



## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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INQUIRIES: Mr T J Ellis SC  
OUR REF: 26425  
YOUR REF:

10 May, 2012

Professor Kate Warner  
Tasmania Law Reform Institute  
Faculty of Law  
Private Bag 89  
Hobart Tasmania 7001

Dear Professor Warner

Thank you for sending me a copy of the Institute's 17<sup>th</sup> Issues Paper, *Sexual Offences Against Young People*. If I may say so, it is a most thorough, accurate and illuminating work.

I do not think it appropriate that I respond to most of the issues, given that some change is probably imminent and prosecuting decisions past or future might wrongly be judged on the basis of any preferences expressed by me. Further, clearly the most important issues are of or will be debated in a wider social and political context than the matters of mainly procedural reform I usually seek to respond to.

There are two matters I would like to comment on. The first is to make the predictable wish that the location and effect of the onus of proof of mistake be harmonised and uniform across crimes and offences to which it applies, in order that the intellectual gymnastics required of juries confronted by different onus provisions will cease.

The second matter is the proposal to rename the crime of maintaining a sexual relationship with a young person as "persistent sexual abuse of a child". I think some caution ought to be observed in this respect, as it is my belief that offenders are more inclined to plead guilty to the offence as presently named than to specified charges of the same conduct. The Court of Criminal Appeal in one of the several appeals I have brought to ensure the crime is attended by appropriate levels of sentencing seemed to agree with that proposition (*Director of Public Prosecutions v M* [2005] TASSC 14 at [38]). It is reasonable to expect that the naming of the crime may have contributed to the apparently enhanced willingness to plead guilty and thus spare the victim from giving evidence. It follows that although renaming the crime might give the legislature and indeed the community a pleasant sense of having

struck a blow against child abuse, if the result is fewer pleas of guilty and more children being cross-examined at trial that satisfaction would be misplaced.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T J Ellis', with a stylized flourish at the end.

T J Ellis SC  
DIRECTOR OF PUBLIC PROSECUTIONS