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Tasmanian Law Reform Institute

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The Australian Christian Lobby welcomes this opportunity to respond to the Law Reform Institute's Issues Paper *Sexual Offences Against Young People*.

Sexual abuse of young people is a gravely serious issue which must not be tolerated in society. The law should deter such abuse and strongly punish those who are guilty of it. Defences should be available only in limited circumstances.

This submission briefly outlines ACL's position regarding the questions in the Issues Paper.

### **No defence age**

ACL believes that there should be a no defence age. This should not be as low as it is in, say, NSW (10 years). ACL recommends a no defence age of 14.

### **Mistake as to age**

The defence of mistake as to age should be retained in only very limited circumstances.

ACL recommends that the defence be based on an honest *and reasonable* belief that the victim was of the legal age of consent. It should be available only in cases where the defendant has taken positive steps to ascertain the minor's age.

ACL strongly believes that the defence should have an age restriction. The defence should not be available if the defendant is above the age of 20.

ACL also recommends that mistake as to age should apply only in some circumstances, such as is the case in Queensland. So, the defence could apply in the case of "carnal knowledge with a child under 16" but should not apply to "procuring a young person for carnal knowledge", "involving a child in

making child exploitation material”, or “making, distributing and possessing child exploitation material”.<sup>1</sup>

**Onus of proof**

The onus of proof should be consistently applied in relation to mistake as to age. The onus of proof should be on the prosecution to prove that the defendant is guilty, but the defendant should be required to prove he or she had an *honest and reasonable* belief that the victim was the legal age of consent, and that he or she took reasonable steps to determine the victim’s age.

Thank you for this opportunity to submit to this inquiry.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Mark Brown', with a long horizontal stroke extending to the right.

Mark Brown

Tasmania Director

Australian Christian Lobby

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<sup>1</sup> See the Issues Paper, p 39.