




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 26 November 2020

CRIMINAL CODE (CONSENT AND MISTAKE OF FACT) AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (2.41 pm): I present a bill for an act to amend the Co-operatives National Law Act 2020, the Criminal Code, the Gaming Machine Act 1991, the Interactive Gambling (Player Protection) Act 1998, the Legal Profession Act 2007, the Liquor Act 1992, the Police Powers and Responsibilities Act 2000, the Racing Integrity Act 2016, the Wagering Act 1998 and the legislation mentioned in schedule 1 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 [245](#).

Tabled paper: Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020, explanatory notes [246](#).

Tabled paper: Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020, statement of compatibility with human rights [247](#).

I am pleased to introduce the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill. The bill and explanatory notes are in the same form as the bill of the same name that was introduced in this parliament on 13 August 2020 and lapsed at the end of the last term of government.

The bill, amongst other things, amends the Criminal Code to implement all recommendations made by the Queensland Law Reform Commission in its review of consent laws and excuse of mistake of fact. The commission's report gave detailed, expert and evidence based consideration to the law of consent and the excuse of mistake of fact.

Whilst recognising the commission's work, I want to acknowledge the voices of those stakeholders who have publicly expressed disappointment that the commission's report and this bill do not go as far as they might have wished to improve women's safety and experiences in the criminal justice system. The commission acknowledged that this complex issue needs to be addressed to change social practices which contribute to sexual violence and goes far beyond what can be addressed by legislative amendments in the area of consent and mistake of fact.

I want to assure those who want to see more done to address sexual violence that the Palaszczuk government's commitment to improving women's safety and experiences in the criminal justice system goes far beyond the commission's review and the implementation of its recommendations. The government's sexual violence prevention framework *Prevent. Support. Believe. Queensland's framework to address sexual violence* states that the government will continue to review and evaluate justice processes and relevant laws in Queensland to ensure that victims of sexual violence are supported and perpetrators are held accountable.

The Palaszczuk government will consult broadly with key stakeholders in the coming months to ensure that we examine the experience of women in the criminal justice system as a whole, to identify possible future areas for reform including attitudinal change, prevention, early intervention, service responses and legislative amendments where necessary.

The bill implements all five of the commission's recommendations by amending the Criminal Code to make explicit four legal principles that can be distilled from the current case law of Queensland. Those principles are: silence alone does not amount to consent; consent initially given can be withdrawn; regard may be had to anything the defendant said or did to ascertain consent when considering whether the defendant was mistaken about whether the other person gave consent; and that a defendant's voluntary self-intoxication is not relevant to the reasonableness aspect of the excuse of mistake of fact.

The bill also implements the commission's recommendation to fix an inconsistency in the Criminal Code by clarifying that the definition of 'consent' in section 348 applies to all offences in chapter 32 including the offence of sexual assault contained in section 352(1)(a). These amendments to the code are intended to strengthen and clarify the operation of the law, ensuring a consistent and correct application of these important legal principles by judges, juries and legal practitioners. A transitional provision provides that the amendments to the code are to apply prospectively to offences in chapter 32 that are charged after the date of commencement but will be able to be applied to offences that are committed before commencement.

The bill also amends the Liquor Act 1992, the Gaming Machine Act 1991 and the Police Powers and Responsibilities Act 2000 to implement the next stage of the government's legislative response to the independent evaluation of the Tackling Alcohol-Fuelled Violence Policy. Amendments proposed align with this objective by enhancing the rigour of the ID scanning and the banning regime in safe night precincts; increasing the minimum duration of police banning notices from 10 days to up to one month; requiring reviews of safe night precincts to occur on a three-yearly basis, to ensure the ongoing effectiveness of those areas; and providing greater transparency and accountability around liquor and gaming machine licensing decisions.

The bill also contains miscellaneous amendments to the Interactive Gambling (Player Protection) Act 1998, the Racing Integrity Act 1998 and the Wagering Act 1998 to codify restrictions on wagering inducements to open and close accounts, consistent with the National Consumer Protection Framework for Online Wagering. Other miscellaneous amendments are proposed to exempt safe night precinct local boards and liquor accords from Commonwealth cartel laws, where they collectively agree to limit alcohol supply or price as a harm minimisation measure; remove the requirement to round down race dividends, allowing punters to receive a minimum dividend, whenever such a dividend is declared; and make a minor, technical amendment to the Co-operatives National Law Act 2020.

Finally, the bill amends the Legal Profession Act 2007. The Legal Practitioners' Fidelity Guarantee Fund, established under that act and administered by the Queensland Law Society, provides a source of compensation for persons who have lost trust money or property due to a dishonest default by a solicitor or law practice. The society may limit the amount payable on claims from the fund to \$200,000 for a single claim and \$2 million for all claims made in relation to a single law practice.

These statutory caps were introduced to protect the fund against the contingency of extraordinary claims which, if paid in full, would result in the fund being exhausted to the detriment of subsequent claims. At the same time, the act allows the society to exceed the caps if satisfied that it would be reasonable to do so after taking into account the position of the fund and the circumstances of a particular case.

Between 2009 and 2016, some claimants did not have their claims against the fund paid in full because of these caps. I thank the Queensland Law Society for supporting amendments to the act to allow those historic claims to now be paid in full. The amendments also provide clear guidance as to when the statutory caps can be applied. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (2.49 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Safety Committee

Mr DEPUTY SPEAKER (Mr Kelly): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.

Portfolio Committee, Reporting Date

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (2.50 pm), by leave, without notice: I move—

That, under the provisions of standing order 136, the Legal Affairs and Safety Committee report to the House on the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill by 12 February 2021.

Question put—That the motion be agreed to.

Motion agreed to.