

POLITICS QUEENSLAND CRIME

# Should sabotaging a condom be a crime? Have your say on rape reform

By [Lydia Lynch](#)

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Queenslanders have been asked to have their say on a legal loophole that allows rapists to claim they were so drunk, they thought their victim was consenting.

They have also been asked whether sabotaging a condom should be a criminal offence.

The same legal technicality means Queensland rape victims who do not scream or cry may never get justice and their attackers could walk free.



Saxon Mullins had to endure five years of legal proceedings to end up in this grey area. JANIE BARRETT

The [consultation paper](#) on the archaic law, known as the [mistake of fact](#) defence, was released by the Queensland Law Reform Commission this week after the matter was referred by Attorney-General Yvette D'Ath in September.

Just weeks before Ms D'Ath [announced the matter would be referred](#), *Brisbane Times* revealed the government [had no immediate plans](#) to change the legislation.

The government's action was spurred on by [years of campaigning](#) by the Women's Legal Service Queensland and other advocates.

Mistake of fact allows a defendant to argue they thought the victim was consenting because they did not clearly resist advances.

It was the same New South Wales law that acquitted the son of a Kings Cross nightclub owner.

Luke Lazarus was convicted of anally raping Saxon Mullins in an alley behind a nightclub in 2013.

[He was then acquitted on appeal](#), after serving 11 months behind bars because the NSW District Court eventually found the then-18-year-old virgin was consenting to anal sex even though "in her own mind" she was not.

After a five-year legal battle, Judge Robyn Tupman found Mr Lazarus had a genuine and honest belief Ms Mullins had consented, because she did not try to run away.

"The absence of a 'no' is not a 'yes'. Silence does not equal consent. Not pushing someone away is not consent," Ms Mullins told *Brisbane Times* earlier this year.

Current law "does not expressly require a defendant to take reasonable steps to ascertain whether the complainant was consenting to the act", according to the consultation paper.

The consultation paper asks Queenslanders whether they believe the criminal code should be extended to include when the person is asleep, unconscious or affected by drugs or alcohol when any part of the sexual act occurs.

It also considers criminalising condom sabotage, or when a person takes off a condom during sex, known as "stealthing".

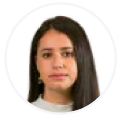
"To date, none of the Australian jurisdictions specifically address these circumstances in their legislation," the consultation paper reads.

"It has been argued that despite the decades of extensive reform of the law relating to sexual offences in Australia, a significant gap and confusion exists in relation to non-consensual condom removal which is not specifically covered under existing legislative provisions."

The deadline for written submissions is January 31 as the commission is required to provide its final report to government by April 17.

## Sexual Assault Helpline: 1800 010 120

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