

TASMANIA

**CRIMINAL CODE AMENDMENT (SEXUAL
ABUSE TERMINOLOGY) BILL 2020**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Repeal of Act

PART 2 – CRIMINAL CODE ACT 1924 AMENDED

4. Principal Act
5. Schedule 1 amended (*Criminal Code*)

**PART 3 – COMMUNITY PROTECTION (OFFENDER REPORTING)
ACT 2005 AMENDED**

6. Principal Act
7. Schedule 1 amended (Class 1 offences)
8. Schedule 2 amended (Class 2 offences)
9. Schedule 3 amended (Class 3 offences)

PART 4 – EVIDENCE ACT 2001 AMENDED

10. Principal Act
11. Section 194M amended (Evidence relating to sexual experience)

PART 5 – YOUTH JUSTICE ACT 1997 AMENDED

12. Principal Act

13. Section 3 amended (Interpretation)

**PART 6 – SENTENCING AMENDMENT (PHASING OUT OF
SUSPENDED SENTENCES) ACT 2017 AMENDED**

14. Principal Act

15. Section 19 amended (Schedule 3 inserted)

**CRIMINAL CODE AMENDMENT (SEXUAL
ABUSE TERMINOLOGY) BILL 2020**

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

A BILL FOR

**An Act to amend the *Criminal Code Act 1924* and to
consequentially amend other relevant legislation**

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
Amendment (Sexual Abuse Terminology) Act
2020*.

2. Commencement

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

3. Repeal of Act

This Act is repealed on the first anniversary of
the day on which it commenced.

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 4

Part 2 – Criminal Code Act 1924 Amended

PART 2 – CRIMINAL CODE ACT 1924 AMENDED

4. Principal Act

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

5. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

(a) by omitting from the heading to Chapter XIV of Part IV “*Crimes Against Morality*” and substituting “*Sexual Crimes*”;

(b) by omitting the charge from section 124(1) and substituting the following charge:

Charge: Penetrative sexual abuse of a child [*or* young person].

(c) by omitting the charge from section 125 and substituting the following charge:

Charge: Permitting penetrative sexual abuse of a child [*or* young person] on premises.

*No. 69 of 1924

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 2 – Criminal Code Act 1924 Amended

s. 5

- (d) by omitting the charge from section 125A(2) and substituting the following charge:

Charge: Persistent sexual abuse of a child [or young person].

- (e) by omitting the charge from section 125B(1) and substituting the following charge:

Charge: Indecent act with or directed at a child [or young person].

- (f) by omitting the charge from section 125C(2) and substituting the following charge:

Charge: Procuring a child [or young person] for penetrative sexual abuse.

- (g) by omitting the charge from section 125C(3) and substituting the following charge:

Charge: Procuring a child [or young person] for indecent act.

- (h) by omitting the charge from section 125D(1) and substituting the following charge:

Charge: Grooming with intent to procure a child [or young person] for sexual abuse.

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 5

Part 2 – Criminal Code Act 1924 Amended

- (i) by omitting the charge from section 125D(3) and substituting the following charge:

Charge: Grooming with intent to expose a child [*or* young person] to indecent material.

- (j) by omitting the charge from section 126(1) and substituting the following charge:

Charge: Penetrative sexual abuse of a person with a mental impairment.

- (k) by omitting the charge from section 129 and substituting the following charge:

Charge: Procuring a person for penetrative sexual abuse by threats [*or* fraud].

- (l) by omitting from section 136(1) “chapter XIV or XX” and substituting “chapter XIV, XIVA or XX”;

- (m) by inserting the following heading after section 138:

Chapter XIVA – Human Remains

- (n) by omitting paragraphs (a) and (b) from section 335 and substituting the following paragraphs:

- (a) penetrative sexual abuse of a child [*or* young person];

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 2 – Criminal Code Act 1924 Amended

s. 5

- (b) penetrative sexual abuse of a person with a mental impairment;
- (o) by omitting from section 336 “of” first occurring and substituting “for penetrative sexual abuse of a child [*or* young person] or”;
- (p) by omitting paragraph (a) from section 336 and substituting the following paragraph:
 - (a) penetrative sexual abuse of a person with a mental impairment;
- (q) by omitting paragraphs (a) and (b) from section 337 and substituting the following paragraphs:
 - (a) penetrative sexual abuse of a child [*or* young person];
 - (b) penetrative sexual abuse of a person with a mental impairment;
- (r) by omitting paragraph (h) from section 337A(1) and substituting the following paragraph:
 - (h) penetrative sexual abuse of a person with a mental impairment;
- (s) by inserting in section 337B(1) “persistent sexual abuse of a child [*or* young person] or” after “for”;

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 5

Part 2 – Criminal Code Act 1924 Amended

(t) by omitting paragraphs (c) and (d) from section 337B(1) and substituting the following paragraphs:

(c) penetrative sexual abuse of a child [*or* young person];

(d) penetrative sexual abuse of a person with a mental impairment;

(u) by omitting from section 337B(1)(e) “young person under the age of 17 years” and substituting “child [*or* young person]”;

(v) by inserting the following section after section 463:

464. Transitionals on the commencement of the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020*

(1) In this section –

commencement day means the day on which the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020* commences;

relevant crime means a crime where the charge for the crime is amended by the *Criminal Code Amendment (Sexual*

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 2 – Criminal Code Act 1924 Amended

s. 5

Abuse Terminology) Act
2020.

- (2) For the avoidance of doubt, the amendments to this Act made by the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020* –
- (a) are not intended to affect, or amend, the elements of a relevant crime as they exist on the commencement day; and
 - (b) apply in relation to an offence, whether or not the offence was committed before, on or after the commencement day.
- (3) A charge for a relevant crime is to be amended, to refer to the charge as amended by the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020*, at the next appearance of a person charged with the crime if –
- (a) the person was charged in respect of the crime by reference to the charge as in force for that crime

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 5

Part 2 – Criminal Code Act 1924 Amended

before the commencement day; and

(b) on, and after, the commencement day, proceedings in respect of the crime so charged have not been finally determined.

(4) A reference in any Act to a charge in respect of a relevant crime is taken, on and after the commencement day, to include a reference to the charge –

(a) as in force immediately before the commencement day; and

(b) as in force on and after the commencement day.

(w) by omitting

Section 124 Sexual intercourse with young person under the age of 17 years

Section 125A Maintaining sexual relationship with young person under the age of 17 years

Section 125C(2) Procuring unlawful sexual intercourse with person under the age of 17 years

Section 126 Sexual intercourse with person with mental impairment

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 2 – Criminal Code Act 1924 Amended

s. 5

from Appendix D and substituting the following items:

- | | |
|-----------------|--|
| Section 124 | Penetrative sexual abuse of a child [<i>or</i> young person] |
| Section 125A | Persistent sexual abuse of a child [<i>or</i> young person] |
| Section 125C(2) | Procuring a child [<i>or</i> young person] for penetrative sexual abuse |
| Section 126 | Penetrative sexual abuse of a person with a mental impairment |

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 6 Part 3 – Community Protection (Offender Reporting) Act 2005 Amended

**PART 3 – COMMUNITY PROTECTION (OFFENDER
REPORTING) ACT 2005 AMENDED**

6. Principal Act

In this Part, the *Community Protection (Offender Reporting) Act 2005** is referred to as the Principal Act.

7. Schedule 1 amended (Class 1 offences)

Schedule 1 to the Principal Act is amended as follows:

(a) by omitting

Section 125D(3)

Making a communication with intention of exposing a person under the age of 17 years to indecent material

and substituting the following item:

Section 125D(3)

Grooming with intent to expose a child [*or* young person] to indecent material

(b) by omitting

Section 137

Charge – Indecency

*No. 61 of 2005

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 3 – Community Protection (Offender Reporting) Act 2005 Amended

s. 8

and substituting the following item:

Section 137	Indecency
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8. Schedule 2 amended (Class 2 offences)

Schedule 2 to the Principal Act is amended by omitting

Section 122	Unnatural crimes
Section 124	Sexual intercourse with a young person under the age of 17 years
Section 125	Permitting unlawful sexual intercourse with a young person on premises
Section 125A	Maintaining sexual relationship with young person under the age of 17 years
Section 125B	Indecent act with or directed at young person under the age of 17 years
Section 125C(3)	Procuring indecent act by, or with, young person
Section 126	Sexual intercourse with person with mental impairment

and substituting:

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 9 Part 3 – Community Protection (Offender Reporting) Act 2005 Amended

Section 122	Bestiality
Section 124	Penetrative sexual abuse of a child [<i>or</i> young person]
Section 125	Permitting penetrative sexual abuse of a child [<i>or</i> young person] on premises
Section 125A	Persistent sexual abuse of a child [<i>or</i> young person]
Section 125B	Indecent act with or directed at a child [<i>or</i> young person]
Section 125C(3)	Procuring a child [<i>or</i> young person] for indecent act
Section 126	Penetrative sexual abuse of a person with a mental impairment

9. Schedule 3 amended (Class 3 offences)

Schedule 3 to the Principal Act is amended by omitting

Section 125C(2)	Procuring unlawful sexual intercourse with young person
Section 125D(1)	Communicating with intent to procure a person under the age of 17 years to engage in an unlawful sexual act

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 3 – Community Protection (Offender Reporting) Act 2005 Amended

s. 9

and substituting:

Section 125C(2)

Procuring a child [*or* young person] for penetrative sexual abuse

Section 125D(1)

Grooming with intent to procure a child [*or* young person] for sexual abuse

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 10

Part 4 – Evidence Act 2001 Amended

PART 4 – EVIDENCE ACT 2001 AMENDED

10. Principal Act

In this Part, the *Evidence Act 2001** is referred to as the Principal Act.

11. Section 194M amended (Evidence relating to sexual experience)

Section 194M(1) of the Principal Act is amended by omitting “Chapter XIV” and substituting “Chapter XIV, Chapter XIVA”.

*No. 76 of 2001

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 5 – Youth Justice Act 1997 Amended

s. 12

PART 5 – YOUTH JUSTICE ACT 1997 AMENDED

12. Principal Act

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

13. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting “maintaining a sexual relationship with a young person under the age of 17 years” from paragraph (b)(iii) of the definition of *prescribed offence* and substituting “persistent sexual abuse of a child [*or young person*]”.

*No. 81 of 1997

*Criminal Code Amendment (Sexual Abuse Terminology) Act
2020
Act No. of 2020*

s. 14 Part 6 – Sentencing Amendment (Phasing Out of Suspended Sentences) Act
2017 Amended

**PART 6 – SENTENCING AMENDMENT (PHASING
OUT OF SUSPENDED SENTENCES) ACT 2017
AMENDED**

14. Principal Act

In this Part, the *Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017** is referred to as the Principal Act.

15. Section 19 amended (Schedule 3 inserted)

Section 19 of the Principal Act is amended by omitting from Part 1 of Schedule 3 to be inserted by that section

<i>Sexual intercourse with a young person under the age of 17 years</i>	<i>Section 124(1)</i>	<i>Criminal Code Act 1924</i>
<i>Maintaining a sexual relationship with a young person under the age of 17 years</i>	<i>Section 125A(2)</i>	<i>Criminal Code Act 1924</i>
<i>Procuring unlawful sexual intercourse with young person</i>	<i>Section 125C(2)</i>	<i>Criminal Code Act 1924</i>

*No. 51 of 2017

Criminal Code Amendment (Sexual Abuse Terminology) Act 2020
Act No. of 2020

Part 6 – Sentencing Amendment (Phasing Out of Suspended Sentences) Act
 2017 Amended

s. 15

<i>Sexual intercourse with a person with a mental impairment</i>	<i>Section 126(1)</i>	<i>Criminal Code Act 1924</i>
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and substituting:

<i>Penetrative sexual abuse of a child [or young person]</i>	<i>Section 124(1)</i>	<i>Criminal Code Act 1924</i>
<i>Persistent sexual abuse of a child [or young person]</i>	<i>Section 125A(2)</i>	<i>Criminal Code Act 1924</i>
<i>Procuring a child [or young person] for penetrative sexual abuse</i>	<i>Section 125C(2)</i>	<i>Criminal Code Act 1924</i>
<i>Penetrative sexual abuse of a person with a mental impairment</i>	<i>Section 126(1)</i>	<i>Criminal Code Act 1924</i>