




Speech By
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MEMBER FOR CURRUMBIN

Record of Proceedings, 25 March 2021

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

 **Mrs GERBER** (Currumbin—LNP) (4.25 pm): Rape culture and sexual violence are never okay. No matter the circumstances, sexual predators must be punished. Given the well-documented history of laws condemning rape, I know that everyone in this chamber agrees with that statement. This bill comes in response to the Queensland community demanding stronger, clearer and more consistent laws to deal with rape and sexual assaults. This bill is necessary to clarify, reinforce and update the current operation of the law; however, let us not believe for a moment that this is the end. There are still steps to be taken to protect women right across Queensland from being sexually abused, assaulted or raped.

I would like to commend the proposed amendments which attempt to address the issues of clarity and consistency around consent and the defence of mistake of fact: that silence does not amount to consent; that consent initially given can be withdrawn; that regard maybe had to anything the defendant said or did to ascertain consent when considering whether the defendant was mistaken about whether the other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; that a defendant's voluntary intoxication is not relevant to the reasonableness aspect of the excuse of mistake of fact; and to provide consistency in the meaning of consent throughout chapter 32 of the Criminal Code.

Many advocacy groups were consulted by the Queensland Law Reform Commission and the Legal Affairs and Safety Committee, and they have expressed concerns that the amendments presented in this bill do not go far enough. They do not effectively close the loophole in relation to an accused rapist committing such crimes. It is a clear sign that there is still more work to be done. This is acknowledged by the Law Reform Commission in their report, when they state that there are limits to what the criminal law is practically and properly able to achieve and that legislative amendment is only one means of addressing these issues.

This bill proposes to update, clarify and reinforce the current operation of the law in text. Now we need practical policy changes to see that women, children and the vulnerable protected. On the government's agenda we need to see the changes advocated by submitters to the Law Reform Commission and the Legal Affairs and Safety Committee. By no means am I arguing with the necessity of the clarification this bill offers to the Criminal Code. What I am concerned about is that this government has not presented the Law Reform Commission with the direction to investigate wider change. Such direction is necessary to see the effective protection of women, both from being violated and from having to cope with the after-effects of sexual violence.

On 2 September 2019 the then attorney-general and minister for justice referred the definition of consent in chapter 32 and the excuse of mistake of fact to the Law Reform Commission for review and investigation. It makes sense, then, that at the Legal Affairs and Safety Committee hearing last year the director of strategic policy and legal services in the Department of Justice and Attorney-General stated—

The four amendments in the bill to the Criminal Code are really just reaffirming principles that are in current case law, so the only thing they might change are directions given to a jury or the nature of directions given to a jury, the language.

For wider change to occur the government must give the Queensland Law Reform Commission the direction to investigate sexual assault legislation and rape culture as a whole.

The stories conveyed by members, both male and female on both sides of this House, sharing their stories about gender inequality and sexual violence are heartbreaking. Just last week Australia saw firsthand the March 4 Justice rallies where locals marched to support those suffering from inequality, injustice and sexual assault.

At the opening of this parliament's sitting week, the Premier stood to acknowledge the marches and exclaim 'me too'—that it was time to listen and let these women be heard. Yesterday we debated a motion condemning harassment and assault of women and highlighting the importance of equality and justice for women. It was moving to see all members of this chamber join in, supporting their fellow Queenslanders for a push for a woman's right to feel safe in her own home, to feel safe in her workplace and to feel safe in her community. It spurred hope. I plead for the government to uphold that hope—to give the Queensland Law Reform Commission the direction to investigate sexual assault legislation and rape culture more broadly. While this bill does not seek to address all the questions we have and the changes we need, it is better than what we had and it is at least a small step in the right direction.

It is all well and good for all of us to stand up in this chamber and say that women's experiences are being heard, to say that enough is enough. However, none of that will amount to much if the government do not act on what they hear. There is still a long way to go before women are effectively protected by this government. To echo the sentiments of the federal minister and member for McPherson, I will continue to fight for women in my electorate and across Queensland so that they can feel comfortable on public transport—until there is no longer a reason for them to fear for their safety when catching a 5 pm train. In the Attorney-General's introductory speech for this bill, it was stated that the implementation of these recommendations would not be the end of the government's commitment. I can only hope that this is true because much more reform is needed.

I spoke about this story yesterday and I am going to do it again today. This is the story of one sexual assault survivor I have spoken with. She was 13. She was sexually assaulted by a teacher four weeks into the beginning of a new school term. His sexual assault was verbal, it was physical and it was not okay. This teacher made her feel as though she could not speak up, that she would not be heard or believed because it was his word against hers, but she did speak up. She spoke to her family, she spoke to the school and she spoke to this government.

The school should have reported this assault to the police for criminal action and they should have reported this teacher to the Queensland College of Teachers for disciplinary action. This did not happen. After being let down for six years by a school which failed to report the grossly inappropriate conduct of a teacher—a man with a blue card—this young woman took matters into her own hands and in 2020 she called the state Department of Education to report him and the school's silence. This young woman was told that it was not their problem because she attended a private school. As a youth and a survivor of sexual violence, she was let down. Her voice, her story, her injustice fell on the deaf ears of this state Labor government. She has said to me that this bill and the proposed amendments do not help her. She has told me that more reform is needed, more policy change is needed and more protection is needed.

This experience is not isolated. The past five weeks have seen countless women share their experiences with sexual assault. It is clear that action and meaningful change is urgently needed. The Queensland Sexual Assault Network referred to this bill as a missed 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'. Let us respond to this by taking action, allowing the Queensland Law Reform Commission free rein to investigate and report on what is actually needed.

As LNP members before me have stated, we support this bill, accepting that amendments are necessary to clarify, reinforce and update the current operation of the law. I look forward to seeing further action taken towards seeing effective change. Let us think about the story of the 13-year-old schoolgirl who is now a young woman and who has still not had justice served against her perpetrator. There is clearly so much room left for reform. Let us take advantage of our position in this chamber and enact real change. We need to do more to support young women and we need to do more to assist them and encourage them to stand up and hold their perpetrators accountable in a court of law.