

TASMANIA

**CRIMINAL CODE AND RELATED LEGISLATION
AMENDMENT BILL 2018**

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**CRIMINAL CODE AND RELATED LEGISLATION
AMENDMENT BILL 2018**

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Children, Young Persons and Their Families Act 1997*, the *Criminal Code Act 1924*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Police Offences Act 1935* and the *Sentencing Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Criminal Code and Related Legislation Amendment Act 2018*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

Criminal Code and Related Legislation Amendment Act 2018
Act No. of 2018

s. 3 Part 2 – Children, Young Persons and Their Families Act 1997 Amended

**PART 2 – CHILDREN, YOUNG PERSONS AND THEIR
FAMILIES ACT 1997 AMENDED**

3. Principal Act

In this Part, the *Children, Young Persons and Their Families Act 1997** is referred to as the Principal Act.

4. Section 14 amended (Informing of concern about abuse or neglect or certain behaviour)

Section 14 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of *prescribed person* in subsection (1):

member of Parliament means the following:

- (a) a member of the Parliament of the Commonwealth who is ordinarily resident in this State;
- (b) a member of the Parliament of this State;

*No. 28 of 1997

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Act No. of 2018

Part 2 – Children, Young Persons and Their Families Act 1997 Amended

s. 4

(b) by inserting the following paragraphs after paragraph (j) in the definition of *prescribed person* in subsection (1):

(ja) a member of the clergy of any church or religious denomination; and

(jb) a member of Parliament; and

(c) by omitting “persons.” from paragraph (l) of the definition of *prescribed person* in subsection (1) and substituting “persons; and”;

(d) by inserting the following definition after the definition of *prescribed person* in subsection (1):

religious confession has the same meaning as in section 127 of the *Evidence Act 2001*.

(e) by inserting the following subsection after subsection (6):

(7) Despite section 127 of the *Evidence Act 2001*, a member of the clergy of any church or religious denomination is not entitled to refuse to comply with subsection (2) on the grounds that he or she formed the belief or suspicion or gained the knowledge as a consequence of information communicated to that

Criminal Code and Related Legislation Amendment Act 2018
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s. 5 Part 2 – Children, Young Persons and Their Families Act 1997 Amended

member of the clergy during a
religious confession.

5. Section 16 amended (Confidentiality of person informing of knowledge, belief or suspicion of abuse or neglect or certain behaviour)

Section 16 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of *notifier* in subsection (1):

law enforcement agency means –

- (a) the Police Service or the police force of another State or a Territory or of an overseas jurisdiction;
or
- (b) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or a Territory or an overseas jurisdiction;
- (b) by omitting from subsection (2)(c) “subsection (3).” and substituting “subsection (3); or”;

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Part 2 – Children, Young Persons and Their Families Act 1997 Amended

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(c) by inserting the following paragraph after paragraph (c) in subsection (2):

(d) is made to a law enforcement agency.

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Part 3 – Criminal Code Act 1924 Amended

PART 3 – CRIMINAL CODE ACT 1924 AMENDED

6. Principal Act

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

7. Schedule 1 amended (Criminal Code)

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting the following section after section 105 in Chapter X:

105A. Reporting crimes

- (1) In this section –

proper authority has the same meaning as in section 162A;

religious confession has the same meaning as in section 127 of the *Evidence Act 2001*;

reportable offence means the following:

- (a) a crime listed in Appendix D (other than crimes under section 245, 268

*No. 69 of 1924

Criminal Code and Related Legislation Amendment Act 2018
Act No. of 2018

Part 3 – Criminal Code Act 1924 Amended

s. 7

or 268A or crimes under Part 2 of the *Misuse of Drugs Act 2001*);

(b) a crime under section 125B, 125D, 127, 178, 178A, 178B, 189 or 191;

(c) an offence against section 35(3) of the *Police Offences Act 1935*.

(2) A person is guilty of a crime if the person –

(a) has information that leads the person to form a reasonable belief that a reportable offence has been committed; and

(b) fails without reasonable excuse to disclose that information to a police officer as soon as practicable.

Charge: Failing to disclose information relating to a reportable offence.

(3) Without limiting the matters that may constitute a reasonable

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s. 7

Part 3 – Criminal Code Act 1924 Amended

excuse for the purposes of subsection (2), a person is excused from disclosing information to a police officer under that subsection if –

- (a) the person fears on reasonable grounds that disclosing the information would endanger the safety of any person (other than the person reasonably believed to have committed, or to have been involved in, the reportable offence); or
- (b) the person fears on reasonable grounds that, as a consequence of disclosing the information, he or she will be subject to intimidation or harassment; or
- (c) reporting the information would disclose information that is privileged on the ground of legal professional privilege; or
- (d) the person believes on reasonable grounds that –

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Part 3 – Criminal Code Act 1924 Amended

s. 7

- (i) another person has already reported the information to a proper authority; or
 - (ii) a proper authority already has the information.
- (4) Despite section 127 of the *Evidence Act 2001*, a member of the clergy of any church or religious denomination is not entitled to refuse to disclose information under subsection (2) on the grounds that the information was communicated to that member of the clergy during a religious confession.
- (b) by omitting subsection (1) from section 125A and substituting the following subsection:
 - (1) In this section –
 - unlawful sexual act* means an act that constitutes an offence against –
 - (a) section 124, 125B, 126, 127, 133 or 185; or
 - (b) section 35(3) of the *Police Offences Act 1935* –

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Part 3 – Criminal Code Act 1924 Amended

whether committed
before, on or after the
commencement of this
section.

- (c) by inserting in section 125D(1) “, and to any person,” after “means”;
- (d) by omitting the definition of *unlawful sexual act* from section 125D(2) and substituting the following definition:

unlawful sexual act means an act that would, if committed in relation to a person under the age of 17 years, constitute an offence against –

- (a) section 124, 125B, 126, 127, 138 or 185; or
 - (b) section 35(3) of the *Police Offences Act 1935*.
- (e) by inserting in section 125D(3) “, and to any person,” after “means”;
 - (f) by omitting subsection (5) from section 125D and substituting the following subsection:
 - (5) It is a defence to a charge under this section to prove that the person whom the accused person intended to procure to engage in an unlawful sexual act or to expose to indecent material –

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Part 3 – Criminal Code Act 1924 Amended

s. 7

- (a) was of or above the age of 15 years and the accused person was not more than 5 years older than that person; or
 - (b) was of or above the age of 12 years and the accused person was not more than 3 years older than that person.
- (g) by inserting the following subsection after subsection (2) in section 461:
- (3) The omission of section 18(3) to this Act by the amending Act is to be taken to have effect from [4 April 1924](#).

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s. 8

Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

PART 4 – EVIDENCE (CHILDREN AND SPECIAL WITNESSES) ACT 2001 AMENDED

8. Principal Act

In this Part, the *Evidence (Children and Special Witnesses) Act 2001** is referred to as the Principal Act.

9. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting “138,” after “137,” in paragraph (b)(i) of the definition of *affected child*;
- (b) by omitting paragraph (ba) from the definition of *affected child*;
- (c) by inserting the following paragraphs after paragraph (c) in the definition of *affected child*:
 - (ca) who has witnessed the following:
 - (i) a crime referred to in paragraph (b)(i);
 - (ii) a crime under section 158 or 159 of the *Criminal Code*;

*No. 79 of 2001

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Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

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- (iii) an offence against section 35(3) of the *Police Offences Act 1935*;
 - (cb) who is giving, or is to give, evidence in respect of a child sexual offence;
 - (d) by inserting the following definition after the definition of *affected child*:

affected person means the following:

- (a) an affected child;
- (b) a person who has attained the age of 18 years upon, or in respect of whom, a child sexual offence was committed when the person was a child;
- (e) by inserting the following definition after the definition of *child*:

child sexual offence means an offence, committed in relation to a child against –

- (a) section 124, 125B, 126, 127, 138 or 185 of the Criminal Code; or
- (b) section 35(3) of the *Police Offences Act 1935*;

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s. 10 Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

10. Part 2: Heading amended

Part 2 of the Principal Act is amended by omitting “**EVIDENCE OF CHILDREN AND SPECIAL WITNESSES**” from the heading to that Part and substituting “**EVIDENCE OF AFFECTED PERSONS AND SPECIAL WITNESSES**”.

11. Section 6 amended (Application for order for special hearing)

Section 6(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “child’s” and substituting “person’s”;
- (b) by omitting from paragraph (b) “child” and substituting “person”.

12. Section 6A amended (Special hearing to take and record affected person’s evidence in full)

Section 6A of the Principal Act is amended by omitting “a child’s” and substituting “an affected person’s”.

13. Section 7A amended (Audio visual record of evidence given at trial)

Section 7A of the Principal Act is amended as follows:

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Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

s. 14

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- (a) by omitting from subsection (1) “child” and substituting “person”;
 - (b) by omitting from subsection (1) “child’s” and substituting “person’s”;
 - (c) by omitting from subsection (2) “child” and substituting “person”.

14. Section 7B amended (Audio visual record may be admitted into evidence)

Section 7B of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) A judge is to admit an audio visual record made under this Part into evidence in a later civil or criminal proceedings if the judge is satisfied that –
 - (a) the audio visual record is relevant to the later proceeding; and
 - (b) admission of the evidence would not be contrary to the interests of justice.

15. Section 7C amended (Possession or dealing in video-taped evidence)

Section 7C of the Principal Act is amended as follows:

- (a) by inserting the following paragraphs after paragraph (a) in subsection (3):

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Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

- (aa) in the case of a police officer, or any other person as authorised by the Commissioner of Police, for a purpose connected with the training and evaluation of a police officer who was involved in the making of the audio visual recording; or
 - (ab) in the case of a law reform body, in accordance with an approval under subsection (4), for a purpose connected with a review by that body into the laws of evidence; or
- (b) by inserting the following subsections after subsection (3):
- (4) The Attorney General may, on application by a law reform body, approve the possession and use of an audio visual recording of evidence by that law reform body subject to such conditions as he or she considers appropriate.
 - (5) In this section –
 - law reform body* means a body or organisation prescribed for the purposes of this definition.

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Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

s. 16

16. Section 8 amended (Special witness)

Section 8(2)(b)(iib) of the Principal Act is amended by omitting “child” and substituting “person”.

17. Section 9A inserted

After section 9 of the Principal Act, the following section is inserted in Part 5:

9A. Special hearing in proceedings for child sexual offence

- (1) In a proceeding for a child sexual offence, a judge may make any one or more of the following orders in relation to a witness if the judge is satisfied that it is in the interests of justice to do so:
 - (a) an order that a special hearing be held to take and record evidence as if the witness were an affected person in respect of whom section 6 applies;
 - (b) if an order is made under paragraph (a), an order that the witness not be present at the trial.
- (2) An order made under subsection (1) may be made on the application of the prosecutor.
- (3) The defendant is to be served with a copy of, and is entitled to be heard on, an

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s. 17 Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

application for an order under
subsection (1).

PART 5 – POLICE OFFENCES ACT 1935 AMENDED

18. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

19. Section 35 amended (Common assault and aggravated assault)

Section 35 of the Principal Act is amended as follows:

- (a) by inserting in subsection (5) “, other than subsection (3),” after “section”;
- (b) by inserting the following subsections after subsection (5):

(5A) Notwithstanding anything in the *Justices Act 1959*, a complaint for the purposes of that Act in relation to an offence against subsection (3) may be made at any time.

(5B) The amendments to this section effected by section 19 of the *Criminal Code and Related Legislation Amendment Act 2018* apply –

- (a) in respect of a complaint made in relation to an

*No. 44 of 1935

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Part 5 – Police Offences Act 1935 Amended

offence against subsection
(3) whether or not that
offence was committed
before or after the
commencement of that
Act; and

- (b) whether or not a
limitation period
previously applying to the
complaint has expired
before the commencement
of that Act.

PART 6 – SENTENCING ACT 1997 AMENDED

20. Principal Act

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

21. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended by inserting after the definition of *Chief Forensic Psychiatrist* the following definition:

child sexual offence means an offence, committed in relation to a person under the age of 17 years, against –

- (a) section 124, 125B, 126, 127, 138 or 185 of the Criminal Code; or
- (b) section 35(3) of the *Police Offences Act 1935*;

22. Section 11 amended (Court may impose single, general or mixed sentence)

Section 11 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) If a court imposes a single sentence on an offender for more than one child sexual offence, the court is to identify the sentence that would have been imposed

*No. 59 of 1997

Criminal Code and Related Legislation Amendment Act 2018
Act No. of 2018

s. 23

Part 6 – Sentencing Act 1997 Amended

for each child sexual offence, had separate sentences been imposed.

23. Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)

Section 11A of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) In determining the appropriate sentence for an offender convicted of a child sexual offence, the court is –
 - (a) to take into account the sentencing patterns and practices at the time of sentencing; and
 - (b) not to take into account the sentencing patterns and practices at the time of the offence.

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Act No. of 2018

Part 7 – Repeal of Act

s. 24

PART 7 – REPEAL OF ACT

24. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.