




Speech By
Sandy Bolton

MEMBER FOR NOOSA

Record of Proceedings, 24 March 2021

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

 **Ms BOLTON** (Noosa—Ind) (6.26 pm): As MPs we seek legislation that makes it better for the people the legislation is intended to serve. The assessment of the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 prompted me to ask: does this piece of legislation do anything tangible for the people we serve? I am basically going to speak to clause 8 and the amendments to section 348 of the Criminal Code.

Legal Aid Queensland, existing to give legal help to financially disadvantaged people, does not consider these amendments are required, with the criminal law practice of Legal Aid having no issue with how the current provisions operate. However, the Queensland Law Society accepts the Queensland Law Reform Commission's position that there should be some amendments to the Criminal Code to clarify, reinforce and update the current operation of the law. Rape & Domestic Violence Services Australia said the bill fails to go beyond a negligible tinkering with the legislation concerning consent and the excuse of mistake of fact in Queensland.

Sexual offences continue to be highly under-reported throughout Australia and the rates of conviction for adult sexual offences continue to lag behind rates of conviction for most other serious offences. Many of these reports do not result in prosecution or are withdrawn at some stage in the proceedings. According to QCOSS, Queensland at 27 per cent of cases withdrawn is the second highest in Australia. Tasmania is the lowest at nine per cent.

Given that witnesses at the public hearing stated that the low reporting rates are attributable to the experience of the actual process itself, including multiple court hearings over what can be many years, we have much to do and the task force is a welcome addition. Questions were also put to attendees on whether the enactment of this legislation would in any way assist victims of sexual assault or prevent attacks happening. No-one could confirm that the bill would achieve either of these two vitally important issues. However, it was pointed out that that was outside the scope of the bill. It should have been the focus.

These amendments may well assist judges to provide properly informed directions to a jury about this area of law. However, as I pointed out in my statement of reservation, law entities do not agree on whether these amendments are even needed—which increases the confusion that we saw. The Queensland Law Reform Commission noted that the community is 'the ultimate user of a law', and effective communication of legislative rights and obligations is a key component of access to justice.

Questioning at the public hearing regarding how these changes could be communicated effectively through education, especially with our children, revealed that there was no concise answer. However, witnesses responded that translating laws into education is a consistent issue. Of relevance is the example of the Tasmanian affirmative model and the question on notice taken as to its effectiveness. It was felt that a lack of education contributed to a reluctance of courts to adopt this model which could have effected greater change, leading to understandable concerns.

The minister has said that further consultation with stakeholders in response to submissions will be undertaken as a matter of urgency, and our committee in its recommendations has reiterated that this must be undertaken. This gives reassurance that this bill may, at the very least, provide the mechanism in which the many issues within the submissions can be addressed.

With resources spent and the QLRC recommending this technical change, I do not oppose the bill, nor the last-minute amendments regarding the Legal Profession Act 2007, and I welcome the changes to online gaming. However, in my statement of reservation I have outlined what I do oppose, and that is that changes sought by our sexual assault survivors and frontline organisations were not included and prioritised. May their efforts through this bill be the catalyst for change and promptly delivered as a follow-up.

In closing, I thank my fellow Legal Affairs and Safety Committee members and chair for his patience. To our secretariat, the minister, departmental staff and all submitters: you took what was confusing—and it was confusing and difficult to grapple with—and made it less so. To witnesses at the public hearing: your attendance was deeply appreciated and your concerns I trust you have felt have been listened to and will be enacted on. The job you do is one of the toughest and your frustration is palpable and understandable.

This year is very much about responsibility, accountability and consequences. As MPs, we have a responsibility to ensure that legislation is in place that makes a difference with tangible, understandable outcomes for you and for those you are working so hard for. We can and must do better.