictions and implement the ALRC's recommendation in relation to penetrative sexual offences.

I will now briefly outline the significant amendments to be made to the *Criminal Code*.

In Tasmania, section 185 of the *Criminal Code* provides for the crime of rape. The crime of rape is defined as 'any person who has sexual intercourse with another person without that person's consent'.

The existing definition of 'sexual intercourse' is provided in section 1 of the *Criminal Code* as 'the penetration to the least degree of the vagina, genitalia, anus, or mouth by the penis and includes the continuation of sexual intercourse after such penetration'.

Clause 4(c) of the Bill removes the existing definition of 'sexual intercourse' and clause 4(e) replaces that definition with a new definition, which will be new section 2B of the *Criminal Code*.

The new definition of 'sexual intercourse' includes the following types of sexual penetration:

- A victim's vagina, genitalia, anus or mouth by the penis;
- A victims' vagina, genitalia or anus by a body part other than a penis;
- A victim's vagina, genitalia or anus by an object either held, manipulated by or attached to another person; and
- The continuation of any of those acts outlined.

By including these forms of sexual penetration under the crime of rape, the existing crime of aggravated sexual assault is no longer required and will be repealed.

The Bill provides that penetration which is conducted for a proper medical purpose or hygiene purpose or if otherwise authorised by law is not penetration for the purposes of the *Criminal Code*.

In addition to the crime of rape, this definition of 'sexual intercourse' is used in relation to the following crimes contained in the *Criminal Code*:

- Sexual intercourse with young person (Section 124);
- Person permitting unlawful sexual intercourse with young person on premises (section 125);
- Maintaining sexual relationship with young person (Section 125A);
- Procuring unlawful sexual intercourse with person under 17 years (Section 125C);
- Sexual intercourse with person with mental impairment (Section 126);
- Procuring by threats, fraud, or drugs (Section 129);
- Incest (Section 133); and
- Abduction (Section 186).

Clause 4(m) of the Bill amends and renames Section 122 of the *Criminal Code*, the crime of 'unnatural sexual intercourse', in relation to acts of bestiality.

During development of the Bill, it became apparent that the application of the definition of 'sexual intercourse' to the crime of 'unnatural sexual intercourse' under section 122 was not appropriate and did not support prosecution for all acts of bestiality. Accordingly, the Bill amends the crime by retitling the crime as 'bestiality' and removing reliance on the definition of 'sexual intercourse'.

Madam Speaker, as noted these amendments bring the Tasmanian *Criminal Code* into line with the recommendations of the Australian Law Reform Commission and the approach to penetrative sexual offences in other Australian jurisdictions.

The Bill also reflects current community standards in relation to 'sexual intercourse' and denounces all forms of non-consensual penetrative sexual crime as equally serious.

I commend the Bill to the House.