



**CRIMINAL CODE AMENDMENT (SEXUAL OFFENCES)
ACT 1994**

No. 72 of 1994

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**CRIMINAL CODE AMENDMENT (SEXUAL OFFENCES)
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AN ACT to amend the *Criminal Code*

[Royal Assent 25 November 1994]

BE it enacted by His 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:—

Short title

1—This Act may be cited as the *Criminal Code Amendment (Sexual Offences) Act 1994*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Criminal Code** is referred to as the Code.

Section 125A inserted

4—After section 125 of the Code, the following section is inserted:—

Maintaining sexual relationship with young person

125A—(1) In this section, “**unlawful sexual act**” means an act that constitutes an offence under section 122, 123, 124, 126, 127, 127A, 133 or 185.

(2) A person who maintains a sexual relationship with a young person who is under the age of 17 years, and to whom he or she is not married, is guilty of a crime.

Charge: Maintaining a sexual relationship with a young person under the age of 17 years.

(3) An accused person is guilty of having committed an offence under subsection (2) if, during a particular period when the young person was under the age of 17 years—

- (a) the accused committed an unlawful sexual act in relation to the young person on at least 3 occasions; and
- (b) the young person was not married to the accused.

(4) For the purposes of subsection (3)—

- (a) it is not necessary to prove the dates on which any of the unlawful sexual acts were committed or the exact circumstances in which any of the unlawful sexual acts were committed; and
- (b) the unlawful sexual act that was committed on any one of the occasions need not have been the same as the unlawful sexual act that was committed on each or any of the other occasions.

* Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code*, as amended to 1 March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86 and 93 of 1986, Nos. 26, 71, 81 and 83 of 1987, Nos. 14 and 29 of 1988, Nos. 7, 9 and 33 of 1989, No. 13 of 1990, Nos. 3, 43 and 46 of 1991, No. 21 of 1992, Nos. 9, 72 and 89 of 1993 and Nos. 4, 7, 10, 21, 61 and 68 of 1994.

(5) It is a defence to a charge under subsection (2) to prove that the accused person believed on reasonable grounds that the young person was of or above the age of 17 years.

(6) An indictment charging a person with having committed an offence under subsection (2)—

(a) is to specify the particular period during which it is alleged that the sexual relationship between the accused and the young person was maintained; and

(b) is not to contain a separate charge that the accused committed an unlawful sexual act in relation to the young person during that period.

(7) A prosecution for an offence under this section is not to be commenced without the written authority of the Director of Public Prosecutions.

Section 311 amended (Form and contents of indictments)

5—Section 311 (2) of the Code is amended by inserting “and section 125A (6)” after “subsection (3)”.

Section 337B inserted

6—After section 337A of the Code, the following section is inserted:—

Maintaining sexual relationship with young person

337B—(1) Subject to subsection (2), upon an indictment for maintaining a sexual relationship with a young person under the age of 17 years the accused person may be convicted of one or more of the following crimes:—

(a) unnatural sexual intercourse;

(b) indecent practice between male persons;

(c) sexual intercourse with a young person under the age of 17 years;

(d) unlawful sexual intercourse with an insane person;

- (e) unlawful sexual intercourse with a defective;
- (f) indecent assault;
- (g) aggravated sexual assault;
- (h) incest;
- (i) rape.

(2) The accused person may only be convicted of a crime specified in subsection (1) if the trial judge is satisfied on the evidence adduced at trial that the accused person was capable of being tried on indictment for that crime.

Section 368A amended (Notice of alibi)

7—Section 368A (8) of the Code is amended by omitting the definition of “the prescribed period” and substituting the following definition:—

“the prescribed period” means—

- (a) in a case where the defendant has been informed in accordance with section 56A of the *Justices Act 1959* of the requirements of this section—the period of 7 days from the day on which the defendant was committed for trial; or
- (b) in a case where the defendant is being tried for an offence under section 125A (2)—the period commencing on the day on which the defendant was committed for trial and ending at the close of evidence for the prosecution; or
- (c) in any other case—the period of 7 days from the day on which the defendant received notice in writing from the Crown Solicitor of the requirements of this section.

Evidence Act 1910 amended

8—The *Evidence Act 1910* is amended as follows:—

- (a) by inserting in section 85 (7) (b) “125A,” after “125,”;
- (b) by inserting in section 103AB (1) (a) (i) “125A,” after “125,”.

Justice (Miscellaneous Amendments) Act 1993 amended

9—Section 4 of the *Justice (Miscellaneous Amendments) Act 1993* is amended by omitting “paragraph (b)” and substituting “paragraph (c)”.

*[Second reading presentation speech made in:—
House of Assembly on 8 April 1993
Legislative Council on 18 August 1993]*

