



Our **Mission** is to prevent child sexual assault in our society.
Our **Vision** is to make Australia the safest place in the world to raise a child.

28th September 2020

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George St
Brisbane, Qld 4000

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

To Whom it May Concern,
Bravehearts is pleased to provide this submission in relation to the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020*.

As an agency that works with, and advocates for, survivors of child assault and exploitation, we actively advocate for evidence-based legislative responses that are focussed on the protection of children and young people and that provide a framework which protects the rights, safety and wellbeing of all survivors. We strongly believe in a justice system that is fair for all, but that places the interests of children, young people and survivors at the forefront.

With respect to issues of consent and the excuse of mistake of fact, our primary position is that legislation must be focussed on effectively protecting children and young people from those who target the vulnerable and who will exploit the power imbalance between adults and children, and that such legislation is enforceable and applied consistently.

We note that the Government has accepted all five of the recommendations made by the Queensland Law Reform Commission (QLRC) in its report, 'Review of consent laws and excuse of mistake of fact' (Report No, 78), and have implemented these amendments through the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020*.

In our submission to the QLRC, we noted our support for the inclusion of a standard of affirmative consent in Queensland sexual offence legislation, ensuring that parties mutually, knowingly, voluntarily, and freely consent through words or actions; noting that silence or lack of resistance, in and of itself, does not equate to an individual consenting to sexual activity.

As with others in the sector, we are disappointed that the current reforms do not include affirmative consent, and the QLRC expressly stated that "[it] does not consider that section 348 should be amended to give effect to an 'affirmative consent' model". It is our position, that the failure to include a standard of affirmative consent allows for the argument, in some cases, that passive compliance equates to consent.

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In relation to the 'onus of proof and the excuse of mistake of fact', Bravehearts believes that the onus of proof should be on the defendant to prove an honest and reasonable belief. While we understand the fundamental principle that in criminal proceedings the onus of proof rests with the prosecution, and therefore that the prosecution must prove that the defendant did not have an "honest and reasonable belief" that the complainant provided consent, Bravehearts respectfully and strongly believes that if the excuse of mistake of fact is raised in evidence, it should be up to the defence to provide proof.

We acknowledge the active work being done by the Queensland Government in the area of sexual violence prevention and intervention. We also note that several of our sector partners, including the Women's Legal Service, have raised additional concerns relating to the current Bill. While Bravehearts' focus is on the real and potential impact of legislation on victims and survivors of child sexual assault, we would ask that the Government consider the submissions of survivors and those working in the sexual assault sector more widely.

As noted in our submission to the QLRC, we recognise the complexity of these laws. Protecting the rights of victims, of any crime, should be paramount and balancing this with ensuring a fair and equitable system can be a challenge.

Please contact us on [REDACTED] if further information or clarification is required in relation to this submission.

Kind Regards,



Hetty Johnston AM
Founder & Executive Director



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