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29 June 2012

Submission by CATHOLIC WOMEN'S LEAGUE TASMANIA INC.

**Regarding TASMANIAN LAW REFORM INSTITUTE
Issues Paper no. 17 (May 2012)**

SEXUAL OFFENCES AGAINST YOUNG PEOPLE.

Catholic Women's League Tasmania Inc. (CWL) is an organisation dedicated to the promotion of the spiritual, social, cultural and intellectual formation of women. The League also advocates respect for human rights with a particular focus on women and children.

CWL shares in the significant community concern about the inadequacy of the justice system in dealing with a particular child prostitution case in 2009/10 and are grateful to the Attorney-General for instigating this review and for the work undertaken by the Tasmanian Law Reform Institute.

Sexual abuse and exploitation of young people by adults is serious criminal activity which calls for unambiguous, effective and just laws to deter potential perpetrators and protect vulnerable children.

While it is not within our capacity to provide an expert opinion on the law in relation to the defence of mistake about age when a person has been charged with a sexual crime against a young person, we offer the following general points for the consideration of the Institute.

1. CWL endorses the Institute's decision not to review the general age of consent in Tasmania, but to focus instead on the substantive issue of child sexual abuse, and work to close loopholes in the current law which allows adults to escape criminal punishment in situations where children have been sexually exploited.
2. CWL is compelled by the principle that sexual exploitation and abuse of children is so harmful and abhorrent that on policy grounds absolute liability is justified where young children are concerned. Tasmanian children should benefit from at least the minimum protections that operate in other Australian jurisdictions.

The law should also encourage adults to take responsibility for their conduct and deter them from taking the risk that the young person is underage.

Consequently, there should be a no defence age of at least 12 years of age for sexual intercourse with a young person, aggravated sexual assault, indecent assault and indecent act with a young person. (Q.1)

3. CWL is persuaded by the Institute's view that the abolition of the defence of mistake as to age could unfairly punish as a sexual offender against children, a person who believed that he or she was having sexual contact with a person over the age of consent. At the same time however, we support measures to tighten the defence of mistake as to age.

It is our view, therefore, that the defence of mistake as to age should be retained (Q.2.a) but that it should continue to be based on both an honest and reasonable belief that the child or young person was over the age of consent. (Q.3.)

While the imposition of a restriction on the age of the perpetrator who can claim the defence of mistake as to age appears too arbitrary in its operation (Q.4.), CWL does support a limitation on the defence of mistake which requires, in addition to a mistaken belief as to age, that the defendant took positive steps to find out the young person's age (Q.5).

4. The defence of mistake as to age in s 125A(5) should be repealed (Q.9.a) so that this defence would not have any operation in cases of non-consensual sexual acts. Maintaining a sexual relationship should also be redefined so that, provided at least one unlawful sexual act was committed in Tasmania, unlawful sexual acts committed outside the State can be taken into account (Q.9.b)

CWL also agrees with the proposal that the offence be renamed 'persistent sexual abuse of a child' (Q.9.c) so as to indicate more clearly that it is dealing with the sexual exploitation of children.

Thank you for the opportunity to respond to this Issue Paper. We wish the members of the Institute well in the compilation of their final report.

Yours sincerely

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