

Creevey Russell /LAWYERS

excellence in law, service and communication



FEATURE ARTICLE — MISTAKE OF FACT

Section 24 of the *Criminal Code Act 1899* (Qld) contains the defence that a person is not criminally responsible for an act such as a sex offence if the person held an honest and reasonable, but mistaken, belief there was consent involved.

The Queensland government has called for the law to be reviewed by the Queensland Law Reform Commission, with a recommendation expected in early 2020.

Creevey Russell Principal Dan Creevey said the suggestion that the mistake of fact defence allows an offender to walk free in sexual offence type matters is “simply wrong”.

“Creevey Russell Lawyers believes the criticisms of the section 24 defence are misinformed and there needs to be greater community awareness as to how the law operates,” Mr Creevey said.

“The mere fact that the defence may be raised does not dictate that a jury will accept the defence is applicable in any

given matter. That is because section 24 contains both a subjective and objective component. A defendant cannot just raise section 24 and expect to be let off – juries apply their common sense, and the subjective component of the test provides that safeguard.”

Creevey Russell Senior Associate Trent Jones said subjectively, an accused person may hold an honest and mistaken belief regarding the existence of anything, such as the fact a person is consenting to sexual intercourse.

“Objectively, however, it is a matter – most commonly reserved for juries – to determine whether or not that mistaken belief held by a defendant was reasonable having regard to all the circumstances of a case,” he said.

“Trials involving sexual offences are most often run before a jury. The role of a jury in a criminal trial is to determine whether or not an accused person is guilty or not guilty of the alleged offence. A jury reaches their verdict by adopting the role of the sole judge of the fact, receiving guidance

and direction regarding the application of the law by the presiding judge.

“A mere mistake of a defendant is simply not enough to enliven a section 24 defence. For a section 24 defence to be successful, a jury must form the view that the honest, but mistaken, belief held by the defendant, in their particular circumstances, was held on reasonable grounds.

“The section 24 defence is not a matter whereby an accused person can simply state that they honestly believed a complainant was consenting and automatically expect to be acquitted. If that were the case, there would certainly be significant issues with the justice system, but that is not the way the section 24 defence is designed to operate.

“Juries have accepted the existence of a mistake of fact defence and acquitted accused people previously, but, similarly, there have been instances where juries have rejected a mistake of fact defence and convicted a defendant.”

YOUR CRIME & MISCONDUCT LAWYERS



Dan Creevey
Principal



Trent Jones
Senior Associate



Josh Mountford
Associate



Samantha Robinson
Lawyer

With offices in Brisbane, Toowoomba, and Roma, our office is ready and able to represent you, or those close to you, in legal matters should the need arise both now and into the future.

BRISBANE'S DRUG & ALCOHOL COURT

Drug related offending has become increasingly prevalent in recent times. In 2017-18 illicit drug offences were the most common offence type totalling 78,167 offenders nationally.

Drug offences have been flooding the Magistrates and District Courts, leading to increased prison populations and a revolving door of recidivism.

Given this current national drug crisis, the court system has been required to adapt to the new challenges it faces by the overwhelmingly large amount of drug offences being heard each day.

To address these needs within the community, the government re-implemented

the Drug and Alcohol Court in Brisbane in January 2018 to alleviate the high caseload pressure of the Brisbane Magistrates Court. The Drug and Alcohol Court is now legislated under the *Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017* (the Act) that was passed on October 2017. The Act now enables a Drug and Alcohol Treatment Order to be included under Queensland's sentencing regime.

Drug and Alcohol Court was trialled in Queensland in 2013, however was abolished by the Liberal National party to save costs. It was estimated that they saved \$35.7 million dollars over a four-year period by scrapping the

Queensland Drug and Alcohol Court and Murri Court. Since then both courts have re-established.

Magistrates refer eligible members of the community to the Drug and Alcohol Court where they are subject to Treatment Order requirements. This was implemented after a Drug and Specialist Court Review identified it to be "an evidence-based and cost-effective approach reflecting modern best-practice".

Read the full article on our website.

<https://www.creeveyrussell.com.au/brisbanes-drug-alcohol-court/>



RECENT RESULT

Armed Robbery – Our crime and misconduct division recently represented an individual charged with armed robbery. The matter proceeded by way of sentence before the District Court of Queensland, and our office (and counsel) were able to secure an outcome that resulted in the client avoiding being sentenced to actual custody. This is an outstanding and unusual result having regard to the seriousness of the charge. Counsel remarked prior to sentencing that it was very rare to have such good quality materials to work with for a sentence. The prior preparation taken by our crime and misconduct team resulted in counsel being provided with sufficient materials to support a submission that a term of imprisonment requiring actual custody was not appropriate in all the circumstances – a submission the presiding judge ultimately agreed with.

LATEST ARTICLES

Visit our website to read the following articles published by Creevey Russell Lawyers:

- What is the effect of an undertaking in domestic violence proceedings?
- Government gets tougher on special hardship licences

www.creeveyrussell.com.au

Brisbane · 07 3009 6555

Toowoomba · 07 4617 8777

Roma · 07 4622 7925

OUR SERVICE TO YOU

Our crime and misconduct division travels throughout Queensland, providing representation to clients on a wide variety of matters. From minor traffic offences to homicides, workplace prosecutions, environmental act breaches, and everything in between, our quality team of lawyers is dedicated to protecting and promoting our clients' best interests.

We are pleased to accept referrals from our colleagues and will respect your primary relationship with your client. We seek to be able to build positive and reciprocal working relationships with your organisation to supplement the services offered by your firm. We are passionate about representing those who find themselves in legal situations they may not have been expecting, guiding them through the process.

OUR SERVICES INCLUDE

Summary offences; Private criminal offences; CCC proceedings; Environmental Protection Act prosecutions; Animal prosecutions; Vegetation Management Act prosecutions; Health investigations; OHO and AHPRA investigations; Employment matters and internal discipline matters; White collar prosecutions; Director's breaches; Misconduct proceedings; Show cause proceedings.