




Speech By  
**Corrine McMillan**

**MEMBER FOR MANSFIELD**

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Record of Proceedings, 25 March 2021

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

 **Ms McMILLAN** (Mansfield—ALP) (12.02 pm): I rise to speak in support of the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill. This bill was initially introduced into the parliament on 13 August 2020 and lapsed at the end of the 56th Parliament. Reintroducing and passing this bill in its current form was a Palaszczuk government 2020 election commitment. The Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020, amongst other things, amends the Criminal Code to implement all of the recommendations made by the Queensland Law Reform Commission in its review of consent laws and the excuse of mistake of fact.

The key focus of this bill is to: codify existing case law in Queensland; implement the recommendations made by the QLRC; and clarify that the definition of consent in section 348 applies to all offences in chapter 32. Clarity in the law is extremely important. The QLRC noted at page 65 of the report that—

... the community is 'the ultimate user of a law', and that effective communication of legislative rights and obligations is a key component of access to justice.

For this reason, it is important that laws regarding consent and mistake of fact are clear for judges, lawyers, juries and the wider community. Apart from codifying the existing law and implementing the recommendations made by the QLRC, the bill also modernises, strengthens and clarifies the existing law in Queensland. By codifying the law as recommended by the QLRC the law will be more accessible to all Queenslanders and facilitate a more consistent and correct application of the law by judges, lawyers and juries.

In recognising the commission's work I want to also acknowledge the voices of those many stakeholders and individuals who have publicly expressed the importance of this work in ensuring women's safety, women's experiences with the criminal justice system, and the significance of this work in changing the cultural context to ensure that our young men in particular are making wise, informed and respectful decisions.

The four principles to be enshrined in the code are: (1) silence alone does not amount to consent; (2) consent initially given can be withdrawn; (3) regard may be had to anything the defendant said or did not say or did or did not do to ascertain consent when considering whether the defendant was mistaken about whether the other person gave consent; and (4) that a defendant's voluntary intoxication is not relevant to the reasonableness aspect of the excuse of mistake of fact.

It is important to note that this bill is the first step. It is important to acknowledge that legislation can only go so far. Education and attitudinal change are also very important. During the last sitting I was very heartened to hear Minister Grace's announcement that this government will work across all government and non-government school sectors to examine whether the Australian curriculum and the Department of Education's Respectful Relationships education program adequately address the issues of sexual consent and reporting in Queensland schools.

There is clearly a common concern about sexual assault and consent, typically amongst secondary aged students, and there is a need for effective responses to support students, parents and schools at the individual school, broader community and systemic policy levels. Much effort is already occurring in our schools and school sectors to address the issues, but focused, ongoing attention and commitment will be required. The prevention of adolescent sexual violence must engage students and become part of the broader conversation across our community. Schools cannot successfully deal with these issues in isolation. Our schools require the cooperation and support of the broader community.

Schools are awash with many initiatives to tackle sex education, appropriate behaviours and consent, yet recent evidence would suggest that a culture exists amongst secondary aged students and the workplace which would indicate that more needs to be done. Our students are with us for 13 years. I feel we can do more to lead a collegiate and informed response to support not only our young Queensland women but our young Queensland men.

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.

Part of the evaluation of the criminal justice system's response to survivors is the Premier and Attorney-General's announcement of the Women's Safety and Justice Taskforce. The terms of reference of the task force are broad and far-reaching. When I was the principal of Glenala State High School I had the great honour of working with Justice McMurdo, and I have every confidence that Justice Margaret McMurdo will deliver tremendous outcomes for the people of Queensland.

The government understands that survivors are disappointed with the recommendations made by the QLRC on the basis that the reforms do not go far enough; however, it is important that we allow the task force, led by Justice McMurdo, to do its work. It is not possible to simply import offence provisions from other jurisdictions into Queensland's Criminal Code because each Australian jurisdiction has its own unique criminal law structure. For example, as the Attorney-General has already indicated, in New South Wales there is a higher bar than Queensland because there is a requirement to prove intent to rape which is not required in Queensland. For this reason amendments cannot be rushed, otherwise there may be unintended consequences that are detrimental to survivors.

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.

In conclusion, I am so proud to be part of a government that is taking a holistic approach to the elimination of violence against women from our communities. I am so proud to be part of a government that had the courage to stand with the thousands of Queensland women last Monday as they marched for justice—when they said enough is enough. I commend my parliamentary colleagues for showing the strength and courage to also tell their stories because it is this courage and the courage shown by our Australian of the Year, Grace Tame, and Hannah Clarke's parents, Lloyd and Sue, who are advocating for change. Let me say to all survivors that the Palaszczuk government hears you, it supports you and it believes you. I commend the bill to the House.