




Speech By
Jason Hunt

MEMBER FOR CALOUNDRA

Record of Proceedings, 24 March 2021

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

 **Mr HUNT** (Caloundra—ALP) (4.51 pm): I rise today to speak in support of the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020. I would like to thank all the members of the committee and the secretariat for their work on what is a strikingly important issue.

Being a male, I can absolutely understand the critical need for action in the area of sexual violence, but the irrefutable fact is that it is overwhelmingly committed by men against women and, as a result, being male, I will never be able to speak with full authority on this matter. I can empathise. I can sympathise. I can support. I can speak out. I can and do act on all of these things, but the truth is I will never really and completely know what it is like.

Like most other gentlemen in this House, I have never had to watch my drink. I have never had to second-guess the idea of walking home alone. I have never had to hold my car keys in such a way that I might have to weaponise them. Not once have I been asked to consider my wardrobe when thinking about my safety on a night out. Not once have I ever had to consider my sobriety when leaving a venue other than to ensure that I do not drive. I have never had to ask a trusted friend to walk me home. My son will, in all likelihood, never have to be concerned about these things either—but what we must ensure is that these considerations are never a concern for anyone.

In light of the data, we must work towards a quantum shift in thinking. When I say ‘we’ I mean we the males in this chamber. We hold positions of significant influence within our respective communities, but it is not just our role to lead by example. It is our role to challenge the behaviour, the stereotypes and those problematic elements of masculinity that make discussion and laws around consent necessary.

The underlying circumstances speak to the fact that from the evidence collected from victim support groups sexual assaults are tragically under-reported. Victims are fearful of coming forward to register complaints because they do not believe they will receive fair treatment.

The committee recommends that the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill be passed. The committee further recommends that, in light of the submitters, the Attorney-General undertake consultation with key stakeholder groups as a matter of urgency in regard to addressing sexual violence. The committee recommends that the Attorney-General give consideration to the application of section 32 of the Criminal Code as it relates to youth offenders. The committee also recommends that further amendments be made to permit the fidelity fund to provide resourcing of measures likely to have a material effect in minimising the risk or magnitude of misappropriation.

What is clear from the QLRC report, and is worth reinforcing today before outlining the consultation process, is that silence alone does not amount to consent, that consent initially given can be withdrawn and that a defendant’s voluntary intoxication is not relevant to the reasonableness aspect

of the excuse of mistake of fact. The consultative framework around the proposed changes were significant. The previous bill was introduced on 13 August 2020 and referred to the Legal Affairs and Community Safety Committee the same day.

On 30 November the committee invited previous stakeholders and submitters to make written submissions on the bill by 12 January 2021. Forty-seven submissions were received. It is pleasing that a number of submitters expressed support for the proposed amendments. The Queensland Law Society stated that they believed the 'amendments do strike an appropriate balance in what is a very difficult area', while the Queensland Council for Civil Liberties also expressed the view that the 'amendments incorporate or at least state explicitly in our law the principle that no means no'.

To this end, clause 8 of the bill inserts new subsections into section 348 of the Criminal Code. New subsection (3) will provide that a person is not taken to give consent to an act only because the person does not, before or at the time the act is done, say or do anything to communicate that the person does not consent to the act. New subsection (4) will provide that if a person does or continues to do an act after the consent to the act has been withdrawn by words or conduct, then the act is done or continues without consent. These are very explicit provisions dealing not just with consent but also with the withdrawal of consent.

Other submissions made note of the fact that they would like to have seen a consent model where consent is described as mutual, ongoing and communicative. QCOSS, for example, would have preferred a model that directly addressed catatonic immobility reaction and centred on an affirmative consent approach or an 'enthusiastic yes'. Similarly, the Women's Legal Service Queensland supported a definition of consent that required a reflective and positive agreement between parties engaged in sexual activity.

Clause 9 of the bill inserts new section 348A into the code. DJAG explained that there is no explicit reference to what use, if any, a jury can make of any 'steps' taken by a defendant to ascertain consent. The proposed new section 348A codifies that a jury can, nonetheless, take into account any steps that were taken or the absence of any steps that were taken depending on the facts of the case.

In closing, I refer to my opening remarks about tackling this subject matter in the broader community. I recently had occasion to meet two year 12 student leaders on the Sunshine Coast. These remarkable young women not only spoke of depressingly familiar instances of sexual assault but also spoke of the role that young men need to embrace if the problem is to be addressed at the source. Discussions are well and good, but listening is even more vital at this time. These two student leaders spoke not just of common instances of inappropriate behaviour but also of the environment and the constantly reinforced social expectations that fosters this in men of all ages.

Similarly, I spoke to two staff in one of the local cafes near my electoral office. Both of these young women spoke of the difficulties around withdrawing consent. They felt that a woman was under considerable pressure to never withdraw consent and that there were underlying dangers in doing so. This is completely unacceptable.

To our youth and those who mentor them, to our students and workmates, and to all the male leaders, role models and exemplars I say this: stop looking for a loophole in morality or in a moment. Do not look for a reason as to why this sort of behaviour is okay. Be 100 per cent honest with yourself. We all know when this sort of behaviour is not okay. Then once you get to that realisation act on it—and listen. Listen without an instant rejoinder that starts, 'Yeah, but what about?' Listen until it gets uncomfortable, because I guarantee it will not be as uncomfortable as the dark thoughts that cross a woman's mind when she is walking home alone. This is the other side of the consent coin.

Although the response from advocacy groups was varied in its level of support for the amendments, what is very clear is that the committee supports the call from advocacy groups for more to be done to address sexual violence and support victims and complainants. To that end, I am delighted that the Women's Safety and Justice Task Force will be part of a wide consultative process that makes recommendations on: coercive control; the need for a new offence of commit domestic violence; and any other area of future reform to improve women's experience in the criminal justice system. On that basis, we are certainly in a much better place than previously. I commend the bill to the House.