



GOLD COAST CENTRE
against sexual violence inc.

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Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street Brisbane Qld 40003
Via email lasc@parliament.qld.gov.au

Dear LACS Committee

Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020

The Gold Coast Centre Against Sexual Violence Inc. (GCCASV) welcomes the opportunity to make a submission to the Legal Affairs and Community Safety Committee in relation to the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020*. We urge you to reject the Bill completely

Introduction

GCCASV (formerly Gold Coast Sexual Assault Support Service) was founded in 1990 to deliver specialist sexual violence intervention and prevention programs to the Gold Coast community. It is a community based, community controlled charitable organization funded by CSYW. Run by women for women, the agency services the geographic area from Coolangatta to Upper Coomera. The organisation provides a safe, supportive, woman-centred environment in which sexual, domestic and family violence survivors can begin their healing journey.

Our response is based on GCCASV's collective knowledge and experience of counselling victim/survivors of rape and sexual assault for over 30 years. During this time we have provided support to complainants through the criminal justice system from reporting to police to magistrates and district court. We support law reform that makes Queensland safer for the victims of sexual and domestic violence and holds offenders accountable.

Opposition to the Bill

We oppose the Bill for the following reasons:

1. The Bill retains a model of consent which is outdated

The opportunity to adopt tested laws enacted in other states many years ago that clearly define consent has been missed. We propose an “affirmative model of consent” which includes the concept of a ‘voluntary agreement’ between two parties. This would require individuals to reach agreement, to clearly affirm through words and actions, their willingness to engage in any sexual activity which is maintained or re-affirmed at every stage of the activity.

2. The Bill puts the onus on the victim to withdraw consent

The amendment in Section 348 subsection 4 puts the onus on the victim to withdraw consent after the sexual activity has begun consensually. This is particularly problematic when the sexual activity changes in nature e.g. a condom is removed or the act becomes violent. Instead the defendant should ensure consent is given BEFORE changing the nature of the sexual encounter.

3. The Bill will allow mistake of fact to continue to perpetuate rape myths

As mistake of fact has been retained defendants will still be able to utilise this defence in situations where a person is asleep, intoxicated, drugged or unconscious. The proposed amendments do not require a defendant to show the reasonable steps they took to ascertain consent. Therefore, there is still a possibility that a lack of resistance or failure to say “no” by the victim/survivor may be construed as consent.

4. The Bill has failed to introduce guiding principles

Guiding Principles are needed to assist in interpreting the legislation and in discouraging the perpetuation of rape myths and stereotypes. There are best practice examples from other jurisdictions eg Victoria provides an objects statement and guiding principles in relation to sexual offences.

5. The Bill does not consider the human rights of victim/survivors

In this Bill, the human rights of a defendant to a fair trial have eclipsed the human rights of victim/survivors of sexual assault. *The Human Rights Act, 2019* provides for equal protection without discrimination and the right to liberty and security of person. These rights have been overlooked in relation to victim/survivors of rape and sexual assault.

6. The Bill does not address the negation of consent for a person with a disability

Under the Queensland Criminal Code Section 216 it is illegal to have sex with a person with “impairment of the mind”. This assumes that someone with a disability is not capable of consenting to sex. Not addressing this situation in the Bill is missed opportunity to correct a law that unfairly discriminates against people with a disability.

Discussion

Sexual violence is perhaps the most committed, least reported and least punished of all crimes.

Queensland's current criminal justice system response to sexual crimes is typified by low reporting rates, high attrition rates, experience of secondary trauma and low conviction rates. Despite legislative change over the past two decades, the process and outcomes for victim/survivors have not dramatically improved.

We believe that the amendments suggested in this Bill do not modernise, make accessible and update the current operation in respect of consent and the mistake of fact excuse in the context of sexual offences in Queensland. Nor do they ensure consistency in the application of the law.

Furthermore, the Bill essentially maintains the status quo of the law in Queensland and does not address the concerns raised by victim/survivors and their advocates in the consultation phase with Queensland Law Reform Commission.

Conclusion

We urge the LACS Committee to reject the Bill in its current "defendant centric" form.

We strongly suggest to government that before any further black letter reform occurs, a broad-based review be undertaken. This review should position the experiences of victim/survivors of sexual violence at the centre - from barriers to reporting; the process of reporting to police; attrition and progression through the criminal justice system through to issues at trial.

Yours faithfully

Di Macleod

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Director