




Speech By
Dr Christian Rowan

MEMBER FOR MOGGILL

Record of Proceedings, 24 March 2021

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

 **Dr ROWAN** (Moggill—LNP) (4.42 pm): I rise to make a contribution to the debate on the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020. Quite simply, any instances of sexual harassment, intimidation and assault must end. There are significant events that we have seen in recent weeks. All elected representatives, community leaders, parents and teachers must work together to ensure that strategies are implemented to end this on behalf of women.

The legislation before the House seeks to implement all five recommendations of the Queensland Law Reform Commission's report titled *Review of consent laws and the excuse of mistake of fact* which was delivered to the Queensland government on 30 June 2020. The genesis for the report came in July 2019 when it was announced by the then attorney-general and minister for justice that the matter of consent in sexual assault and alleged rape cases would be referred to the Queensland Law Reform Commission.

In August last year the previous Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 was introduced into the Queensland parliament. However, with the dissolution of the 56th Parliament, the former Legal Affairs and Community Safety Committee was not able to complete its detailed consideration of the legislation. With the commencement of the 57th Parliament of Queensland, the current legislation was introduced on 26 November 2020 and wholly in the same form as the previous bill.

As I have said earlier, this legislation will implement all five of the Queensland Law Reform Commission's recommendations by amending the Criminal Code to make explicit four legal principles as derived from current case law in Queensland. These principles are: silence alone does not amount to consent; consent initially given can be withdrawn; regard may be had to anything the defendant said or did to ascertain consent when considering whether the defendant was mistaken about whether the person gave consent; and a defendant's voluntary intoxication is not relevant to the reasonableness aspect of the excuse of mistake of fact.

As articulated by my colleague, the Liberal National Party's shadow Attorney-General and minister for justice, whilst these four principles can be distilled from current case law in Queensland, they are not currently and explicitly stated in the Criminal Code. The amendments that are enacted by this legislation will make these principles of case law explicit and in doing so will allow for clear and concise interpretation. I also note that other amendments will be made to the Criminal Code to fix inconsistencies and further clarify the application of the definition of consent.

Additionally, this legislation also amends other acts, including the Legal Profession Act 2007, a number of gambling, racing and wagering acts and the Liquor Act. I note that some of these amendments are aimed at reducing alcohol related harms, enhancing licensing transparency with

respect to relevant applications and delivering consumer protections related to online gambling harms. Some of these matters, as they are pertinent to inducements when it comes to gambling, are important. As a specialist physician in the area of addiction medicine, I support these amendments.

I also noted during the contribution of the member for Clayfield, the shadow Attorney-General and minister for justice, some of the discussions with respect to the Legal Profession Act 2007 and the changes being foreshadowed there. Significant education is to be provided to lawyers and legal professionals with respect to how they manage trust accounts. I look forward to hearing the Attorney-General's contribution as to what will happen with the additional funds raised and the transparency of the expenditure of those funds.

As the Liberal National Party shadow minister for education, I wish to briefly address those aspects of the legislation that are pertinent to Queensland's system of education and the vital education of young Queenslanders when it comes to matters of appropriate behaviour, consent and healthy relationships. Whilst it is broadly accepted that parents and caregivers are responsible for the education of their children when it comes to sex education, it is equally accepted that this is a responsibility that is shared in collaboration with our education system and part of the school curriculum in order to ensure children receive the right information on matters, including respectful behaviour and language, privacy—particularly in the digital age—consent and sex.

This is a point that was largely echoed by the Youth Advocacy Centre, both in its submissions to the Legal Affairs and Safety Committee's examination of the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 as well as in the testimony that was provided during the committee's public hearing in Brisbane on 21 January 2021. While the Youth Advocacy Centre highlighted concerns with how aspects of the Criminal Code would be applied to young people through the proposed amendments in the bill, there was still a substantial acknowledgement of the importance of adults understanding both the significant physical, emotional and sexual changes and pressures that young people, and particularly teenagers, go through at this time in their lives and the positive role that education can play. Specifically in reference to public hearing, Ms Janet Wight, Chief Executive Officer of the Youth Advocacy Centre, stated—

... education is absolutely critical in this space. It is absolutely critical for young people. Good role models would also help some young people of course learn their behaviours from what they see happening around them, including at home, which is highly problematic. We need to probably put more emphasis with young people into positive relationships. I know we do some of that already, but clearly things are happening which are not good behaviour, are not respectful, or young people have not had the ability to learn.

To that end, I note that independently of the focus and intent of the legislation before the House today, the Minister for Education has recently announced a review into sexual education in Queensland schools, with a specific focus on sexual consent. I acknowledge the Minister for Education's ministerial statement to the Queensland parliament this week about the broad stakeholder engagement the Palaszczuk Labor government is undertaking with respect to this review. The Minister for Education is pursuing that this important issue be listed on the Commonwealth's agenda for the national meeting of jurisdictional ministers for education scheduled to take place on 30 April 2021.

There is no doubt that there must be consistency of curriculum content. I certainly look forward to hearing more about the state government's further developed plan for implementation following stakeholder as well as state school and non-state school sector consultation. The Palaszczuk state Labor government must ensure that there are firm time lines and that the developed plan to address this issue must be clear and concise and be able to be implemented as a matter of urgency given the importance of this issue within our community.

Similarly, it is important that when it comes to the education of our children, particularly with respect to sexual education, the Queensland state government must be as open, transparent and accountable as possible with both parents and teachers on the curriculum including the information and associated resources that are used.

There can be no doubt that critical to ending the scourge of domestic and family violence is the ongoing implementation of education programs and initiatives throughout the continuum of the education system. Kindness, understanding, empathy and compassion are the cornerstones of respectful relationships and these qualities must be further instilled in our young Queenslanders as a key component of school based education programs. Importantly, fostering the collaboration of community leaders, parents, teachers and carers as role models is the responsibility of all elected representatives. All of us in the Queensland parliament have a role to play to enable this collaboration.

I would like to take this opportunity to address the role of social media. Unfortunately, social media is being weaponised to harass, bully, denigrate, demean and even intimidate elected representatives including both women and men. This must certainly cease, particularly given adults are

supposed to be role models for not only teenagers but also children. I note that a number of federal and state elected representatives have referred matters to their various police forces, whether to the Federal Police or here in Queensland to the Queensland Police Service.

I thank all of those who made submissions and provided evidence to the Legal Affairs and Safety Committee. I also thank the Queensland Law Reform Commission for undertaking the necessary work to enable the drafting of today's legislation including commission chair, the Hon. Justice David Jackson, commission members and the commission secretariat, led by director Mr David Groth. They have certainly done some significant and important work in bringing this legislation to the parliament via the government. I, along with the Liberal National Party, support the bill.