Speech By

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MEMBER FOR MACALISTER

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CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION AMENDMENT BILL; CRIMINAL CODE AND OTHER LEGISLATION (DOUBLE JEOPARDY EXCEPTION AND SUBSEQUENT APPEALS) AMENDMENT BILL

Mrs McMAHON (Macalister—ALP) (5.30 pm): I rise to make my contribution to this cognate debate. This week, Queensland Women's Week, we introduce some landmark legislative changes here in Queensland—changes that will largely contribute to a safer Queensland for Queensland women. From the outset, we start this conversation by acknowledging that the experience of women and girls in the justice system is one of fear, prejudice and unfairness, and we acknowledge that women are overwhelmingly impacted by domestic and family violence. I would like to touch on the contribution of the member for Ninderry, who reflected that some of these amendments might lead to some unfair outcomes. I would certainly acknowledge that we do not have fair outcomes at the moment. I understand that thousands of women have contributed to the reports of the taskforce that have led to these amendments, and they have done so because currently the outcomes for women are wholly unfair.

In this debate we have a lot to cover, so I will focus my contribution on the amendments around coercive control and affirmative consent. Before I start, I would like to acknowledge the many thousands of women whose experience with domestic and family violence and the criminal justice system more broadly, as well as interactions with and within the QPS, contributed to the many inquiries and reports that have directly led to this amendment. Their stories, their strength and the sacrifices that have been made by Queensland women over decades drive us forward.

I spent many years as a first responder to domestic and family violence incidents, and I remember the cultural change that Queensland had to go through to eradicate the idea that what happens in the home stays in the home. We know that we have come a long way since the early nineties, but we must realise that there are still those who have this mindset. I remember undergoing the first big tranche of domestic and family violence amendment training that incorporated the definition of 'domestic and family violence' to include economic, emotional and psychological abuse, and I can tell members that this was not necessarily widely accepted by members of the QPS at the time. Those who have read the commission of inquiry report would not be surprised. It is one thing to take action when assaults occur and property is damaged—things that can be directly observed and proved—but when other aspects like economic and psychological abuse take a bit more effort, there is often resistance.

I was a senior project officer for domestic and family violence in the QPS when the last tranche of sweeping changes to DV legislation occurred in 2017. I travelled the state talking to our district domestic and family violence coordinators and conducting regional training sessions, so I understand that the changes that this legislation seeks to make will require education—education not only for our frontline police but also to the wider community.

The amendment to be introduced in chapter 29A in the Criminal Code is to include the offence of coercive control. This is something that I consider to be the next big cultural shift in domestic and family violence legislation in Queensland. Coercive control in section 334C will apply where: the person is in a domestic relationship; the person engages in a course of conduct that consists of domestic violence occurring on more than one occasion; the person intends the course of conduct to coerce or control the other person; and the course of conduct would be reasonably likely to cause the other person harm.

To name this offence coercive control and to include it in the Criminal Code indicates the serious nature of this offence, and certainly many contributions already today have indicated a number of instances where coercive control has led to the death of a Queenslander. I applaud the inclusion of this offence and acknowledge the education campaign that will have to accompany these changes, particularly with our young people, through programs like Respectful Relationships in our schools. This generational change that we start today must start with our young people.

The other amendment I would like to comment on relates to the changes to affirmative consent. Under section 348, consent will mean free and voluntary agreement. Previously the wording was around 'given'—that someone had to give consent. Much of the feedback did focus on the fact that this particular wording required, in most cases, women to be sexual gatekeepers—that is, the person to say yes or no, that it was up to one person. However, I acknowledge and commend to the House the comments, contributions and submissions by those that really did touch on modern community standards of healthy relationships requiring mutual agreement. This word 'agreed' also brings us into line with most other jurisdictions. This requires consent and an understanding that consent can be withdrawn at any time; that a person who does not offer physical or verbal resistance is not, by reason of that fact, to be taken to have consented; and that the person does not consent to an act just because they consented to the same or different act with the same or other person at a previous time.

I also applaud the inclusion of additional circumstances which infer or which indicate there is not consent—that is, that a person did not say or do anything to communicate consent; that they did not have the cognitive capacity to consent; and, more importantly, that the person is so affected by alcohol or other drugs as to be incapable of consenting to the act. There certainly have been a number of cases where a defendant has claimed to have been too intoxicated to understand whether consent had been given or not, particularly when that person is impacted by alcohol or drugs voluntarily.

The fact that a person is unconscious or asleep clearly is not giving consent. The fact that we had to actually write that in legislation is quite sickening if you think about it, but this is where we are at. This is how unfair the current system is: we have to spell out in black and white that if a person is asleep they are not consenting to a sexual act.

That the person participates in an act because of force or fear of force is not consent. I could go on, but the more I read this list the more disappointing one can find that, in a modern society, we actually have to outline and articulate what is not consent. However, I can tell you that every time we have to write something like this in black and white it is because someone has used this as an excuse to have unwanted, uninvited and non-consensual sex. This is why the system as it is is so unfair. Let's not go into how difficult it is to actually prosecute these things in court, but someone—a defendant or a defence team—has gone into court and used these as excuses and got off a charge of rape or sexual assault. We have to stand in here today and pass these amendments to this particular section of the Criminal Code to say that this is not consent. The fact that we have to do this is extremely disappointing in what should be a modern-day society.

Here we are: we will pass this bill today or tomorrow. I hope that this bill gives guidance to some people about what is now acceptable and not acceptable and what is now criminal and not criminal. More importantly, I hope the fact that this is written down—that this amendment is passed here in the state of Queensland—makes this a safer state for Queensland women because we know that, by and large, it is Queensland women who have been on the unfair end of our current legal system. I applaud this bill and I applaud the work of the many thousands of women who came forward to shape this bill in front of us today. I ask all members to pass this bill. I commend it to the House.