

DRAFT SECOND READING SPEECH

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Criminal Code Amendment (Sexual Abuse Terminology) Bill 2020

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Madam Speaker, I move that the Bill now be read a second time.

For too many years the evils of child sexual abuse have been one of our community's darkest secrets. It is a secret that has been kept by our children, a secret that has been kept by their loved-ones, a secret that has often caused indescribable damage to Tasmanian families.

I would like to acknowledge the bravery and resilience of victims and survivors of this abuse. Increasingly these brave individuals are no longer faceless in our society – they are our peers and friends, they are our family members and colleagues, they are – and can be – anyone among us. I would like to take this opportunity to commend them for their incredible courage in reporting the abuse that they have suffered.

We have many brave victims and survivors in Tasmania who are dedicated advocates for all people affected by child sexual abuse. Their contribution to the child safe policy, civil and criminal justice reforms are critical to ensure that we do not repeat the mistakes of the past. I would also like to acknowledge those victims that are no longer with us.

The crime of “Maintaining a sexual relationship with a young person under the age of 17 years’ is one of the most serious and heinous crimes of abuse against children. It is a crime whereby a child is repeatedly subjected to sexual acts.

There has been significant concern in the community about the terminology used in this crime. This is understandable – repeatedly subjecting a child or young person to unlawful sexual acts is not what is considered to be a ‘relationship’. The use of such terminology is an additional cruelty for a complainant.

However, any changes to the criminal law in Tasmania must be carefully considered, analysed and tested with legal stakeholders to ensure that they do not have unintended consequences or negative impacts on criminal proceedings. Accordingly, the Government has conducted a thorough review of Tasmania’s sexual crimes and undertaken extensive analysis and consultation as I committed to doing. Changes to the *Criminal Code* must never be done on an *ad hoc* basis by the Parliament. The work in consideration of the concerns raised by victims and survivors has resulted in this Bill, which amends a number of crimes to use language that more accurately describes the behaviours involved.

This Bill is another step towards exposing the realities of child sexual abuse. This Bill reflects the growing understanding that the sexual abuse of a child or a young person does real, lasting and significant harm.

The *Criminal Code Amendment (Sexual Abuse Terminology) Bill 2020* is part of this Government’s commitment to listening to, and responding to, the concerns and needs of our community.

Tasmania has some of the most advanced and nuanced criminal laws in Australia – especially in respect of charging child sexual abusers. For example, Tasmania’s crime of ‘Communicating with intent to procure a person under the age of 17 years to engage in an unlawful sexual act (s 125D(1))’ and ‘Making a communication with the intention of exposing a person under the age of 17 years to indecent material (s 125D(3))’ covers not just communications to children – but communications to any person or potential person.

Whilst these crimes may be technically advanced – their terminology is not. It is for this reason that these crimes will be amended to reflect the predatory and exploitative nature of the offending.

Firstly, I would like to address the way that victims of sexual crimes are described in the *Criminal Code*. At this time, the *Code* switches between describing victims as, children, young people, or even people under 17 years old.

This Bill will ensure that victims of child sexual abuse are described appropriately by giving the charging authorities discretion in describing victims as either a ‘child’ or a ‘young person.’ This discretion will ensure that there is flexibility in naming so as to provide victims with the dignity of an appropriate title.

This Bill also amends the terminology of the crime of “Maintaining a sexual relationship with a young person under the age of 17 years” – to terminology that more accurately describes the true nature of the conduct – ‘Persistent sexual abuse of a child [or young person]’.

Chapter XIV of the *Criminal Code* contains the majority of Tasmania’s sex related crimes. Currently, Chapter XIV is titled “Crimes Against Morality.” These crimes are not matters of subjective moral standards – they are objectively terrible acts – and they should be described with language that reflects this. Therefore, this Bill therefore renames Chapter XIV to “Sexual Crimes”.

There are a number of crimes within Chapter XIV that refer to ‘sexual intercourse’ – for example ‘Sexual intercourse with a young person under the age of 17 years.’ These matters are criminal acts, for many reasons, including the significant age disparity between the victim and offender.

This Bill will remove the words ‘sexual intercourse’ from these criminal charges and replace it with the term ‘penetrative sexual abuse’ – a reform which describes these criminal acts with the seriousness and factual language that they deserve.

To that effect, this Bill renames ‘Sexual intercourse with a young person under the age of 17 years’ (s 124) to ‘Penetrative sexual abuse of a child [or young person].’

The crime of ‘Procuring unlawful sexual intercourse with young person (s 125C(2)) will be amended to ‘Procuring penetrative sexual abuse of a child [or young person]’. The crime of ‘Permitting unlawful sexual intercourse with a young person on premises’ (s125), will become ‘Permitting penetrative sexual abuse of a child [or young person] on premises.’ And the crime of ‘Sexual intercourse with a person with mental impairment’ (s126) will become ‘Penetrative sexual abuse of a person with mental impairment’.

This Bill updates the crime of 'Indecent act with or directed at a young person under the age of 17 years' (s125B) to 'Indecent act with or directed at a child [or young person]'. The crime of 'Procuring indecent act by, or with, young person' (s125C(3)) will be 'Procuring indecent act by, or with, a child [or young person]'.

The crime of 'Communicating with intent to procure a person under the age of 17 years to engage in an unlawful sexual act (s 125D(1))' will be amended to 'Grooming by communicating with intent to procure a child [or young person] for penetrative sexual abuse' and the crime of 'Making a communication with the intention of exposing a person under the age of 17 years to indecent material (s 125D(3))' will be named 'Grooming by communicating with intent to expose a child [or young person] to indecent material'.

This Bill is not intended to effect the elements of the crimes or the substantial jurisprudence that has developed around them. This Bill therefore includes a transitional provision to remove any doubt about the impact of these changes.

It is not appropriate that these important reforms are left to filter through the criminal justice system on a case-by-case basis. It is not appropriate that a person may be tried for 'Maintaining a sexual relationship with a young person under 17 years' whilst in the very next Court another is tried for the 'Persistent sexual abuse of a child' – differentiated only by whether a charge was laid before or after the commencement of this Bill. It is for this reason that this Bill will automatically amend all outstanding proceedings to the contemporary terminology on the next Court appearance after commencement.

In addition to ensuring that our important body of criminal law does not change with the removal of outdated terminology – this Bill will also provide – permanently in the *Criminal Code* – that any previous references to old terminology in other Acts is taken to include this contemporary language.

The reforms in this Bill were previously the subject of a detailed Position Paper released in December 2018. There was significant feedback on that Paper from a range of stakeholders, and I would like to take this opportunity to thank those who took the time to provide a submission.

Words matter. Words have power. Our words shape our community, our culture – and this Government is committed to ensuring that our criminal law describes the sexual abuse of children with the clarity, severity and condemnation that it deserves.

Madam Speaker, I commend the Bill to the House.