

<b>Queensland Legislative Assembly</b>	
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 24 MAR 2021	Tabled <input checked="" type="checkbox"/>
MP: Hon Ferguson	By Leave <input type="checkbox"/>
Clerk's Signature: 	

## LEGAL AFFAIRS AND SAFETY COMMITTEE

### Report No. 3

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

### QUEENSLAND GOVERNMENT RESPONSE

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#### INTRODUCTION

On 26 November 2020 the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 (the Bill) was introduced to Parliament.

The Bill was referred to the Legal Affairs and Safety Committee (the Committee) which was required to report back to the Legislative Assembly by 12 February 2021.

On 12 February 2021 the Committee tabled its report (No.3) in relation to the Bill (the Report).

The Queensland Government response to the Committee's recommendations in the Report is provided below.

#### RESPONSE TO RECOMMENDATIONS:

##### Recommendation 1

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

##### Queensland Government response:

The Queensland Government thanks the Committee for its consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

##### Recommendation 2

*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.*

##### Queensland Government response:

The Queensland Government supports this recommendation.

On 11 March 2021, the Queensland Government announced a wide-ranging review into the experience of women across the criminal justice system to be undertaken by the

Women's Safety and Justice Taskforce (Taskforce), led by the Honourable Margaret McMurdo AC.

The Taskforce will consult widely and make recommendations on:

- how best to legislate against coercive control as a form of domestic and family violence;
- the need for a new offence of "commit domestic violence"; and
- other areas warranting future reform to improve women's experience in the criminal justice system, including both legislative and non-legislative measures.

The Taskforce has been asked to provide its recommendations on how to best legislate against coercive control by October 2021 and to deliver recommendations to Government on how to best improve women's experience in the criminal justice system by March 2022.

### **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.*

#### **Queensland Government response:**

The Queensland Government supports this recommendation.

To address the Committee's recommendation, the Government will:

- table an Erratum to the Explanatory Notes to the Bill to clarify that Chapter 32 of the Criminal Code is not limited in application to sexual offending against adults; and
- consult with the Youth Advocacy Centre Inc and other relevant stakeholders to better understand their concerns regarding the application of Chapter 32 of the Criminal Code to youth offenders.

### **Recommendation 4**

*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.*

#### **Queensland Government response:**

The Queensland Government supports this recommendation.

To address the Committee's recommendation, the Government will move amendments during consideration in detail of the Bill to provide additional payment powers under section 364 of the *Legal Profession Act 2007*.

## ISSUES RAISED IN RELATION TO STATEMENT OF COMPATIBILITY:

The Committee noted the statement of compatibility tabled for the Bill did not address how the following provisions are compatible with human rights under the *Human Rights Act 2019*:

### ***ID scanning***

*The statement of compatibility does not address whether the provisions concerning ID scanning in Part 7, Division 2 of the Bill are compatible with the right to privacy in section 25.*

### **Queensland Government response:**

The Queensland Government advises that privacy protections under the *Privacy Act 1988 (Cth)* apply when recording, accessing or disclosing any personal information from operating an ID scanner at a licensed premises, unless the disclosure of personal information is otherwise required or permitted by law. The amendments to the ID scanning provisions operate within this existing framework and do not raise any new limitations on the right to privacy.

### ***Publication of gaming and liquor decisions***

*The statement of compatibility does not sufficiently explain how the publication requirement reasonably limits the right to privacy. In particular, it does not explain how publishing personal information of individuals named in a decision achieves the purpose of 'providing greater rigour and transparency around the liquor and gaming machine licensing regimes'.*

### **Queensland Government response:**

The Queensland Government advises the Bill protects the right to privacy of applicants by ensuring any sensitive or confidential information relating to the applicant, or persons associated with the applicant, is not publicly released when publishing a decision online. Information regarding the identity of applicants for liquor and gaming licences is already publicly available, due to existing legislated requirements such as the keeping of publicly available registers and the advertising of applications. The publishing of personal information of individuals named in a decision achieves the purpose of providing greater rigour and transparency around the liquor and gaming machine licensing regimes by allowing members of the community, including those potentially impacted by the operation of the licence, to have knowledge of who holds the licence. This will allow community members to monitor and engage with licensees regarding their ongoing achievement of the objectives of the *Liquor Act 1992* and the *Gaming Machine Act 1991*.

It is noted that Victoria keeps publicly-accessible registers of liquor and gaming licences, which include the name of the licensee or nominee for the licence (see <https://www.vcqlr.vic.gov.au/gaming-decisions-2020>). The Victorian Commission for Gambling and Liquor Regulation, the independent liquor and gambling regulator, makes public its liquor and gaming decisions and reasons for decision. These published decisions include the name of the licensee, as proposed by the Bill. Similar to Queensland, Victoria has in place the Victorian Charter of Human Rights and Responsibilities Act 2006, which includes the right to privacy.