

# **Renaming Sexual Offences in Chapter XIV of the *Criminal Code Act 1924***

Submission to the Tasmanian Department of Justice  
Child Abuse Royal Commission Response Unit

**7 February 2020**

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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au)

## **Introduction**

1. The ALA is grateful for the opportunity to share its to contribute to ongoing debate surrounding the naming of certain sexual offences under the Criminal Code.
2. The ALA is an organisation strongly supportive of the presumption of innocence, the requirement for guilt to be proven beyond reasonable doubt by the prosecution, and the right of defendants to a fair trial; and it is an opponent of legislative amendments that erode those protections. The ALA is also committed the fundamental principles of codification, namely that it improves access to justice and interpretation of the criminal law by lay persons.
3. The function of the name of the offence ought, in the case of newer statutory offences, succinctly to convey the elements of the offences. It needs to cover the elements exhaustively, but the closer the name of the offence to the physical elements, the better service is done to the principles of codification. The ALA cautions against an approach where, under the veil of removing “sanitised” language, the elements of the offence are obscured by the adoption of ambiguous language because it has a condemnatory tone.

## **Section 124 - sexual intercourse with a young person**

4. The ALA supports the proposal to rename this offence “unlawful sexual intercourse with a young person”. The ALA considers that a proposed name such as “child sexual abuse” does not adequately reflect the elements of the offence. The notion that “unlawful sexual intercourse” “sanitises” the act is quite mistaken. Calling it “child sexual abuse” sacrifices an accurate description of the substance of the act in favour of tone.

## **Section 125 – permitting unlawful sexual intercourse with a young person on premises**

5. The ALA supports retention of the current name.

## **Section 125A – maintaining a sexual relationship with a young person**

6. The ALA supports retention of the existing name so long as the elements of the offence remain unaltered. Whilst the ALA accepts the force of the argument that the word “relationship” has a positive connotation, it remains unanswerable in the ALA’s view that the elements of the offence involve proof of a “relationship”, and that the offence name in fact accurately describes the offending that is alleged or proven.
7. Having said this, s 125A is inelegantly drafted. The ALA would support redrafting s 125A to reduce its complexity and to ensure a better coordination between the offence provision in s 125A (2) and its conceptual overlay in s 125A (3).
8. However it might be redrafted, the ALA rejects the notion that the offence is the most serious sexual offence under the Code. It is better to characterise it as the most versatile sexual offence under the Code and that because of its versatility it can apply in both the most serious, and in the least serious, instances of offending. Herein lies the danger of sacrificing substance for tone.

## **Section 126 - Sexual intercourse with a person with a mental impairment**

9. The ALA supports changing the name of the offence to “unlawful sexual intercourse with a person with a mental impairment”.

## **Section 127 – Indecent assault**

10. The ALA supports retention of the name of the offence because a change to “sexual assault” would be inconsistent with the elements of the offence.

## **Section 129 – Procuring by threats, fraud, or drugs**

11. The ALA supports changing the name of the offence to “procuring unlawful sexual intercourse by threats, fraud, or drugs”.

## **Section 137 – Indecency**

12. The ALA supports change of the name of the offence to “Wilful indecency”. The “indecency” description pithily captures the elements of the offence.

## **Section 138 – Exhibiting obscene matter**

13. The ALA supports changing the name of the offence to “exhibiting a disgusting object or obscene show”.

## **Section 139 – Misconduct in relation to human remains**

14. The ALA supports relocating the offence.



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