

TASMANIA

**CRIMINAL CODE AND RELATED LEGISLATION
AMENDMENT (CHILD ABUSE) BILL 2018**

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**CRIMINAL CODE AND RELATED LEGISLATION
AMENDMENT (CHILD ABUSE) 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* 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 (Child Abuse) Act 2018*.

2. Commencement

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

Criminal Code and Related Legislation Amendment (Child Abuse) 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 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 the Parliament of this State; and
- (b) by omitting “persons.” from paragraph (l) of the definition of *prescribed person* in subsection (1) and substituting “persons;”;

*No. 28 of 1997

Criminal Code and Related Legislation Amendment (Child Abuse)
Act 2018
Act No. of 2018

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

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- (c) 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*.

- (d) 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 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):

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s. 5 Part 2 – Children, Young Persons and Their Families Act 1997 Amended

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”;
- (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

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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:

105A. Failing to report the abuse of a child

- (1) In this section –

abuse offence means the following:

- (a) an offence against section 124, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 130A, 133, 157, 158, 159, 165A, 166, 170, 172, 175, 176, 177, 178, 178A or 178B;

*No. 69 of 1924

Criminal Code and Related Legislation Amendment (Child Abuse) Act 2018
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Part 3 – Criminal Code Act 1924 Amended

- (b) an offence under chapter XIX or XX;
- (c) an offence of attempting to commit an offence referred to in paragraph (a) or (b);
- (d) an offence under a previous enactment that is substantially similar to an offence referred to in paragraph (a), (b) or (c);

child means a person under the age of 18 years;

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*.

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

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Act 2018
Act No. of 2018

Part 3 – Criminal Code Act 1924 Amended

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- (a) has information that leads the person to form a reasonable belief that an abuse offence has been committed against another person who was a child at the time of the alleged offence; and
- (b) fails without reasonable excuse to disclose that information to a police officer as soon as practicable.

Charge: Failing to report the abuse of a child.

- (3) A person is not guilty of an offence under subsection (2) if –
 - (a) the information was obtained by that person when he or she was a child; or
 - (b) the alleged victim of the offence to which the information relates had attained the age of 18 years at the time the information was obtained by the person and the person believes on reasonable grounds that

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Part 3 – Criminal Code Act 1924 Amended

the alleged victim does not wish the information to be reported to a police officer.

- (4) Without limiting the matters that may constitute a reasonable excuse for the purposes of subsection (2), a person has a reasonable excuse for failing to comply with 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 child abuse offence); or
 - (b) subject to subsection (5), reporting the information would disclose information in respect of which there is a lawful claim or right of privilege; or
 - (c) the person believes on reasonable grounds that –

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Part 3 – Criminal Code Act 1924 Amended

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- (i) another person has already reported the information to a proper authority;
or
 - (ii) a proper authority already has the information; or
 - (d) the information is generally available to members of the public.
- (5) 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.
- (6) A prosecution for an offence against subsection (2) is not to be commenced without the written authority of the Director of Public Prosecutions.
- (b) by inserting in section 125D(1) “, and to any person,” after “means”;
 - (c) by inserting in section 125D(3) “, and to any person,” after “means”;

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Part 3 – Criminal Code Act 1924 Amended

(d) 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 –

(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.

(e) 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.

(f) by inserting the following section after section 461:

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Act 2018
Act No. of 2018*

Part 3 – Criminal Code Act 1924 Amended

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462. Application of *Criminal Code and Related Legislation Amendment (Child Abuse) Act 2018*

Section 105A, as inserted by the *Criminal Code and Related Legislation Amendment (Child Abuse) Act 2018*, applies in respect of information obtained on or after the commencement of that Act, including if that information relates to a child abuse offence that occurred or may have occurred before the commencement of that Act.

Criminal Code and Related Legislation Amendment (Child Abuse) Act 2018
Act No. of 2018

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 omitting paragraph (ba) from the definition of *affected child*;
- (b) 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*; or
 - (cb) who is giving, or is to give, evidence in respect of a child sexual offence;

*No. 79 of 2001

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

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- (c) 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, or is alleged to have been committed, when the person was a child;
- (d) by inserting the following definition after the definition of *child*:

child sexual offence means an offence, committed in relation to a child, against section 124, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 130A, 133 or 185 of the Criminal Code;

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**”.

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s. 11 Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

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:

- (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”.

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Act 2018
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Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

s. 14

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(3) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) 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

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s. 16 Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

16. Section 7D inserted

After section 7C of the Principal Act, the following section is inserted in Part 2:

7D. Viewing of video-taped evidence by law reform body

(1) In this section –

law reform body means a body or organisation prescribed for the purposes of this definition.

(2) The Attorney General may, on application by a law reform body, approve the viewing of an audio visual recording of evidence by members of that body for the purposes of a review into the laws of evidence by that body.

(3) An approval under subsection (2) may be subject to such conditions as the Attorney-General considers appropriate.

(4) If a person has authority to possess and use an audio visual recording of evidence under section 7C, that person also has authority to play that recording to a member of a law reform body if –

(a) the playing of the audio visual recording of evidence is in accordance with an approval under subsection (2); and

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- (b) all legal proceedings in relation to the evidence given in the audio visual recording have been concluded; and
 - (c) the witness giving evidence in the audio visual recording has–
 - (i) been de-identified in the audio visual recording; or
 - (ii) in the case of a witness who has attained the age of 18 years, consented to the use of the recording by the law reform body.

17. Section 8 amended (Special witness)

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

18. 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

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s. 18 Part 4 – Evidence (Children and Special Witnesses) Act 2001 Amended

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) Without limiting the matters that may be taken into account in determining the interests of justice under subsection (1), the following matters are to be taken into account for that purpose:
- (a) whether the unavailability of the witness to give evidence in the ordinary manner would cause undue delay in prosecution;
 - (b) whether the giving of evidence in the ordinary manner by a witness might, because of the relationship between that witness and another witness, cause that witness or the other witness emotional trauma or distress.
- (3) An order made under subsection (1) may be made on the application of the prosecutor.

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- (4) The defendant is to be served with a copy of, and is entitled to be heard on, an application for an order under subsection (1).

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Part 5 – Sentencing Act 1997 Amended

PART 5 – SENTENCING ACT 1997 AMENDED

19. Principal Act

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

20. 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 section 124, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 130A, 133 or 185 of the Criminal Code;

21. 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

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Act 2018
Act No. of 2018

Part 5 – Sentencing Act 1997 Amended

s. 22

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

22. 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 to take into account the sentencing patterns and practices at the time of sentencing.

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Act No. of 2018

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Part 6 – Repeal of Act

PART 6 – REPEAL OF ACT

23. Repeal of Act

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