




Speech By  
**Charis Mullen**

**MEMBER FOR JORDAN**

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Record of Proceedings, 25 March 2021

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

 **Mrs MULLEN** (Jordan—ALP) (4.01 pm): I am pleased to rise and make a contribution to the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020. This is a really important bill, but we also know that it is only the beginning of a conversation—one that has started, and one that will not stop and should not stop. It is not an easy conversation and it is one that many women, men and families are having. It is certainly one I am having with my daughters, who are almost 15 and 12. It is one of the most important things I can do to protect and empower my daughters. I am pleased that as a government we are also closely looking at issues of consent and educating our girls and boys on navigating these issues.

I acknowledge the decision of the Minister for Education to progress the review of these matters and would urge this to happen as soon as practicable because I certainly know from the discussion I am having with my 15-year-old that students are already talking about these issues and they feel like our state schools need to be saying more. What I do know is that in this place, in this parliament, it is equally important to ensure our young women and men have the protection of the law in this state when it comes to issues of consent and excuse of mistake of fact.

The events of the last month have certainly elevated issues of sexual assault, harassment and violence against women. Women have been sharing their stories, and they are all extremely powerful. They all begin with a sense of entitlement—the belief of some men that they have a right to act in this way, to say sexist things to harass women, to sexually assault them or to hurt them. This entitlement must stop.

Governments need to listen. They must act. Women across Australia are demanding this. What is clear is that our government has been listening to women, not just for the last month but since we were elected in 2015. We are the government that implemented all 140 recommendations of the historic report titled *Not now, not ever: putting an end to domestic and family violence in Queensland*. We are the government that implemented Queensland's first ever framework to address sexual violence—Prevent. Support. Believe. We are the government that has sought to review consent laws and excuse of mistake of fact through this legislation. We are the government that has established an independent task force to consult on potential coercive control legislation. We are the government that is now progressing a wideranging review into the experiences of women across Queensland's criminal justice system. I am so proud to be part of a government that is listening to women, that believes women and is doing what we can to address these critical issues for women.

When the Queensland Law Reform Commission was asked to undertake a review of consent laws and excuse of mistake of fact, they did so within limited terms of reference. I value the work of the commission and their report gave detailed, expert and evidence based consideration to the law. To assist with the preparation of its consultation paper, the commission invited preliminary submissions on

the issues raised in the review from the judiciary, legal stakeholders, academics and organisations representing the interests of victims/survivors. Some members of the public also provided the commission with their preliminary views.

The commission then released a detailed consultation paper outlining the key issues raised in the review and called for submissions on a number of specific questions. The commission received 87 submissions from respondents including legal professional bodies, community legal centres, academics, individuals who had experienced sexual violence, organisations that support and represent victims/survivors of sexual violence, and members of the public. In addition, the commission held a consultation workshop with representatives from organisations that support and represent victims/survivors of sexual violence as well as victims/survivors who wished to attend.

The submissions to the review raised many issues and reflected a wide range of views. Some of the matters raised were outside the scope of the commission's terms of reference. The commission also examined a large number of rape and sexual trials and appeals in Queensland for the purpose of achieving an evidence based analysis of how the laws to be reviewed are operating in practice. They also considered the approaches and relevant law reform reports of other jurisdictions, both within Australia and internationally, in informing itself about appropriate reforms.

The bill implements all five of the commission's recommendations in its final report by amending the Criminal Code to make explicit four legal principles that can be distilled from the current case law of Queensland. These principles are: silence alone does not amount to consent; consent initially given can be withdraw; 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 a defendant's voluntary intoxication is not relevant to the reasonableness aspect of the excuse of mistake of fact. I hope you are listening Senator Abetz.

The bill also implements the commission's recommendations 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.

As the Attorney-General stated in her first reading speech, the government acknowledges that this bill does not go as far as some key stakeholders would wish to improve women's safety and experience in the criminal justice system. Again, our government has listened with the Premier announcing a wideranging review into the experience of women across the criminal justice system to be undertake by the Women's Safety and Justice Taskforce led by Margaret McMurdo AC.

Our recent announcement to legislate against coercive control is only the first part of the work being done by the task force that is also going to examine issues faced by women when accessing the criminal justice system. We know that women face barriers when reporting against domestic, family and sexual violence. While as a government we have made significant progress to prevent and respond to domestic, family and sexual violence in Queensland, we know there is more work to be done. It is recognised that the experience of the criminal justice system for women as victims, survivors or accused is different than it is for men. Sadly, we know that women and girls are disproportionately affected as victims of sexual assault, but it remains one of the most underreported crimes and only a small proportion of reported cases are prosecuted in court and achieve a conviction.

We have heard the data. One in five Queensland women have experienced sexual violence since the age of 15. One in four women have experienced violence at the hands of their partner. We want to make sure these crimes are being reported and justice is being done. Our government is committed to generational change and that is why we are leading an ongoing program of reform to end domestic, family and sexual violence and to improve the criminal justice system for all women. I look forward to having that conversation with my daughters. I commend the bill to the House.