Speech By

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

Mr PURDIE (Ninderry—LNP) (4.08 pm): I rise to speak to the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 and contribute more broadly to the discussion in this parliament and to the discussion that all Queenslanders must continue to have to prevent sexual assault, better support victims of crime and ensure justice is served.

According to the 2016 ABS Personal Safety Survey, one in six women have experienced at least one sexual assault since the age of 15 compared to one in 25 men. Regarding the laws that are in place to deal with these crimes, in December 2018 news.com.au published the following statistics: in Queensland an estimated 30,000 sexual assaults occur each year, yet in 2017 just 4,751 sex crimes were officially reported to police. Around half that number proceeded to trial—2,446 cases—but, of them, only 835 resulted in a guilty verdict. This means that fewer than one in five victims who report to police achieve a conviction in Queensland. Of the 835 perpetrators found guilty of sex offences in Queensland in 2017, roughly half—44 per cent—were released straight back out on the streets with a mere slap on the wrist such as a fine, community service order or a suspended sentence. What is also of concern is that perpetrators who did go to jail received very brief sentences. Now we are to consider if the amendments contained in this bill will deliver better protection for victims, stronger laws to instil more confidence in the system, and increase reporting.

The Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 was first introduced in August 2020 and received a backlash from community legal services, academics and survivor advocacy groups who were among the 52 submissions received by the 2020 committee. They were outspoken in their belief that the amendments to the Criminal Code 'simply maintain the status quo and would not make women safer, or encourage more survivors to go to court, especially those suffering domestic violence'.

Before I speak to the bill in detail, I would like to highlight that, after examining the bill and considering stakeholder concerns expressed in 2020, the 2021 committee recommended that urgent consultation take place to address sexual violence 'including examining the experience of women in the criminal justice system ... and possible future areas for reform such as attitudinal change, prevention, early intervention, service responses and legislative amendments'. I commend the committee for this recommendation. However, I question the government's decision to proceed with this bill before this consultation could take place.

Clearly this bill is not perfect, and I echo the list of concerns raised yesterday afternoon by our shadow Attorney-General, the member for Clayfield—but, for want of a better reality, it is at the very least possibly a step in the right direction. The amendments contained in this bill attempt to remove the 110-year-old legal defence in the Queensland Criminal Code that allows accused rapists to beat their charges if juries accept they had a 'mistaken but honest and reasonable belief that sex was consensual'. Research has shown that this defence has been used by repeat violent offenders including those who were drunk or where survivors had a language barrier.

According to the chief executive of the Women's Legal Service, Angela Lynch, there are about 46,000 instances of sexual violence each year in Queensland, and two-thirds of defendants who use the mistake-of-fact defence get off. Just as grim of a statistic is that in 2018 there were only 308 perpetrators convicted, which highlights the incredibly low number of cases being reported to police, the inadequacies of the law to achieve a conviction, a complete lack of faith in the system and the fact that the onus of proof is on the victim and not on the perpetrator.

It is right that the community is screaming out for change. I would like to acknowledge the bravery of those rape and sexual assault survivors who have been campaigning for many years for the government to modernise Queensland's antiquated laws. As stated in the bill's explanatory notes, the Criminal Code is to be amended to 'strengthen, modernise and make the law more accessible for all Queenslanders and facilitate a more consistent and correct understanding of the law by judges, legal practitioners and juries,' ensuring that it is 'clear and unambiguous in its statement of the law'.

Primarily the bill's objective is to enact the recommendations of the Queensland Law Reform Commission in its *Review of consent laws and the excuse of mistake of fact* report. The commission received 87 submissions from legal bodies, academics, victims of sexual violence and other organisations that support them and, in addition, the transcripts from 135 rape and sexual assault trials, 40 appeal decisions and another 76 trials that were referred to it at its invitation.

The bill implements all five of the commission's recommendations by amending the Criminal Code to make explicit four legal principles: 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 a defendant's voluntary intoxication is not relevant to the reasonableness aspect of the excuse of mistake of fact.

The bill also seeks to clarify the definition of 'consent' contained in section 348 and applies to offences listed in chapter 32—which includes sexual assault. The other offences in chapter 32 are rape, attempted rape and sexual assault with intent to commit rape. The reason for the disconnect between the legal fraternity and other stakeholders is that their interpretation of the bill appears to lie in the fact that the QLRC determined that the mistake-of-fact defence should not be scrapped per se—instead, that the definition of 'consent' should be expanded in the Criminal Code. The QLRC also determined an alleged offender should not need to take any particular 'steps' to get consent, but juries could consider anything they said or did when considering whether the mistake-of-fact defence should apply. Unfortunately, it appears there is ambiguity here—something the bill sought to correct.

The committee also recommended that more consideration be given to the application of the new laws as it relates to youth offenders. The Youth Advocacy Centre claimed that the application of these amendments to young people between the ages of 10 and 17 would be problematic as there is not an adequate distinction made between a young person and an adult in the Criminal Code, although minors experience an entirely different social, physical and emotional reality.

The statistics about youth offenders in this space is alarming. In 2018-19 alone, 108 boys and four girls aged between 10 and 17 were charged with rape; 343 boys and 74 girls were charged with other sexual offences; 64 boys and 317 girls aged between zero and 14 were reported victims of rape or attempted rape; and 23 males and 46 females aged 15 to 19 were also reported victims. Given the scale of this crisis and the committee's suite of urgent recommendations, it appears there is still more work to be done.

In closing, I support any amendments to archaic laws in order to better protect and support Queenslanders. In this regard I commend the bill to the House. However, I believe the government should and could have engaged in a deeper conversation with Queenslanders to determine what that looks like.