

## **Legal Affairs and Safety Committee**

**Erratum to Report No. 3, 57th Parliament -**

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

The Legal Affairs and Safety Committee tabled Report No. 3 – Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 on 12 February 2021, and now informs the Legislative Assembly of a correction to the report.

On pages vi and 29, the committee refers to section 32 of the Criminal Code in the Committee comment and Recommendation 3. On these pages ‘Section’ should read ‘Chapter’.

The amended pages of the report are attached to this erratum.



Peter Russo MP

**Chair**

February 2021

## Recommendations

### **Recommendation 1** **4**

The committee recommends the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 be passed.

### **Recommendation 2** **27**

The committee recommends that in light of the comments of submitters, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence undertake consultation with key stakeholder groups as a matter of urgency in regards to addressing sexual violence in Queensland, including examining the experience of women in the criminal justice system as a whole and possible future areas for reform such as attitudinal change, prevention, early intervention, service responses and legislative amendments as necessary.

### **Recommendation 3** **29**

The committee recommends that the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence give consideration to the application of Chapter 32 of the Criminal Code as it relates to youth offenders.

### **Recommendation 4** **41**

The committee recommends that further amendments be made to permit the Fidelity Guarantee Fund to provide resourcing for measures likely to have a material effect in minimising the risk or magnitude of misappropriations.

clearly things are happening which are not good behaviour, are not respectful, or young people have not had the ability to learn. It is not simply about us saying that you would not sentence or not punish, but if we even do sentence young people in this space there needs to be some meaningful responses which help them to understand and address what might have gone wrong. Even where we think there is a level of culpability, I still think there is a responsibility on us more generally to help those young people to ensure that this does not become a pattern of behaviour.<sup>136</sup>

YAC acknowledged, however, the difficulty of educating young people in these matters:

We need to encourage those adults who have contact with children to be exploring these issues with them and giving them the resources to be able to do that as well as perhaps there being quite formal programs that might be attached—for example, a service which was supporting youth justice and supporting educating those who may be found to have broken the law. It is a multifaceted approach. It is one that I do not think any jurisdiction that I have witnessed has ever properly addressed—how do we ensure that people know what their rights and responsibilities are under the law? That all needs to be targeted in a way that is appropriate to the relevant groups to which you are trying to make available that information.

...

I think that is a very good question, particularly challenging because of the age group we are talking about and because we do have a culpability at the age of 10 in Queensland. It is a very young age to start an education program and there will be very disparate views in the community about wanting children at that very young age to be educated in relation to those very issues. It would be quite challenging.

One of the other issues we see of young people being charged or engaging in some of this behaviour is that often those young people are not engaged in formal education structures. We do not necessarily have systems within our state care system. Those young people in the child protection system who often are not in home or in residential care often are not provided with appropriate information in relation to sexual education. It is often not part of case plans. We see young people being more vulnerable. Often our most vulnerable young people are going to miss out on some of those formal education processes that we would hope would be part of this process of educating people around this issue.<sup>137</sup>

#### 2.1.8.1 Committee comment

The committee acknowledges the work of YAC and their experience with young people. The committee notes YAC's comments on adolescence, including how factors such as maturity and physical, psychological and emotional elements that are unique to this age group may impact on the potential for misunderstanding or miscommunication on the part of one or both parties in relation to consent or mistake of fact. The committee considers the evidence of YAC requires further consideration in regards to the application of Chapter 32 of the Criminal Code as it relates to youth offenders (10 to 17 years of age).

#### **Recommendation 3**

The committee recommends that the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence give consideration to the application of Chapter 32 of the Criminal Code as it relates to youth offenders.

#### **2.1.9 Transitional arrangement for the Criminal Code amendments**

Clause 10 of the Bill contains a transitional provision for the operation of the amendments to the Criminal Code. The explanatory notes state:

Clause 10 inserts a new Chapter 104 (Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2020) into the Criminal Code. Proposed new section 754

<sup>136</sup> Public hearing transcript, Brisbane, 21 January 2021, p 14.

<sup>137</sup> Public hearing transcript, Brisbane, 21 January 2021, pp 14-15.