

SEXUAL ASSAULT — AFFIRMATIVE CONSENT LEGISLATION

**213. Hon SOPHIA MOERMOND to the parliamentary secretary representing the Attorney General:**

I refer the Attorney General to reports that the New South Wales government will introduce sweeping changes to sexual assault laws, and plans to adopt an affirmative consent model going forward.

- (1) How many other jurisdictions across Australia currently employ, or are actively considering, an affirmative consent model?
- (2) Does the McGowan government have any plans to move towards affirmative consent here in Western Australia?
- (3) If no to (2), why not?

**Hon MATTHEW SWINBOURN replied:**

I thank the member for some notice of the question.

- (1) Two other states besides Western Australia have codified the criminal law. Tasmania is one and it is the only Australian jurisdiction to employ an affirmative consent model similar to that proposed by the New South Wales government. In Tasmania, section 14A of the Criminal Code Act 1924, “Mistake as to consent in certain sexual offences” sets out in section 14A(c) that a mistaken belief as to consent is not honest and reasonable if the accused did not take reasonable steps to ascertain the complainant was consenting to the act.

The other codified state is Queensland where the Queensland Law Reform Commission completed its review of the operation of consent and mistake-of-fact laws in relation to sexual offending in June 2020. In the final report, the QLRC did not recommend extensive changes to the existing laws. Instead, it adopted the view that there should be amendments that clarify, reinforce and update the current operation of the law. Since then, however, the Queensland government has established the Women’s Safety and Justice Taskforce with a wide remit to consider, among other terms of reference, the experience of women across the criminal justice system.

- (2)–(3) The Commissioner for Victims of Crime has been working with the Director of Public Prosecutions on recommendations to the Attorney General in relation to sexual assault laws in Western Australia. As stated, the criminal law framework in New South Wales and Victoria is very different from that in Western Australia and this, alongside how to improve the experience of victims in the criminal justice system, will be taken into account when considering the recommendations.