



Speech by

**Mrs J. SHELDON**

**MEMBER FOR CALOUNDRA**

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Hansard 26 October 1999

**MRS L. MACKENZIE; BATTERED WOMEN SYNDROME**

**Mrs SHELDON** (Caloundra—LP) (11.50 a.m.): Today, I would like to speak about Lorna Mackenzie, a woman who has recently been sentenced to eight years' imprisonment after pleading guilty to the manslaughter of her husband, Bill. She shot her husband at their Sunshine Coast hinterland property. Mrs Mackenzie will not be eligible for parole until she has served three years' imprisonment.

I welcome the announcement yesterday by Mrs Mackenzie's solicitors that there will be an appeal against her conviction and sentence. Her new lawyers intend to withdraw her plea of guilty. Her lawyers obviously feel that great injustice was done to this woman who endured 40 years of severe domestic violence—I will not go into the details of that—and that she does not deserve to be in prison.

I have written to the Attorney-General and to the Minister for Police. I wrote to the Attorney-General and asked him to consider an appeal if no appeal was instituted on behalf of Mrs Mackenzie. I have asked the Minister for Police if Mrs Mackenzie could be removed from the high security prison, where she is currently detained, to a lower security prison. I have also asked whether she could receive adequate psychiatric treatment in whichever facility she is placed.

Mrs Mackenzie's current place of imprisonment does not have adequate facilities to enable her to continue with her psychiatric treatment. She is trying to self-manage her treatment and this is causing her some difficulty. As part of the prison regulations, certain drugs which she was taking are not allowed to be distributed to prisoners. She is trying to organise her treatment with the drugs that are available to her. Anyone who has been involved with treating severely depressed people will understand that this is totally inadequate.

Mrs Mackenzie's family, as well as the general public, speak very highly of this woman. I have received an enormous number of letters in support of Mrs Mackenzie. These letters outline her good character and stress how well she was regarded as a teacher. Reference is made to her compassion and her kindness towards others, whether they be fellow workers or ordinary people in the community. I have received a number of phone calls in which people have asked whether it is possible to set up support groups to help Mrs Mackenzie. Media interest confirms that people in general feel that a grave injustice has occurred.

With the current situation in the courts, it is unlikely that any appeal in this case would be heard until next year. I believe this woman would be better cared for if she could be released until her appeal is heard and decided. This would enable her to receive support within the security of her family. She would also receive adequate medical treatment. I ask the Attorney-General to consider whether Mrs Mackenzie could be released until her appeal has been heard.

I would like to address the issue of the battered women syndrome and the existing state of the law in Queensland. Battered women syndrome—BWS—is not in itself a codified defence or an excuse for the offence of murder or other offences against the person. There has been great expectation that battered women syndrome would be adopted as a defence in its own right in Australian courts. Over the past 30 years, there have been incremental developments in the acceptance of evidence given to substantiate the heightened sense of awareness and of the accused's inability to escape a violent relationship.

Unfortunately, this expectation was dashed by the recent High Court decision of *Osland v. The Queen*. In a 3-2 decision, the High Court held that there was no separate defence of battered women syndrome in Australia which would exonerate an accused for the murder of a spouse, even if that person had been subjected to years of physical and psychological abuse. In the minority judgment of Justices Gaudron and Gummow, their honours found that, at the very least, BWS should be accepted by the courts as a condition that is best explained to a jury by expert evidence. It was argued in paragraph 57 that it was only through such expert evidence that a jury would be able to understand the mental state of the accused.

The majority decision of the court must now be considered to be an Australian authority until legislation replaces it. While the majority of the court said that battered women syndrome could not be used as a defence, nevertheless they agreed with a minority that it should be accepted via expert evidence where it relates directly to the issues in the case.

I would like to mention international law as it relates to Australia. Apart from the broad and sweeping International Convention on Civil and Political Rights, which Australia has ratified, there appears to be only one other international instrument that could potentially affect the area of violence towards women. In 1993, the United Nations established the Convention on the Elimination of Violence against Women. Australia played a pivotal role in the formation of this convention but failed to adopt its resolution until 25 April 1996. The Australian Government is yet to ratify the convention. As a consequence, the convention's articles are not binding on domestic law. Should they become binding, however, the Australian Government will need to legislate domestically for the protection of women from violence.

I have written to the Prime Minister asking whether he will ratify the convention and, after having done so, whether he would consider introducing legislation to protect women from violence. I also ask the Queensland Attorney-General to introduce legislation which will allow battered women syndrome to be used as a defence. As we know, statute law overrides case law and it is very important that we in Queensland show that we consider that years and years of gross domestic violence against women should be an adequate defence.

Much of the criticism of the current law claims that it perpetuates the legal reality that women are second-class citizens. Some men can successfully argue provocation after killing their spouses in a fit of jealous rage. This is accepted. Some are able to walk free from a murder charge after arguing self-defence in a bar room fight, whilst women continue to be sentenced to long prison terms for the killing of their violent and abusive partners. That is a criticism of the current State law and is not without justification.

To the uninitiated, many women accused of murdering their partners had ample opportunity to escape the dangers. It has been said that in many of these instances all they needed to do in their partner's absence was walk out the door. People who make such statements do not understand the intense psychological and physical pressure suffered by these women. In many cases, the accused has to plan action for the safety of herself and her family. As a result, she will not react simply as an individual but will look towards what is best for her family. Many times women cannot just walk out the door because of economic circumstances. All these matters are taken into consideration and that is why women often stay in very abusive relationships. People might ask, "Why on earth do they stay?" They stay because of the position in which they find themselves.

There are key arguments for reform of the law. I believe there should be sexual equality before the law. We should satisfy international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women. Adequate defences of this kind would counter power imbalances, be they physical, psychological, financial or legal.

The case of Lorna Mackenzie has shown that women in Queensland are defenceless when it comes to endeavouring to defend themselves after years of domestic violence. When they take action, as victims, they again become the persecuted. Surely this is not just. I hope that we can see justice prevail in Lorna Mackenzie's situation because she needs justice.

She has asked me to visit her in prison. I am seeking advice from her lawyers on this matter because I do not wish to jeopardise any avenue that she may have for appeal. If her lawyers agree, I will ask the Minister for Police, Mr Barton, for permission to see Mrs Mackenzie in prison. I believe that any support she can receive is vital.

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