




Speech By
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MEMBER FOR COOPER

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

 **Ms BUSH** (Cooper—ALP) (6.16 pm): I rise to speak to the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill. As a member of the Legal Affairs and Safety Committee, I want to begin by thanking the secretariat for their hard work and also my parliamentary colleagues from all sides. I think we all truly understood the importance and significance of what we were doing and what our task was.

The need to understand and clarify consent has never in our history perhaps been greater. In the time even that I have been a parliamentarian, women across Australia have been traumatised by the ongoing rape culture that exists. Women have also been emboldened by the stories of survivors—people like our 2021 Australian of the Year, Grace Tame—who have spoken with a jarring truth of the experience of women in Australia and within our criminal justice system. Women across our own parliament have spoken. There have been many voices but the same story—a story of abuse, shame, silence and a deep knowing that, even if they report, the odds are stacked against them in relation to securing an offence.

We believe that just 15 per cent of alleged sexual assaults in Queensland are ever reported to police, and less than half of those proceed to trial. I am so proud to now be a part of a government that has led the nation in tackling violence, including sexual violence, against women. We accepted all 140 recommendations of the landmark *Not now, not ever* report, a report that was critical in building the foundations for our latest announcements.

This month, the Palaszczuk government announced the Women's Safety and Justice Taskforce, which will look into the experiences of women in the criminal justice system. That is what we have been hearing loud and clear over and over from thousands of women who have said resoundingly that enough is enough.

Let me begin by addressing what this bill achieves. This bill will strengthen the legislation in relation to sexual consent and mistake of fact in Queensland. The bill implements all five of the Queensland Law Reform Commission's recommendations by amending the Criminal Code to make explicit four legal principles currently observed within the case law of Queensland in relation to charges relating to rape and sexual assault. Those principles are: silence alone does not count to consent, which we have acknowledged is critical, particularly in instances of freezing; consent initially given can be withdrawn because circumstances do change; 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.

This bill also implements the commission's recommendation to fix an inconsistency in the Criminal Code by clarifying that the definition of consent in section 348 applies to all chapter 32 offences. These amendments to the code are intended to strengthen and clarify the operation of the law, ensuring a consistent and correct application of these important legal principles by judges, juries and legal practitioners.

We made an election commitment to action the recommendations from the QLRC. The QLRC's review has been described as a forensic analysis of the current operation of the relevant laws in Queensland. The recommendations in the commission's report were based on examination of the operation of the laws in Queensland on consent and the excuse of mistake of fact. The transcripts from 135 rape and sexual assault trials during 2018 and 40 appellate decisions between 2000 and 2019 were examined in addition to another 76 trials referred to the commission at its invitation.

It is fair to say that feedback received both by the commission and throughout the Legal Affairs and Safety Committee's hearings was divided, demonstrating the complexity of this issue. The majority of submissions received from the legal fraternity, including the Aboriginal and Torres Strait Islander Legal Service, supported the recommendations made in the commission's report. The Queensland Law Society, for example, stated—

We believe that the amendments as drafted strike an appropriate balance in what is a very difficult area.

The government acknowledges the submissions from the women's and sexual assault sector that have voiced their concerns that the bill does not go far enough. I thank these services that work tirelessly to provide support, legal assistance and advocacy to survivors of sexual assault. I want to assure them that our government is committed to improving the experience of women throughout the criminal justice system.

This is a first and important step in the direction of clarifying the law with regard to consent and mistake of fact. We do have an important opportunity now with a skilled and dedicated Women's Safety and Justice Taskforce to look at this issue holistically—from examining the barriers to reporting, which we know are many, through to how survivors will be supported throughout the investigation and prosecution and what I imagine will be an important conversation around what justice in fact looks like for our survivors. It is important to recognise that survivors of crime are in fact heterogenic and their idea of and needs around seeking justice do vary.

Further, to the women who found the strength to put their experiences down in writing, I think it is really important for you to know that we did read every one of your words, we believe you and we truly thank you for your submissions. Legislators have a responsibility to ensure the laws both reflect and keep up with community expectations. In the time that this bill has been considered, a seismic and necessary shift has occurred in Queensland—in fact, nationwide—in relation to how we as people view sexual harassment and assault, and I think it is fair to say how we think it should be responded to. At the heart of this lies the issue of consent.

As we saw through the QLRC report, in the majority of rape cases the question does not come down to whether or not a sexual act occurred but whether there was in fact consent. I recognise that legislation alone will not accomplish the shift that we are crying out for. We as a nation need to change how we view, describe and respond to sexual assault. It is not so much a leap forward but a 180-degree pivot and deep reflection that is required in this country. To underscore that point, the submission from the Queensland Council of Social Services concluded—

Clearly legislative reform as part of a larger suite of reforms—including judicial education—will most likely deliver better outcomes for sexual assault survivors.

Only this week I particularised instances of assault that I had experienced. What followed was a series—hundreds—of comments by members of the public laying the blame at my feet. As long as the blame rests with the victim we will never make real progress. While I wish legislative reform could alter deeply ingrained attitudes, I recognise the importance that social policy and education really does play in this space.

That is why I want to again congratulate the hard work and advocacy of our Premier and Attorney-General in putting together the task force that will deliver what Queensland needs and deserves—a holistic, deep dive into the experiences of women interacting as victims within the criminal justice system within this state. I am optimistic about the review announced by the education minister around whether we go far enough into consent in our schools. I think that is vitally important.

We know the data as reported. That being that one in five Queensland women have experienced sexual violence since the age of 15. One in four women have experienced violence at the hands of their partner. We know that women and girls are disproportionately affected by sexual assault. It still remains one of our most underreported crimes. This week I have had numerous women and men disclose to me instances of sexual violence, including being pressured by siblings to perform oral sex on their friends, feeling pressured into sleeping with a team leader at work while employed on a casual contract and women been prostituted by their partners against their will. Many of these people have never reported these crimes and have lived with the shame ever since. I absolutely believe our first focus needs to be on creating an environment where it is safe for victims to seek help and to ultimately report

the crimes. We need an honest insight into what is happening for girls and women, with a focus on our minority groups and those who are particularly vulnerable, including our sex workers and those living with disability.

The review will be conducted by the Women's Safety and Justice Taskforce headed by former president of the Queensland Court of Appeal, Margaret McMurdo. It is due to report on how to best legislate against coercive control by October and to deliver recommendations to government on how to best improve women's experiences in the criminal justice system within 12 months. Once we have these recommendations we will truly be in a position to advance women's rights and interests here in Queensland.

It has been said a number of times in this House already this week: the standard you walk past is the standard you accept. The Palaszczuk Labor government is choosing to not walk past this issue but to instead stand with the survivors in developing a new framework for addressing sexual violence in Queensland, commencing with this bill. I commend the bill to the House.