

# *Human Rights in Action: rape and sexual assault law reform in Queensland*

## **How to make a submission**

Making a submission is an important part of the law-making process. Our laws should reflect and respond to the needs of our community.

Any individual or organisation can make a submission on a proposed law. Parliamentary committees prefer to receive written submissions, but they do not need to be long or detailed. Oral (spoken) submissions may be accepted if you cannot make a submission in writing. You should talk to the Committee about this option.

The phone number for the Legal Affairs and Community Safety (LACS) Committee is 3553 6641.

### **Are submissions public or confidential?**

Normally, submissions are made public once they have been received. If you want all or part of your submission to be kept confidential, you should state this clearly and explain your reasons in a covering email or letter.

### **Making a valid submission**

Although there is no required format for submissions, there is some information that you must include to ensure that your submission is valid.

1. You must include your name. This can be your personal name (if you are making a personal submission) or your organisation's name; and
2. At least two of the following:
  - a. Mailing address
  - b. Email address
  - c. Daytime telephone number

If the submission is made on behalf of an organisation, you must state the level of approval of the organisation (e.g. a local branch, executive committee or national organisation).

Your submission should be sent to: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Or by post to:

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

The closing date for written submissions for this Bill is **Tuesday 29 September 2020.**

## Template submission

Below is a basic submission template that QCOSS has prepared as a guide. We have included some basic arguments that you may like to adopt, but we strongly encourage you or your organisation to add your own perspective and reasoning. Where possible, please try to include facts and evidence to support your views.

Many organisations and individuals have already made a lot of good arguments about this issue. Included below is a list of links for further reading. If you have time, you may like to visit some of this material and reference it in your own submission.

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[DATE]

[Your Name]

[Your Address / Phone Number]

[Your email address]

Legal Affairs and Community Safety (LACS) Committee

By email: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear LACS Committee,

### **Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020**

Thank you for the opportunity to provide feedback on this Bill. [My/our] submission responds to the proposed amendments to the Criminal Code regarding the law of consent and the excuse of mistake of fact.

[Insert relevant information about you/organisation and why this Bill of interest and relevance to you/organisation.]

[I/we] oppose the Bill for the following reasons:

1. **The Bill retains an outdated model of consent.** This is an historic opportunity to reframe and modernise Queensland's outdated sexual assault laws. Unfortunately, this Bill only tinkers with existing legislative definitions. [I/we] would prefer to see a Bill that introduces an ***affirmative consent model***. Such a model would require individuals to enthusiastically and clearly affirm their willingness to have sex through words or actions. An affirmative consent model would provide greater protection for individual sexual autonomy. It would also send a very clear message to the community that the person seeking consent is responsible for taking active and reasonable steps to ensure that consent exists.

2. **The Bill fails to uphold the human rights of sexual assault survivors.** The human rights analysis for this Bill is one-sided and solely considers the rights of defendants to a fair trial, and their protection from retrospective criminal laws. The Attorney-General's statement of compatibility is silent on the human rights of sexual assault survivors. Sexual violence is disproportionately a gendered crime. Human rights to equal protection of the law without discrimination (section 15 *Human Rights Act 2019*); the right to life (section 16 *Human Rights Act 2019*); protection from torture and cruel, inhuman or degrading treatment (section 17 *Human Rights Act 2019*); and the right to liberty and security of person (section 29 *Human Rights Act 2019*) all apply to all survivors of rape and sexual assault, yet these rights have been entirely overlooked.
  
3. **The excuse of mistake of fact will continue to be used to perpetuate rape myths.** The Bill retains the mistake of fact excuse which defendants will be able to argue in situations where a person is asleep, heavily intoxicated or unconscious. The proposed changes do not require defendants to show they took positive steps to ascertain consent. This leaves open the possibility that consent can be inferred from a lack of resistance, even though victims 'freezing' (tonic immobility) during an assault is a very common behavioural response and recognised survival tactic.
  
4. **The Bill fails to address the negation of consent for a person with disability.** Section 216 of the Criminal Code makes it unlawful for any person to have sex with another person who has an impairment of the mind. This is a discriminatory provision as it assumes that people with disability are not capable of consenting to sex. Pages 11 to 15 of the Queensland Human Rights Commission's submission to the Queensland Law Reform Commission (*Review of consent laws and the excuse of mistake of fact*, available on the QHRC website <[www.qhrc.qld.gov.au/resources/submissions](http://www.qhrc.qld.gov.au/resources/submissions)> addresses this point at length. This is a missed opportunity to correct a law that unfairly discriminates against people with disability in Queensland.

Reform of consent laws and the excuse of mistake of fact is long overdue in Queensland. [I/we] ask that the LACS Committee rejects the Bill in its current form and requires government to make amendments that incorporate the issues we have outlined.

[Insert any closing statement]

Yours faithfully

[Your name]

## Useful Links

Rape and Sexual Assault Research and Advocacy is a coalition of researchers who are committed to reforming rape and consent laws across Australia. Their website is:

<https://rasara.org/>

RASARA and Women's Legal Service Queensland's online petition - "Real rape law reform in Queensland" <https://consent.good.do/rapereformqld/email-ag/>

Response to the QLRC Report on Consent and Mistake of Fact by RASARA members Professor Jonathan Crowe, Dr Rachael Burgin, Angela Lynch and Julie Sarkozi, Women's Legal Service:

<https://static1.squarespace.com/static/5e38a9c3c182ca3ee4fa899d/t/5f2ce6d159a63275f739d94b/1596778195665/Response+to+QLRC+Report+-+consent+and+mistake+of+fact.pdf>

Jonathan Crowe, 'Queensland rape law 'loophole' could remain after review ignores concerns about rape myths and consent' *The Conversation* 4 August 2020:

<https://theconversation.com/queensland-rape-law-loophole-could-remain-after-review-ignores-concerns-about-rape-myths-and-consent-141772>

Consent law in Queensland <https://www.consentlawqld.com/> This is a useful website hosted by Bri Lee, with writing by Jonathan Crowe and Bri Lee about consent law in Queensland, with accessible summaries of QLRC documents and template responses.

A submission to the QLRC by Queensland Sexual Assault Network: <https://qsan.org.au/wp-content/uploads/2020/06/QSAN-QLRC-Review-of-Consent-Laws-the-Mistake-of-Fact.pdf>

A press release by Women's Legal Service: <https://wlsq.org.au/sexual-assault-review-recommendations/>

A submission to the QLRC by Queensland Human Rights Commission: <https://www.qhrc.qld.gov.au/resources/submissions> (31 January 2020)

A submission to the QLRC written by the Brisbane Rape and Incest Survivors Support Centre (BRISCC) <https://briscc.org.au/wp-content/uploads/2020/02/QLRC-Mistake-of-Fact-2020-Submission.pdf>

Queensland Law Reform Commission Report No 78, *Review of Consent Laws and the Excuse of Mistake of Fact* – June 2020:

<https://www qlrc.qld.gov.au/ data/assets/pdf file/0010/654958/qlrc-report-78-final-web.pdf>