



CARE LEAVERS AUSTRALASIA NETWORK

CLAN is a National, Independent, Peak Membership Body which supports, represents and advocates for people who were raised in Australian Orphanages, Children's Homes, Foster Care & Other Institutions.

Submission to the QLD Law Reform Commission:

**Review of Consent Laws and the excuse of
mistake of fact.**

CLAN - Care Leavers Australasia Network is a national, independent, peak membership body which represents and advocates for those who were raised in Australia and New Zealand's Orphanages, Children's Homes, Missions and Foster Care. There were more than 500 000 children in Australia who grew up in 900 plus Orphanages, Children's Home, Missions and foster care. CLAN's main objective is to assist and support Care Leavers and their families through the wide variety of work we do including but not limited to advocacy, counselling, casework, records searching and publishing Care Leaver's stories.

CLAN would like to thank the QLD Law Reform Commission for giving us the opportunity to comment on your current draft proposals regarding consent in relation to sexual offences. Considering CLAN's role is primarily advocating for Care Leavers, CLAN feels that the majority of issues raised in your consultation paper, while commendable are not within our area of expertise. We do however believe we have a role in using our knowledge of the child welfare system and how it has negatively impacted upon Care Leavers to inform and educate current public policy. Whilst CLAN are not legal experts, our point of view comes from our almost twenty years supporting and advocating for Care Leavers, and seeing the injustices of the legal system carried out upon them while they pursue justice for the crimes that were committed against them.

Therefore, we do feel obligated to comment on one particular aspect of your consultation paper, that being the section where 'consent is not freely and voluntarily given'. In particular, CLAN would like to discuss 'consent obtained by exercise of authority'. Whilst CLAN is pleased to see the consideration of negating consent due to the abuse of authority, we feel that the current legislation in QLD concerning this area is not strong enough nor specific enough and allows for the victimisation of the vulnerable.

The proposed legislation requires that authority be 'exercised' over a person to the degree where the complainant is unable to agree freely and voluntarily. Whilst this law may possibly be appropriate for those who are adults and are living freely and making their own decisions, this piece of legislation is highly inappropriate for 16 or 17 year olds who are living in the child welfare system and are being taken advantage of by adults whom they trust. Just because a child is old enough to give sexual consent it does not mean they are not still a child. This is especially true for children who are state wards and living in foster care, kinship care or in some sort of group home or other institution. Giving consent in these situations does not make a sexual relationship with a child in their care, acceptable in any form, and it definitely shouldn't be legal.

The Royal Commission in their Criminal Justice Report recommended:

State and territory governments should review any position of authority offences applying in circumstances where the victim is 16 or 17 years of age and the offender is in a position of authority (however described) in relation to the victim.

If offences require more than the existence of the relationship of authority (for example that it be abused or exercised), states and territories should introduce legislation to amend the offences so that the existence of the relationship is sufficient.

In this review of consent laws, special consideration needs to be given to children who are legally old enough to consent but who are obviously still children and as such particularly vulnerable to abuses of power. Whilst the clear intent of these laws regarding exercising authority in order to obtain consent allows for differentiation between the presence of authority and utilising that authority CLAN would argue they are one and the same, especially when it comes to children in the child

welfare system. CLAN find the notion that there can be a position of authority, trust, or responsibility and there not be some element of inequality perplexing.

It must be understood that authority is as much psychological state of mind as it is something tangible that can be utilised. Even if those in a position of authority do their best to not 'exercise' their authority in obtaining consent, the authority still exists and plays a role in the mind of the other person who does not have the same authority. Expecting a child (especially one that has a traumatic background due to being in the child welfare system) to wade through these complex psychological matters and decide whether the party who has the authority is not leveraging it in some way or will not in the future is absurd.

Our main concern is with the child welfare system and ensuring that those in care today are not sexually abused or taken advantage of by those who are in a position of power or trust, especially by those who are entrusted and paid to care for their wellbeing.

It must also be remembered that children in care are particularly vulnerable and may have already been sexually, physically, or psychologically abused, and may also already be suffering from low self esteem and trust issues. All these factors can contribute to a child feeling more pressured to consent or wanting to please so they are not 'abandoned' again. The unique issues surrounding children in care and the abuse of those in a position of authority or trust are unique and must be treated as such.

Thus, it is CLAN's recommendation that the QLD Law reform Commission either amends this section regarding 'exercising authority' and its negation of consent, or it develops a new subsection specifically covering children in state care and the unique issues regarding consent and authority. The Royal Commission into Institutional responses to child sexual abuse has reviewed this area and believes that this legislation NEEDS to be introduced to protect some of our most vulnerable children, and it is the states job to do this.

We urge the QLD Law Reform Commission to reconsider the Royal Commission's recommendations regarding abuse of a position of authority or trust. Specific legislation needs to be introduced to protect the children of QLD, who have already been removed from their biological families in order to be protected. Not using this opportunity when considering the law of consent is completely wasted if you do not implement legislation to protect children in care who are used and abused sexually everyday by the people who are meant to be protecting them. Those perpetrators who are savvy enough to use the child's psychological state against them to get consent need to be punished and need to be stopped. You have the perfect opportunity now to do this, please do not waste it.