



Tasmanian Council of Social Service Inc.

Renaming Sexual Offences February 2020



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About TasCOSS

TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low-income Tasmanians living in vulnerable and disadvantaged circumstances. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

Thank you for the opportunity to respond to the Department of Justice's review of the language used in section 125A of the *Criminal Code* in relation to the crime of 'maintaining a sexual relationship with a young person'.

TasCOSS advocates on behalf of Tasmanians living on low incomes, who often live in vulnerable and disadvantaged circumstances. Our vision is for one Tasmania, free of poverty and inequality, where everyone has the same opportunity. We advocate for public policy that values and respects the diversity of Tasmanians and makes a real difference to the lives of people who are experiencing vulnerability. We work to ensure that the human rights of all Tasmanians are integrated into government consultation processes, policy approaches and budget allocations. As the peak body for the Tasmanian community services sector, TasCOSS welcomes the opportunity to provide our representative input into new legislation and amendments to existing Bills.

Our submissions and advocacy are strongly informed by the expertise of our members and the lived experiences of the Tasmanians we represent. For this submission we consulted with our member organisations that work with both victim-survivors and perpetrators. We also consulted with members of the community legal sector.

Key Issues and recommendations

TasCOSS' approach to the review of the language of the *Criminal Code* starts from the principle that crime causes harm, and that justice requires repairing that harm.¹ Under this logic, it is imperative not only that the justice system require offenders to take responsibility for their actions and the harm that they have caused, but also that the justice system takes every step to avoid causing additional harm to victim-survivors of crime.

TasCOSS agrees with the premise of the discussion paper, and with the Royal Commission findings that inform it, that language which minimises the gravity of sexual crimes can cause further harm to victim-survivors, and that outdated language in the *Criminal Code* should be modernised to reflect current community expectations. TasCOSS supports amendments to the *Code's* language that are appropriate, consistent, and in general line with other Australian jurisdictions.

Key elements requiring updating are:

'*Crimes against morality*': Chapter XIV of the *Criminal Code*, which contains all sexual offences in Tasmania except the crime of 'Rape' (contained in Chapter X), is currently titled 'Crimes Against Morality'. TasCOSS agrees with the discussion paper that this title is inappropriate as a descriptor for sexual offences, in particular those against children, for all the reasons outlined in the discussion paper (historical conception of 'crimes against morality' as victimless crimes, inability of children to provide 'free agreement') and supports the proposed change to 'Sexual Crimes'. The retention of the word

¹ <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.bFcVAVyQ.dpbs>

'crimes' in this title is consistent with the titles of other parts ('Crimes against public order'; 'Crimes against the person') and chapters ('Crimes relating to the administration of justice'; 'Crimes endangering life or health') of the *Code*. It also conveys the severity of the acts being described: globally, there are some offences that are not punishable by law, but a crime is always a violation of law.²

'Indecent acts': TasCOSS agrees with the discussion paper that as in the case of 'morality,' 'indecenty' no longer reflects the community's understanding of the nature of the acts prohibited by this crime, and supports the proposed change to 'sexual acts' throughout.

'Maintaining a sexual relationship with a young person': TasCOSS agrees with the discussion paper that this language sanitises and minimises the exploitative and abusive nature of sexual acts with children and young people. Such language runs a serious risk of dismissing perpetrator responsibility for the harm that they have caused — particularly as regards the word 'relationship,' which strongly implies a consensual interaction. We note that the Royal Commission, although it does not appear to have made recommendations around best-practice language for naming sexual crimes against children, consistently refers to sexual acts against children and young people as 'abuse'.

We also note, however, that changing the language of this offence might carry the risk of unintended harm to victim-survivors. This is because — as argued by some respondents to a 2012 Tasmanian Law Reform Institute (TLRI) issues paper on sexual offences against young people, including the then-Director of Public Prosecutions — stronger language could discourage offenders from a guilty plea, thereby requiring a young victim-survivor to give evidence to a trial. The TLRI indeed ultimately agreed with this position, adding that renaming these crimes might also influence the perceptions of jurors and make convictions more difficult to obtain.³ Indeed, it would appear that a substantial majority of people convicted in Tasmania between 2014 and 2019 of 'maintaining a sexual relationship with a young person' (42 of 61, or nearly 70%) pleaded guilty, meaning that their victim-survivors did not have to undergo the trial process (cross-examination etc.).⁴

TasCOSS notes that four states — Victoria, New South Wales, South Australia and Western Australia — have adopted the language of "Persistent sexual abuse/exploitation of a child." We recommend that the Department conduct further research to find out whether guilty plea rates in these states have changed significantly since the change in language. Until this information is available, we cannot make a recommendation on specific language. We would appreciate the opportunity to hear what the Department learns and to re-consult with key stakeholders at that time to determine what approach appears to best serve the needs of victim-survivors.

'Sexual intercourse with a young person' and other sexual crimes against children: TasCOSS notes that the four states named above have adopted stronger language in relation to repeated sexual offending than in relation to a singular offense. We recommend that the Department conduct further research to determine why these states decided on these approaches, and any disparities between plea rates for singular offences and course-of-conduct offences. Until this information is available, we cannot make a recommendation on specific language. We would appreciate the opportunity to hear what the

² <https://thetrcompany.com/en/difference-crime-offence/>

³ Sexual Offences Against Young People, Final Report no. 18, 2012, Tasmania Law Reform Institute.

⁴ <https://www.supremecourt.tas.gov.au/publications/decisions-of-the-court/sentences-publications/>



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