

CLAUSE NOTES

Justice Miscellaneous (Royal Commission Amendments) Bill 2022

- Clause 1** **Short title**
Specifies the name of the proposed Act.
- Clause 2** **Commencement**
Provides that the Act commences on Royal Assent.
- Clause 3** **Principal Act**
Provides that the Principal Act being amended in Part 2 is the *Annulled Convictions Act 2003*.
- Clause 4** **Section 3 amended (Interpretation)**
Amends the definition of 'sexual offence' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) of the Criminal Code.
- Clause 5** **Principal Act**
Provides that the Principal Act being amended in Part 3 is the *Classification (Publications, Films and Computer Games) Enforcement Act 1994*.
- Clause 6** **Section 79 amended (Proceedings on prosecutions)**
Provides that the Principal Act is amended by substituting section 79 paragraph (a) to remove the limitation period to commence proceedings under sections 72, 72A or 73 and by inserting paragraph (ab) to provide a 2 year limitation period for the commencement of proceedings against sections 73A, 74 or 74A from the time when the offence is alleged to have been committed.
- Clause 7** **Section 88E inserted**
Provides that the Principal Act is amended by inserting a new section 88E to introduce a transitional provision to allow proceedings for an offence against section 72, 72A or 73 to be brought irrespective of any previous limitation periods that applied at the time the offence is alleged to have been committed.
- Clause 8** **Principal Act**
Provides that the Principal Act being amended in Part 4 is the *Community Protection (Offender Reporting) Act 2005*.
- Clause 9** **Schedule 2 amended (Class 2 offences)**
Provides that the Principal Act is amended by inserting section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in Schedule 2.

- Clause 10** **Principal Act**
Provides that the Principal Act being amended in Part 5 is the *Corrections Act 1997*.
- Clause 11** **Section 3 amended (Interpretation)**
Amends the definition of 'sexual offence' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) of the Criminal Code.
- Clause 12** **Principal Act**
Provides that the Principal Act being amended in Part 6 is the *Criminal Code Act 1924*.
- Clause 13** **Schedule 1 amended (*Criminal Code*)**
Provides that the Principal Act be amended by introducing a new section 124A to create a new crime (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).
Inserts subsection (1) to provide the definitions relevant to this section.
Inserts subsection (2) to introduce a crime that a person who is 18 years and above is guilty of a crime if they have sexual intercourse with a child to whom they are in position of authority.
Inserts subsection (3) to provide that consent is not a defence to the crime.
Subsection (4) to provide that the new crime does not apply in relation to people who are married to each other.
Provides that that the Principal Act be amended by introducing a new section 125E to create a new crime (Failure by a person in authority to protect a child from a sexual offence).
Inserts subsection (1) to introduce a crime that a person who occupies a position within, or in relation to, a relevant organisation who holds a reasonable belief that there is a substantial risk of a relevant child becoming a victim of a sexual offence by another person over 18 years who is associated with the organisation will be guilty of this crime if they do not take all reasonable steps in the circumstances to reduce or remove the risk.
Inserts a new subsection (2) to provide that it is not necessary to prove that a sexual offence has been committed.
Inserts a new subsection (3) and (4) to provide that the provision covers instances where child sexual offences are committed outside of Tasmania provided that the substantial risk was created in Tasmania.
Inserts a new subsection (5) to provide that despite section 127 of the *Evidence Act 2001*, a member of the clergy of any church or religious denomination is not entitled to refuse to comply with subsection (1) on the basis that the knowledge was obtained as a consequence of information communicated during a religious confession.
Inserts subsection (6) to provide the definitions relevant to this section.

Amends the Principal Act by inserting into the definition of 'sexual offence' the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in section 326A(1).

Amends the Principal Act by inserting the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) into section 335.

Amends the Principal Act by inserting the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) into section 336.

Provides that that the Principal Act be amended by providing alternative convictions that are relevant to new section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).

Amends the Principal Act by inserting the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in section 337.

Amends the Principal Act by inserting the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in section 337B(1).

Amends the Principal Act by renaming Chapter XLVI of Part IX to 'Appeals against conviction'.

Amends the Principal Act by inserting the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) into Appendix D.

Clause 14 **Principal Act**

Provides that the Principal Act being amended in Part 7 is the *Criminal Law (Detention and Interrogation) Act 1995*.

Clause 15 **Section 4 amended (Detention of person in custody)**

Provides that the Principal Act is amended by inserting paragraph (ha) in section 4(4) to include the use of a witness intermediary as a relevant matter regarding the reasonableness of the period of detention of a person in custody.

Clause 16 **Principal Act**

Provides that the Principal Act being amended in Part 8 is the *Dangerous Criminals and High Risk Offenders Act 2021*.

Clause 17 **Schedule 1 amended (Serious Offences)**

Provides that the Principal Act is amended by inserting section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in Schedule 1.

Clause 18 **Principal Act**

Provides that the Principal Act being amended in Part 9 is the *Evidence Act 2001*.

- Clause 19** **Section 3 amended (Interpretation)**
Amends the definition of 'sexual offence' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).
- Clause 20** **Section 19 amended (Compellability of spouses and others in certain proceedings)**
Provides that the Principal Act is amended by including the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).
- Clause 21** **Section 94 amended**
Inserts a new subsection (4) to section 94 of the Principal Act to provide that the admissibility of evidence about propensity or similar fact evidence in this Part to tendency evidence or coincidence is not restricted by any principle or rule of common law or equity.
Inserts a new subsection (5) to section 94 of the Principal Act to preclude the court having regard to the possibility that evidence may be the result of collusion, concoction or contamination in the determining the probative value of tendency evidence or coincidence evidence concerning specific sections in the Principal Act.
- Clause 22** **Section 97A inserted**
Inserts section 97A to the Principal Act to prescribe factors that have presume significant probative value concerning the admissibility of tendency evidence in child sexual offences.
Inserts a new subsection (1) to limit the scope of application of the section to acts that constitute, or may constitute, a child sexual offence.
Inserts a new subsection (2) to provide a presumption that tendency evidence about a defendant will have significant probative value under section 97(1)(b) and section 101(2) where:
 - tendency evidence about the sexual interest that the defendant has or had in children;
 - tendency evidence about the defendant acting on a sexual interest in children.Inserts a new subsection (3) to prescribe that subsection (2) applies in relation to the tendency evidence in issue irrespective of whether the sexual interest or act was directed at a complainant in the proceeding or any other child or children generally.
Inserts a new subsection (4) to enable the court to determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so.

Inserts a new subsection (5) to limit the matters the court can consider in determining whether tendency evidence does not have significant probative value unless there are exceptional circumstances where:

- the sexual interest or act to which the tendency evidence relates is different from the sexual interest or act alleged in the proceedings;
- the circumstances of the tendency evidence concerning the sexual interest or act are different for the circumstances in which the sexual interest or act alleged in the proceedings;
- the personal characteristics of the interest or act (age, sex or gender) are different;
- the relationship between the defendant and the subject of the tendency evidence is different from the relationship between the defendant and the alleged sexual act or interest;
- the period of time;
- no distinctive or unusual features;
- the level of generality.

Inserts a new subsection (6) to provide definitions to specific words in the section, such as 'child' and 'child sexual offence'.

Clause 23

Section 98 amended

Amends section 98 of the Principal Act to insert a new subsection (1A) to provide that subsection (1) includes the use of evidence from 2 or more witnesses claiming they are victims of offences committed by a defendant in a criminal proceeding to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that a defendant did an act in issue in the proceeding.

Clause 24

Section 101 amended

Amends section 101 of the Principal Act to restrict tendency evidence and coincidence evidence adduced by the prosecution by omitting from subsection (2) "substantially outweighs any prejudicial effect it may have on" and substituting "outweighs the danger of unfair prejudice to" and by omitting subsection (5).

Clause 25

Section 194K amended

Provides that the Principal Act is amended by inserting section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in section 194K(1)(b).

Clause 26

Principal Act

Provides that the Principal Act being amended in Part 10 is the *Evidence (Children and Special Witnesses) Act 2001*.

Clause 27

Section 3 amended (Interpretation)

Amends the Principal Act to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in relation to the definitions of 'affected child', 'child sexual offence', 'prescribed proceedings' and 'specified offence'.

Clause 28

Section 5A inserted

Inserts a new section 5A to the Principal Act to extend the availability of audio visual recording of a statement of certain witnesses to be admissible as the evidence in chief of that witness.

Inserts a new subsection (1) to provide for definitions of specific terms used in the section.

Inserts a new subsection (2) to provide for the application of the section in criminal proceedings to witnesses who are:

- a child, other than the defendant, who is giving evidence;
- the alleged victim of a sexual offence;
- the alleged victim of a family violence offence; or
- a special witness.

Inserts a new subsection (3) to enable the use of an audio visual recording of a statement between a witness and an investigating official to be tendered or treated as examination in chief of that witness in proceedings.

Inserts a new subsection (4) to enable a judge to determine whether the tendering of the audio visual recording is in the best interests of justice.

Clause 29

Section 6A substituted

Amends the Principal Act by inserting Subsection 6A(2) to allow a judge to hold a special hearing in relation to any witness's evidence if it is in the interests of justice and with consent of the parties in certain proceedings.

Clause 30

Section 7H amended (Functions of witness intermediary)

Amends the Principal Act by providing that a witness intermediary is not required to take an oath or make an affirmation prior to preparing and providing an assessment report or attending a ground rules hearing.

Clause 31

Section 7I amended (Assessment report)

Amends the Principal Act by providing that the judge may make orders in respect of the provision and distribution of materials relevant to the preparation of an assessment report.

Clause 32

Section 7J amended (Use of witness intermediary)

Amends the Principal Act by inserting a new subsection (1A) to enable a judge to make an order that a witness intermediary be used in respect of a witness in a specified proceeding without an assessment report if the judge is satisfied that it is in the interests of justice to do so.

Clause 33

Principal Act

Provides that the Principal Act being amended in Part 11 is the *Justices Act 1959*.

- Clause 34** **Section 61 amended (Interpretation)**
Provides that the Principal Act is amended by inserting section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) in subsection 61(2)(a)(i).
- Clause 35** **Principal Act**
Provides that the Principal Act being amended in Part 12 is the *Magistrates Court (Criminal and General Division) Act 2019*.
- Clause 36** **Section 4 amended (Interpretation)**
Amends the definition of 'affected person' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).
- Clause 37** **Principal Act**
Provides that the Principal Act being amended in Part 13 is the *Police Offences Act 1935*.
- Clause 38** **Section 3 amended (Interpretation)**
Amends the definition of 'sexual offence' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).
- Clause 39** **Section 35 amended (Common assault and aggravated assault)**
Provides that the Principal Act is amended by removing the limitation period to commence proceedings under subsection 35(3).
- Clause 40** **Principal Act**
Provides that the Principal Act being amended in Part 14 is the *Sentencing Act 1997*.
- Clause 41** **Section 4 amended (Interpretation)**
Amends the definition of 'child sexual offence' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).
- Clause 42** **Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)**
Amends the definition of 'sexual offence' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).

Amends the Principal Act by providing that a judge may consider that the fact that an offender was in a position of authority is an aggravating factor in sentencing despite the offender not having been convicted of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority) of the *Criminal Code*.

- Clause 43** **Section 27A amended (Interpretation of Part)**
Amends the definition of 'sexual offence' to include the new crime of section 124A (Penetrative sexual abuse of a child [or young person] by a person in a position of authority).
- Clause 44** **Principal Act**
Provides that the Principal Act being amended in Part 15 is the *Victims of Crime Assistance Act 1976*.
- Clause 45** **Section 7 amended (Procedure for determining applications for awards)**
Provides that the Principal Act is amended by removing the limitation period to make an application for an award involving an allegation of child sexual abuse.
- Clause 46** **Repeal of Act**
This automatically repeals the amending legislation 12 months after the Act is fully commenced. This is because the amendments are incorporated into the Principal Act, and will remain in force after the repeal of the Amending Act.