

## FACT SHEET

### *Evidence (Children and Special Witnesses) Amendment Bill 2020*

The Evidence (Children and Special Witnesses) Amendment Bill 2020 makes amendments to the *Evidence (Children and Special Witnesses) Act 2001*, the *Criminal Code Act 1924* and the *Legal Aid Commission Act 1990* to establish a legislative framework for the use of intermediaries in Tasmanian courts.

The Bill fulfils the Tasmania Government's commitment to implement the Royal Commission into Institutional Responses to Child Sexual Abuse's recommendations to establish a Pilot Witness Intermediary Scheme in Tasmania.

The Bill amends the *Evidence (Children and Special Witnesses) Act 2001* to:

- Define the scope of the Pilot Intermediary Scheme to apply to:
  - all children under the age of 18 years participating in the criminal justice process who are victims or witnesses (other than a defendant) in sexual offence matters and/or matters under Chapter XVII of the *Criminal Code Act 1924*; and
  - adults with a communication need participating in the criminal justice process who are victims or witnesses (other than a defendant) in sexual offence matters and/or matters under Chapter XVII of the *Criminal Code Act 1924*.
- Define 'communication need' applicable to adult victims and witnesses;
- Requires the Secretary of the Department of Justice to establish and maintain a panel of persons who the Secretary considers are suitable to be witness intermediaries, the Intermediaries Panel;
- Provides for the Secretary of the Department of Justice to allocate a person from the Intermediaries Panel to perform the relevant functions of a witness intermediary in respect of a witness;
- Sets out the functions of a witness intermediary, including providing an assessment report and providing recommendations during a specified proceeding to the judge, and any lawyer appearing in the proceeding as to adjustments to be made in the proceeding;
- Requires a person to take an oath or affirmation before acting as a witness intermediary in specified proceedings in a court;
- Provides for the circumstances in which a judge is to make an order an assessment report be prepared.

- Gives a judge the power to make an order that a witness intermediary be used in respect of a witness in a specified proceeding, if having considered an assessment report, the judge is satisfied that the use of a witness intermediary will assist proceedings (a Witness Intermediary Order);
- Gives a prescribed witness the same rights as an 'affected person' and 'affected child' under the Act.
- Provides that a judge must direct that a ground rules hearings be held for a prescribed witness in a specified proceeding and provides that a judge may make directions in a ground rules hearing;
- Amends section 8A to prevent a defendant directly cross-examining a prescribed witness unless the cross-examination is undertaken by counsel;
- Clarifies that a judge may make an order under section 8A(3) directing that an unrepresented defendant be given assistance under the *Legal Aid Commission Act 1990* for cross-examination only if it's in the interests of justice to do so;
- Requires the Legal Aid Commission to provide legal aid for the purpose of cross-examining the witness or person, without applying the income, assets or other merits test;

The Bill amends the *Criminal Code Act 1924* to:

- Extend the definition of 'affected person' to include 'a prescribed witness' within the meaning of the *Evidence (Children and Special Witnesses) Act 2001*..

The Bill also makes a consequential amendment to the *Legal Aid Commission Act 1990* to clarify the operation of section 8A of the *Evidence (Children and Special Witnesses) Act 2001* with respect to legal aid funding.