



Speech By
Hon. Mark Bailey

MEMBER FOR MILLER

Record of Proceedings, 25 March 2021

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

 **Hon. MC BAILEY** (Miller—ALP) (Minister for Transport and Main Roads) (4.16 pm): I rise to speak in favour of the bill. In doing so, I join my colleagues from all sides of the chamber in recognising the importance of reflecting on what we have seen over the past month. The allegations and the courage by Brittany Higgins and the disclosures made by countless women across the nation, including ministers and members of this place, have all required incredible courage. To all those who have made disclosures and to those victims/survivors who cannot for understandable reasons make disclosures, and nor should they if they feel uncomfortable about it: we hear you, we stand with you and we support you.

It was a privilege to be at the March 4 Justice rally here last Monday, when tens of thousands of people—many women and some supportive men—took to the streets across our nation saying with one voice that enough is enough. This rally included a very substantial rally outside the Legislative Assembly—which was very large and very emotional. You could see on the faces of those who attended how much it meant to them to be there, to stand together, for many to speak out for the first time, but for them to know that they are not alone. It was a privilege to be there to support them as a minister and as a member of the parliament with my colleagues. The Premier, the cabinet and many members of this Palaszczuk Labor government attended. It was a real privilege. It is a start.

It is incumbent on us as representatives of our communities to call out unflinchingly any sexual harassment or sexual violence including in its milder forms of sexism and discrimination verbally wherever it exists because one inevitably leads to another. That acceptance of inequality, that acceptance of others that it is reasonable to besmirch a gender and to belittle others, is the beginning of the process that takes people to dark places. That is what we have to deal with culturally in our community. We all have a role to play in it. It is incumbent on all of us to drive that cultural and procedural change to stamp out sexual harassment and assault and also, importantly, to properly support victims/survivors when they come forward.

This legislation is an important part of that work. By implementing the Queensland Law Reform Commission's recommendations in relation to consent laws and the excuse of mistake of fact we are taking another step forward towards tackling sexual assault and violence in our community. This is a complex issue and one which requires changes to social conditions far beyond what can be legislated in law. This is also an issue which encompasses a wide range of views from a wide range of stakeholders. Some of those stakeholders believe this legislation does not go far enough, and the government acknowledges those concerns.

I want to acknowledge the work of the Attorney-General, her leadership on social reform and her work with stakeholders. I also acknowledge the hard work and leadership of the former attorney-general who originally introduced this bill in the previous parliament. At the end of the last term we committed that we would reintroduce this legislation as a priority, and that is what we have done.

The Queensland Law Reform Commission made five recommendations following their review, and this bill implements all of them. The bill amends the Criminal Code to make explicit four legal principles that can be found in current case law. Those principles are: silence alone does not amount to consent; consent initially given can be withdrawn; regard may be had to anything the defendant said or did or did not say or did not do 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 fixes an inconsistency in the Criminal Code by clarifying that the definition of consent applies to all offences in relation to rape and sexual assault as is appropriate.

This legislation is only part of this Palaszczuk Labor government's commitment to addressing sexual assault and improving the safety and accessibility of our criminal justice system for victims/survivors of sexual violence. Through the Prevent. Support. Believe. framework we are continuing to evaluate relevant processes and laws to support all victims/survivors and ensure that perpetrators are held to account for their actions. The Palaszczuk Labor government has recently announced a wideranging review into the experiences of women across the criminal justice system. This review will be undertaken by the Women's Safety and Justice Taskforce. This will be led by the Hon. Margaret McMurdo AC, the trailblazing former president of the Queensland Court of Appeal and a woman of impeccable credentials.

We know there are barriers to women reporting domestic, family and sexual violence, and we know that women's experiences of the criminal justice system have often been very different to those of men. This review will look into possible future areas of reform, including: prevention, service response, training for first responders, attitudinal change and legislative amendment. This is an important review, and it is vital that it is allowed to do its work to prevent unintended consequences as a result of any rushed amendments. We have to be sure that we have the legals right and in place, and that is something we have been careful to do. People, particularly victims, deserve that respect.

This legislation and a raft of other measures being pursued by this government are part of our ongoing program of social reform to end domestic, family and sexual violence and to improve the criminal justice system for women. I think it is fair to say that for some people in the community the events of the last month have not been a surprise. A lot of people have understood this has been much more widespread than people realise, but for some people I think it has been a revelation to see just how widespread it is. I see this reform, which has been coming for some time—well before the recent processes and rallies over the last month or so—as a very concerted response to social reform to ensure that women, rightly, can take their equal place in our community. We have made great advances but we also have a long way to go, including in some of the most powerful places in this country. I think something that has shocked a lot of people is that depravity can be so close to the halls of power of this nation.

I commend the bill to the House. I am proud to support the bill. I see it as part of a continuum of reform and the review will be an important part of that continuum. This government has had a very strong record over six years of social reform in terms of domestic and sexual violence, and we will continue to do so under this Premier, this Attorney-General and this party room, which is united to ensure that women have their equal place in the community and that we achieve that.