

MEDIA RELEASE

NEWS FROM THE UNIVERSITY OF TASMANIA

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ATTENTION: Chiefs of Staff, News Directors



TLRI releases issues paper: Sexual Offences Against Young People

UTAS' Tasmanian Law Reform Institute (TLRI) has released a new issues paper *Sexual Offences against Young People* and is seeking views from the public.

The issues paper focuses particularly on the legal defence of mistake as to age to sex offences against young people, namely where a person can defend the charge because they had a mistaken belief that the young person was over the age of consent.

The project was referred to the Institute by the Attorney-General, following a Tasmanian case in which a 12-year-old girl was prostituted by her mother and her mother's male friend.

The fact that only one of the girl's many clients was prosecuted gave rise to controversy and criticism of both the Director of Public Prosecution's decision not to prosecute and the law relating to the crime of sexual intercourse with a young person.

Professor Kate Warner, Director of the Institute and author of the issues paper, said the focus of the paper is on the current law.

"The current law is unnecessarily complex and inconsistent in a number of respects and, in comparison with the law in other jurisdictions, could be said to be liberal in terms of the scope of the defence of mistake as to age."

The paper looks at various options for reform, including introducing a 'no defence' age, that is, when a child is below a prescribed age (10, 11, 12 or 13 for example) no defence of consent or mistake as to age can be argued.

Prof Warner said the Institute has noted from the outset that not all child sex offenders and offences are the same.

"Child-specific sexual offences catch paedophiles in the true sense of the word but they can also, for example, criminalise teenagers for same-age sex.

"For these reasons considerable care needs to be taken to respond in a careful and principled manner to the concerns that this case generated."

Prof Warner said despite the complexity of this area of the law, and the strength of emotions these crimes invoke, the Institute is required to consider the legal issues referred to it dispassionately and objectively.

The paper is available on the Institute's webpage:
www.law.utas.edu.au/reform

The TLRI asks for responses in writing by 29 June 2012.

Information Released by:

The Media Office, University of Tasmania
Phone: (03) 6226 2691 Mob. 0447 537 375
Email: Media.Office@utas.edu.au

Further information on the TLRI's issues paper:

Sexual Offences Against Young People

The paper:

- summarises the criminal proceedings arising out of the particular child prostitution case that led to the referral to the Institute;
- analyses the current law in relation to the defence of mistake as to age as it relates to sexual offences against young people; and
- explores the pros and cons of various options for reform, and asks questions of the reader, hoping to encourage considered responses from readers.

Some of the issues with the current law:

- the different ages that apply to different crimes,
- when the defence of mistake is available, and
- whether it is the prosecution or defence which bears the onus of proof in relation to mistake for different crimes.

Options for reform:

The paper looks at various options for reform, such as:

- introducing a 'no defence' age, that is, when a child is below a prescribed age (10, 11, 12 or 13 for example) the defence of consent or mistake as to age cannot be argued;
- abolishing the defence of mistake as to age;
- limiting the mistake as to age defence by:
 - restrictions on the age of the accused; and / or
 - adding a requirement to take all reasonable steps to ascertain age.

The paper seeks feedback on questions such as:

- Should there be a 'no defence age' (that is, an age, such as 10 or 12, below which the defence of consent or mistake cannot be argued) for sexual intercourse with a young person, aggravated sexual assault, indecent assault and indecent act with a young person?

- Should there be 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?
- Should the onus be on the prosecution to prove that the defendant had no honest and reasonable belief that the young person was under 17 or should the defendant have to prove such a mistake?
- Should we adopt 'knew or ought to have known that the young person was under age' as a uniform test for the age element in child sex offences in the Code?