

FACT SHEET

Justice Miscellaneous (Royal Commission Amendments) Bill 2022

The Justice Miscellaneous (Royal Commission Amendments) Bill 2022 (the Bill) makes amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*, the *Criminal Code Act 1924*, the *Criminal Law (Detention and Interrogation) Act 1995*, the *Evidence Act 2001*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Police Offences Act 1935* and the *Victims of Crime Assistance Act 1976*.

The Bill implements the Government's commitment to introduce a number of legislative amendments arising from the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in its Criminal Justice Report.

The Bill also makes a number of other amendments that support people affected by child sexual abuse and other violent crimes to effectively engage with the criminal justice system.

The Bill amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to provide:

- that proceedings for an offence against sections 72A or 73, which concern making, reproducing or procuring a child to be involved in making child exploitation material, may be commenced at any time.

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

- a new crime of '**Penetrative sexual abuse of child or young person by person in position of authority**';
- a person is guilty of the new crime of 'Penetrative sexual abuse of child or young person by person in position of authority' if that person is in a position of authority in relation to a child and that person has sexual intercourse with that child;
- a person is in a position of authority in relation to a child if the person:
 - is a teacher at the school the child attends;
 - is a parent of the child or the person is in a significant relationship, within the meaning of the *Relationships Act 2003*, with a parent of the child;
 - provides religious, sporting, musical or other instruction to the child;
 - is a religious official or spiritual leader in a religious or spiritual group attended by the child;
 - is a health professional or social worker providing professional services to the child;
 - is responsible for the care of the child and the child has a cognitive impairment;
 - is employed or providing services in a prison or a detention centre;
 - is employed or providing services to a child, within the meaning of the *Children and Young Persons and Their Families Act 1997*; or
 - is an employer of the child.

- the new crime does not apply if the accused person was under 18 years of age at the time of the act or acts of sexual intercourse.
- a new crime of **'Failure by a person in authority to protect a child from a sexual offence'**:
- a person is guilty of this crime if they are employed by a relevant organisation and they hold a reasonable belief that there is a substantial risk that a relevant child may become the victim of a child sexual offence by a person associated with the relevant organisation and the person fails to take reasonable steps to reduce or remove that risk.
- This crime will apply to all people in organisations that exercise care, supervision or authority over children, whether as a primary function or otherwise.
- for the purposes of the crime, a 'relevant organisation' is an organisation that exercises care, supervision or authority over children, and includes:
 - religious organisations;
 - educational institutions;
 - child care services;
 - hospitals;
 - councils;
 - State service agencies;
 - sporting groups, and youth organisations;
 - charity or benevolent organisations;
 - organisation providing out of home care and accommodation services; and
 - community service organisations.
- A 'person associated' with the relevant organisation is the potential perpetrator of child sexual abuse and includes an employee, officer, volunteer, contractor or agent but is not a person who solely receives a benefit from the organisation. It is not necessary to prove that acts of child sexual abuse have been committed for the purpose of this crime.

The Bill amends the *Criminal Law (Detention and Interrogation) Act 1995* to provide:

- that the time during which the questioning or investigation of a suspect is paused or suspended to facilitate the use of a witness intermediary is relevant to the reasonableness of a period of detention before bringing a person before the court.

The Bill amends the *Evidence Act 2001* to provide:

- that principles or rules of the common law or equity preventing or restricting the admissibility of evidence about propensity or similar fact evidence are not relevant when applying tendency and coincidence provisions;
- that a court when assessing the probative value of tendency or coincidence evidence is not to have regard to the possibility that tendency evidence or coincidence evidence may be the result of collusion, concoction or contamination;

- a rebuttable presumption that certain tendency evidence relating to a child sexual offence is presumed to have significant probative value and to set out matters that may not ordinarily be taken into account by a court to overcome that presumption and determine that the evidence does not have significant probative value;
- that coincidence evidence includes evidence from multiple witnesses claiming they are victims of an accused person, which is used to prove, on the basis of similarities in their evidence, that the accused person did a particular act; and
- that tendency evidence or coincidence evidence adduced by the prosecution about a defendant is inadmissible unless the probative value of the evidence 'outweighs' the danger of unfair prejudice to the defendant rather than 'substantially outweighs'.

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

- that a video record of interview may be used as the whole or part of evidence in chief for certain categories of witnesses;
- that the pre-recording of audio visual evidence extends to any other witness where it is in the interests of justice to conduct the pre-recording and the parties agree.
- that a witness intermediary is not required to give an oath or affirmation prior to preparing an assessment report or attending a ground rules hearing;
- that a Court may make orders for the distribution of materials as necessary for a witness intermediary to assess a witness and prepare an assessment report; and
- that the Court can order the use of a witness intermediary without an assessment report in certain circumstances.

The Bill amends the *Police Offences Act 1935* to:

- remove the limitation period for the offence of 'assault with indecent intent'.

The Bill amends the *Victims of Crime Assistance Act 1976* to:

- remove the limitation period for applications involving child sexual abuse.

The Bill also makes consequential amendments to the *Annulled Convictions Act 2003*, the *Community Protection (Offender Reporting) Act 2005*, the *Corrections Act 1997*, the *Dangerous Criminals and High Risk Offenders Act 2021*, the *Justices Act 1959*, the *Magistrates Court (Criminal and General Division) Act 2019* and the *Sentencing Act 1997*.

The Bill is to commence on Royal Assent.