

COMMUNITY LEGAL CENTRES TASMANIA

10 February 2020

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001
attn: Oliver Hinss

via email: haveyoursay@justice.tas.gov.au

To Oliver,

Re: *Renaming sexual offences - removing outdated language in Chapter XIV of the Criminal Code Act 1924 Proposal Paper*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the Department of Justice 'Renaming sexual offences - removing outdated language in Chapter XIV of the *Criminal Code Act 1924*' Proposal Paper ('the Proposal Paper'). Our response is limited to Chapter XIV sexual offences.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We strongly support the Tasmanian Government's intention to amend and update the names of some sexual offences so that they better reflect community expectations and accurately describe the crime alleged to have been committed.

- ***Chapter XIV of the Criminal Code Act 1924***

Currently, Chapter XIV of the *Criminal Code Act 1924* (Tas) ('the Act') is headed 'Crimes against Morality' and except for the crime of rape¹ contains all the sexual crimes in Tasmania. We agree with the rationale set out in the Proposal Paper for the amendment of the heading:²

Traditionally, crimes against morality are a category of crime that is considered victimless usually to reflect that the acts that constitute the crime are committed

¹ *Criminal Code Act 1924* (Tas), Chapter XX - Rape: Abduction: Stalking and Bullying.

² Department of Justice, *Renaming sexual offences - removing outdated language in Chapter XIV of the Criminal Code Act 1924 Proposal Paper* at 4-5.

against consenting adults. As a result of shifts in perceptions of what is appropriate and inappropriate behaviour, the use of 'morality' to describe contemporary sexual crimes is not appropriate.

Crimes against children are not victimless in the same way that other crimes of morality such as prostitution, gambling and illicit drug use are. Relevantly, the current 'Crimes against Morality' contains no reference to the victimless crimes mentioned above, and almost solely consist of crimes committed against children. Of the twenty-three crimes currently listed under 'Crimes against Morality' the overwhelming majority (18 out of 23 crimes) are crimes committed against children and young people.³

We agree with the Proposal Paper that the name of Chapter XIV (Crimes against Morality) should be changed to use factual or descriptive language. Given that Chapter XIV contains all the sexual crimes in Tasmania other than rape, we recommend 'Sexual offences' as a more factually descriptive title.

- ***Sexual Intercourse with Young Person***

We strongly agree with the Proposal Paper that the crime of 'sexual intercourse with a young person' in section 124 of the Act should be changed. In our opinion, renaming the crime 'child sexual abuse' or 'sexual abuse of a child or young person' is consistent with the terminology used by the Royal Commission into Institutional Responses to Child Sexual Abuse.⁴

- ***Abolishing use of 'unlawful' from sexual crimes involving young people***

Along with the *Criminal Code Act 1924* (Tas) adopting the phrase 'child sexual abuse', we strongly agree with the Proposal Paper and its acknowledgement that the word 'unlawful' when used in conjunction with sexual offences against children and young persons may "sanitise the offence and may not accurately reflect the crime committed".⁵ To ensure consistency within the *Criminal Code Act 1924* (Tas) we support the renaming of section 125 which is currently headed 'person permitting unlawful sexual intercourse with young person on premises' to 'permitting child sexual abuse' or 'permitting the sexual abuse of a child or young person'. For the same reasons, we support the amendment of 'procuring unlawful sexual intercourse with person under 17 years' in section 125C of the Act and instead adopting the phrase 'procuring child sexual abuse'. And finally, we support the amendment of 'communications with intent to procure person under 17 years' in section 125D of the Act and instead renaming the offence 'communication with intent to procure child sexual abuse'.

- ***Maintaining a sexual relationship with a young person***

We strongly agree that the crime of maintaining a sexual relationship with a young person should be changed. As it is currently expressed the term implies that there is consent between an adult and child in circumstances where the consent either does not exist or cannot exist due to the power imbalance.

³ The only five crimes not expressly involving children are section 122 Bestiality, section 136 Warning relating to uncorroborated evidence, section 137 Indecency, section 138 Obscene publications and section 139 Misconduct in respect of human remains of the *Criminal Code Act 1924* (Tas).

⁴ See for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Commonwealth of Australia 2017).

⁵ Department of Justice, *Renaming sexual offences - removing outdated language in Chapter XIV of the Criminal Code Act 1924 Proposal Paper* at 6.

To ensure consistency with the new crime of 'persistent family violence' we believe a more appropriate term would be 'persistent child sexual abuse'. As the Proposal Paper also notes, the effect of this change would also bring Tasmania into line with the approach taken in New South Wales, Victoria, South Australia and Western Australia.

- **Abolishing use of 'indecent' from sexual offences**

We agree with the Proposal Paper that the use of the word 'indecent' has "fallen out of modern use"⁶ and that a more appropriate phrase for the crime of indecent act with a young person in section 125B of the Act is 'engaging a child in a sexual act'. Support for this amendment is found in New South Wales and Victoria which have both removed the use of the term indecent.⁷

We also support the renaming of 'indecent assault' in section 127 of the Act with 'sexual assault' which would also have the advantage of ensuring consistency with Victoria, Queensland and the Australian Capital Territory.⁸

Finally, the offence of 'indecent' in section 137 of the Act should be replaced by 'sexual act' or 'sexual activity directed at another person'.

- **Sexual Intercourse with Person with Mental Impairment**

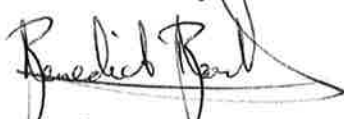
We support the Proposal Paper's intention to replace the term 'sexual intercourse with person with mental impairment' with 'sexual abuse of a person with mental impairment'.

- **Procuring by Threats, Fraud or Drugs**

We agree with the Proposal Paper that the crime of 'procuring by threats, fraud or drugs' in section 129 of the Act is "ambiguous" because it does not describe the element of sexual intercourse that defines the crime. We support the proposed renaming to 'procuring a person for sexual abuse by threats, fraud, or drugs'.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁶ Department of Justice, *Renaming sexual offences - removing outdated language in Chapter XIV of the Criminal Code Act 1924 Proposal Paper* at 9.

⁷ See the *Crimes Act 1958* (Vic) and *Crimes Act 1900* (NSW).

⁸ See section 40 of the *Crimes Act 1958* (Vic); sections 51-53 of the *Crimes Act 1990* (ACT) and section 352 of the *Criminal Code Act 1899* (QLD).