



Speech By
Deb Frecklington

MEMBER FOR NANANGO

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

 **Mrs FRECKLINGTON** (Nanango—LNP) (6.41 pm): Madam Deputy Speaker—

Each and every one of us has an obligation to each other to not follow the ways of the past and to take our future on a new path. Those are the very strong words of Mason Black. This House has heard much about Mason Black, the school captain of Brisbane Boys' College. Those are his words.

I rise to contribute to the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020. As the House has already heard, the objective of this bill is to implement the five recommendations of the Queensland Law Reform Commission by clarifying aspects of the Criminal Code in relation to consent and mistake of fact. It is imperative to say, but it does not need to be said, that rape—in fact, any form of sexual violence—is an horrific offence and one that no member of society should accept or condone. For the victim it means a lifetime of agony and memories.

Reportedly, fewer than 10 per cent of rape cases make it to court. That means that many people are not held to account for their actions. But when they do get to court complainants are subjected to the agony of trial, which is a demeaning process that results in much second-guessing for the victim. The long-awaited Law Reform Commission report explicitly sets out the following legal principles as stated by the Attorney-General—

... silence alone does not amount to consent; consent initially given can be withdrawn; regard may be had to anything the defendant said or did to ascertain consent when considering whether the defendant was mistaken about whether the other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 will address an inconsistency in the Criminal Code by clarifying that the definition of consent applies to all offences in chapter 32 of the Criminal Code, which include rape, attempted rape, assault with the intent to commit rape and sexual assault. To clarify why this is so important, the current defence used by many offenders is the mistake-of-fact excuse. This, quite frankly, is a loophole.

The law is full of loopholes. As a former lawyer myself, as are many of us in this House, including the Attorney-General and the shadow Attorney-General, we know that the law is full of loopholes. This is one loophole that needs to be changed. The mistake-of-fact defence allows a defendant to argue that they honestly and reasonably believed the other person consented to sex or the action. Quite frankly, no means no. Too many have been able to sail through this hole in our law, leaving victims to rightfully ask why the law has not been on their side.

In light of the current focus on the issue of sexual harassment, sexual assault and sexual violence it is timely that this bill is finally before the parliament, but it should have been before the parliament before this. It should have been before the last parliament. That is why I say the Law Reform Commission report was long-awaited, but when it was handed down no action was immediately taken. I am on record in this House many times talking about the need for this change, so I am pleased to contribute in a small way to this debate—but I have been on the record for years calling for this change.

As the LNP members who have spoken before me have stated, the LNP opposition supports this bill. I acknowledge the extensive consultation undertaken by the Law Reform Commission and I thank those who made submissions to the committee. In many cases this would not have been an easy process, and we all here thank you. While there is general community support for the proposals in this bill, I note that the Queensland Sexual Assault Network felt the bill missed an opportunity 'to broadly assess the operation and practical application of current legislation that would improve the safety of women, encourage them to report to police and engage with the criminal justice system'.

The Women's Legal Service has been calling for a change to these laws for a long time, noting that Queensland's current laws are inadequate and leave many women unprotected. The Women's Legal Service believes that a complete review of the system including laws, courts, police, community sectors and attitudes is needed. In their submission they state—

This bill as is, is a missed opportunity to draft legislation in a way that provides a clear and unequivocal benchmark for the whole community about acceptable norms for the community to expect in consensual sexual relationships.

They also note very concerning statistics, and I know they have been read out in this House, so I will not go through them. I would also note just briefly that I do agree with the committee's recommendation that the impact of these laws must be examined in the context of youth offenders as well. I would like to acknowledge the words of the shadow Attorney-General, the member for Clayfield, who said that we are 'open to further legislative changes ... strongly supported by the evidence and that deliver a better system and outcomes than that which it seeks to replace. That must be the key to changes to this system'.

More work is needed to ensure that survivors of sexual assault can more easily make a complaint and endure the stress of a trial. This is an important start today in this House. We know it will go a long way towards closing the loophole that so many people have been able to jump through. We will continue to call for more societal change and more education. Because there are no better words, in my mind, I must conclude with the words of Mason Black, who said—

How can it be that even with all of our money and laws, every day women around our country continue to be abused, raped, psychologically vilified and denied basic human rights that most males take for granted? If we are so smart and so enlightened on this issue as a society, why is it still happening?

I see in the news today a police commissioner is calling on a sexual consult app as a way to now record consent.

I understand the good intention that he is proposing, but has our society degraded so far that in this day and age that we are living in, women have to have an app to say no?

What you really need is a basic acceptance and respect, and that boys is on all of us.

Boys, if a woman wants to say no, and she says no, we have to listen, understand and accept this.