

TASMANIA

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

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CRIMINAL CODE AMENDMENT (SEXUAL ABUSE TERMINOLOGY) BILL 2020

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
19 March 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.

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

s. 3

Part 1 – Preliminary

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This Act is repealed on the first anniversary of the day on which it commenced.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

Part 2 – Criminal Code Act 1924 Amended

s. 4

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.

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

*No. 69 of 1924

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

s. 5

Part 2 – Criminal Code Act 1924 Amended

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.

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

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Act No. of 2020

Part 2 – Criminal Code Act 1924 Amended

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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];

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

- (o) by omitting from section 336 “of” first occurring and substituting “for

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Part 2 – Criminal Code Act 1924 Amended

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”;

(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];

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Act No. of 2020

Part 2 – Criminal Code Act 1924 Amended

s. 5

- (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 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* –

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

s. 5

Part 2 – Criminal Code Act 1924 Amended

- (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 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.

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

Part 2 – Criminal Code Act 1924 Amended

s. 5

(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

from Appendix D and substituting the following items:

Section 124 Penetrative sexual abuse of a child [*or* young person]

Section 125A Persistent sexual abuse of a child [*or* young person]

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

s. 5

Part 2 – Criminal Code Act 1924 Amended

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

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*

s. 8 Part 3 – Community Protection (Offender Reporting) Act 2005 Amended

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:

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

s. 9

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

and substituting:

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2020
Act No. of 2020*

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

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

Part 4 – Evidence Act 2001 Amended

s. 10

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*

s. 12

Part 5 – Youth Justice Act 1997 Amended

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)(iia) of the definition of *prescribed offence* and substituting “persistent sexual abuse of a child [*or young person*]”.

*No. 81 of 1997

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Act No. of 2020

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

s. 14

**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*

s. 15 Part 6 – Sentencing Amendment (Phasing Out of Suspended Sentences) Act
2017 Amended

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