

FACULTY OF LAW AND BUSINESS
Thomas More Law School
SEMESTER 1, 2021
LAWS106: Criminal Law and Procedure

ASSIGNMENT 2
INSTRUCTIONS

Your task is to examine the attached document and provide the requested opinion/advice. The document presents a hypothetical scenario involving a criminal law problem. The scenario needs to be read carefully, and in conjunction with your reading in this course. You are advised to start EARLY, as the issues here reasonably complex, and will require a good deal of background reading for you to recognise them.

Your task is to **write an opinion on criminal liability** that sets out the law and evidence that explains your view on:

- 1) The likely charge or charges, and why;
- 2) Whether the matter should proceed as an indictable or summary offence.

You are required to identify the specific law you are relying on, the explanation/interpretation of that law, and its application to the evidence available in reaching your conclusion.

In providing your opinion, please apply the law relevant to the State in which you are located.

ASSIGNMENT CONDITIONS

1. Your work is to present in the form of a opinion/letter of advice. Copies of letters of advice/opinions are available on the LEO site if you need a template.
2. Students shall, unless unforeseen circumstances arise, present assignments in a word-processed form.
3. Your work should be in 12 font, and not exceeding 2500 words. Your paper must be fully referenced and footnoted in compliance with the Australian Guide to Legal Citation.
4. A bibliography is not required.
5. This assignment is worth 35% of course marks.
6. Unless otherwise specified, you should apply the law in your state of residence.
7. **This assignment is due no later than 5.00pm on FRIDAY, 30 APRIL, 2021.**
8. Your assignment needs to be submitted via the Turnitin Portal on the LEO Site under the "Assessments" Tile.
9. Please note that timely submission is expected. Extensions, if granted, will be minimal.
10. **This work must be your own. You are not permitted to work with any other person in this assignment. Any academic misconduct will be referred for disciplinary action.**

BACKGROUND

During late 2020, the State Parliament introduced a range of reforms to sex offences. These reforms made radical changes to the existing law in relation to sex offences in the State.

The **Crimes (Sex Offences) Reform Bill** was introduced by the Attorney General, the Hon. Sam Knobel, on 2 November 2020. During the Second Reading Speech, he stated:

“Tonight, we are pleased to introduce sweeping reforms to the criminal law of this state. The government intends to completely reform sex offences. In particular, we are simplifying the law as it applies to sex offences in this state. The law here has grown too cumbersome and complex, and frequently fails to deliver justice to the victims of crime. I therefore commend the bill to the House.”

The following Act/Bill was tabled in the Lower House on 2 November 2020. It was passed by both Houses on 2 November.¹ Extracts are set out below.

Crimes (Sex Offences) Reform Act 2020

Act No. 65 of 2020

An Act to reform the criminal law relating to sex offences

[Assented to 28 November 2020]

The Parliament enacts –

1 Short Title

This Act may be cited as the *Crimes (Sex Offences) Reform Act 2020*.

2 Criminal law repealed

This Act repeals Part [x] of the [relevant statute].

It is the express intention of Parliament that all sex offences otherwise contained in the criminal law of the state are repealed as of the commencement date, and the provisions of this Act replace them.

3 Category 1 Sex Offence

(a) Any person who commits a category 1 sex offence is guilty of an offence.

Maximum Penalty: 15 years

(b) Any person who commits a category 1 sex offence in circumstances of aggravation is guilty of an offence.

Maximum Penalty: 25 years

¹ Queensland is a Unicameral Parliament and only has one House. Assume the Bill was passed.

(c) Any person who commits a category 1 sex offence in circumstances of special aggravation is guilty of an offence.

Maximum Penalty: Life

(d) For the purposes of this Act, a **category 1 sex offence** means:-

Any sexual connection without consent occasioned by the penetration or connection to any extent of the vagina, anus or mouth of any person by any part of the body of another person, or any object manipulated by another person.

(e) For the purposes of this Act, **circumstances of aggravation** means:-

Any circumstance in which the accused-

- (i) Intentionally or recklessness inflicted actual bodily harm;
- (ii) Threatened to inflict actual bodily harm on any person;
- (iii) The victim is under 16 years of age;
- (iv) The victim is under the authority of the accused;
- (v) The victim has a serious physical or cognitive disability;
- (vi) The accused breaks into and enters the dwelling house of the victim for the purpose of committing the offence
- (vii) The accused deprives the victim or another person of their liberty.

(f) For the purposes of this Act, **circumstances of special aggravation** means:-

Any circumstance in which the accused-

- (i) The accused was in the company of another person;
- (ii) Intentionally or recklessly inflicted a serious injury;
- (iii) The accused was armed with an offensive weapon or instrument.

(g) A person sentenced to imprisonment for life for an offence under this section is to serve that sentence for the term of the person's natural life.

4 Category 2 Sex Offence

(a) Any person who commits a category 2 sex offence is guilty of an offence.

Maximum Penalty: 7 years

(b) For the purposes of this Act, a **category 2 sex offence** means:-

Any touching without consent by the accused of another person with any part of the body, or object, that a reasonable person would consider in the circumstances to be indecent.

(c) An offence under this section may be dealt with summarily on the election of the prosecution.

15 Consent

(1) A person consents to sexual activity if the person freely and voluntarily agrees to sexual activity in the knowledge of scope of that activity.

(2) A person charged with an offence under this Act has a legal burden to satisfy the court on the balance of probabilities that they had obtained the consent of the complainant.

(3) A person does not consent to sexual activity if –

- (i) The person is under 16 years of age;
- (ii) The person is asleep;
- (iii) The person is substantially intoxicated;
- (iv) The person is unconscious;
- (v) Consent has been obtained through force, terror or trick;
- (vi) Consent has been obtained through any misrepresentation.

25 Commencement

This Act commences on 1 April 2021.

26 Transitional Provisions

(a) This Act does not have retrospective effect.

(b) A person charged with a sex offence prior to the commencement date shall be subject to the law as it applied prior to the commencement date.

HYPOTHETICAL

Assume that you are working for the Attorney-General's office as a solicitor. The Attorney-General is responding to a matter that has been raised by the Director of Public Prosecutions concerning an indictment being prepared concerning a Mr Wayne Pollock. A summary of the relevant brief has been set out below.

Pollock is 30 years of age and works as a lawyer at Cash, Grab and Runn, a large firm specialising in commercial litigation. Pollock is a senior associate, single, and has no prior convictions.

Pollock was arrested by police on the 7th of April 2021, following a complaint about two sex offences committed this year. He has been charged with two offences and released on bail.

Pollock has been charged with offences under section 3(b) and 4(a) of the *Crimes (Sex Offences) Reform Act 2020*.

The complainant at Amanda Tomlins, 28, who also work at Cash, Grab and Runn as a senior associate. Tomlins gave a statement to police that formed the basis of these charges. Tomlins is single and has no prior convictions.

Count 1 – Category 2 Sex Offence

On the 26th of January 2021, a work function was held to celebrate Australia Day. The event took place at a tennis club that was booked by the partnership. Tomlins stated there was a good deal of alcohol consumed on the premises, and that the function was well attended. She stated that towards the end of the evening she went to the bathroom, and then planned to call a taxi to go home. She stated that when she came out of the bathroom that Pollock was waiting and engaged her in some casual conversation. He congratulated her on a recent merger of a large client and spoke about how hard it was to make partner. Pollock then asked if she would like to have dinner with him. She said that she would. The stated there had always been some affection between them, so was quite pleased about the date offer. She said that he then approached her, and they kissed. The kiss was mutual. However, she said that Pollock then moved her against the wall, continued to kiss, and then pushed his hand down her skirt to feel her crotch over her underwear. She then pushed him away and left the venue angrily.

Count 2: Category 1 Sex Offence

Tomlins stated that she had not spoken again to Pollock after the event until the 5th of April. She was able to avoid him as they worked on different floors. Things changed on 5 April. On that day Tomlins was advised by the Managing Partner that she had been assigned to a large merger that was being overseen by Pollock, and that she would be working for him on the project. She initially asked not to for “personal reasons”, but the Managing Partner told her that unless there was a formal complaint lodged, there was no reason not to work with Pollock, and that if it was not serious enough to lodge a complaint, it was something she would need to “sort out”. Tomlins decided to speak with Pollock.

Tomlins went to Pollock’s office at approximately 6PM. She stated that the conversation was “strained”, but that she explained to him that they had to work together and did not want the past to interfere with their work. She claimed that Pollock was fairly cold and did not say much. She stated that Pollock then said, “If you’re going to work for me, you’ll have to do something for me.” She stated that Pollock then locked the door to his office and proceeded to have intercourse with her. She said she did not know what to do as she was shocked by what was happening. In her statement she denied consenting to sex.

The following day she reported the matter to police.

The Attorney General has written to his legal team in the following terms.

“I have received advice from the Director of Public Prosecutions about concerns with the prosecution of this case. Because of the introduction of new law, there is some confusion as to the applicable law. The DPP have expressed concerns about future appeals, especially with respect to Count 2 and the relevant fault element for that offence. I therefore require your advice in the following:-

1. Has Wayne Pollock been charged with the right offences?
2. If not, what are the rights offences?
3. In relation to Count 2, is this a strict liability offence?
4. If not, what fault element would apply.

I require your written advice no later than close of business on 30 April 2021.”