

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Justice and Related Legislation Miscellaneous Amendments Bill 2022*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

This Bill contains minor amendments that update and clarify a number of different Acts in my Justice portfolio. The Bill also includes an amendment to the *Animal Welfare Act 1993* (the Animal Welfare Act).

Some of the amendments have been requested by various officers or agencies, including the Director of Public Prosecutions, the Director of Monetary Penalties Enforcement Services, and the Magistrates Court of Tasmania. There is also an amendment that responds to a judgment handed down in the Supreme Court of Tasmania.

Mr Speaker, I will now address each of the proposed changes.

#### Amendment to the *Animal Welfare Act 1993*

Currently, sections 43 and 43AA of the *Animal Welfare Act 1993* (the Animal Welfare Act) provides the court with the power to disqualify a person from having custody of animals if convicted of an offence under that Act. However, because the offence of bestiality is contained in the *Criminal Code Act 1924* (the Criminal Code), not the Animal Welfare Act, a judicial officer does not have the power to make such an order upon convicting a person of bestiality.

Accordingly, this amendment amends section 43 so that the power is enlivened upon conviction of an offence under the Animal Welfare Act, or conviction of bestiality under the Criminal Code. The ability to disqualify a person from having custody of animals is discretionary, and may be used instead of, or in addition to, other penalties or orders. This is an important amendment designed to protect animals from those that pose a risk of harming them.

#### Amendments to the *Criminal Code Act 1924*

In 2020, a judgment of the Supreme Court of Tasmania ruled that the crime of bestiality in section 122 of the *Criminal Code Act 1924* (the Criminal Code), as presently drafted, only criminalises penile penetration by, or of, an animal. This was because the absence of a definition of the term 'bestiality' led to a presumption that Parliament intended the term to have its common law meaning, which does not extend to all sexual activity between a human and animal. This situation arose as an inadvertent consequence of previous amendments to the Criminal Code.

The Bill firstly amends section 1 of the Criminal Code by providing a definition of bestiality. The definition is 'sexual activity of any kind between a human being and an animal'. This definition is consistent with that contained in the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

To avoid any doubt, the section which creates the offence, namely section 122 of the Criminal Code, is amended to clarify that acts engaged in for the purpose of genuine veterinary, agricultural and scientific research practices, provided those acts are reasonable for that purpose, do not fall within the scope of the offence. This wording is partly based on comparable exceptions contained in the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* and the *Victorian Crimes Act 1958*.

Mr Speaker, in conjunction with the amendment to the Animal Welfare Act, these amendments ensure that this crime reflects modern community standards and expectations in criminalising all sexual activity between a human and an animal.

#### Amendments to the *Births, Deaths and Marriages Registration Act 1999*

Following amendment in 2019, section 24 of the *Births, Deaths and Marriages Registration Act 1999* (the Births, Deaths and Marriages Act) requires a Magistrate to be satisfied of a child's will and preference before the Magistrate can approve a proposed change of name for a child.

Mr Speaker, both the Magistrates Court and the Registrar of the Births, Deaths and Marriages Office have requested amendment to improve the operation of this provision, primarily to address the situation where a child is too young for a Magistrate to be able to determine their will and preference. This appears to be an inadvertent limitation on what was previously the position for the Court in relation to very young children. I am advised that there are a number of applications received each year which involve children within that category.

While retaining the option to approve the name change if the Magistrate is satisfied it is consistent with the will and preference of the child, the amendment introduces an alternative option. A Magistrate may now also approve the change of name if satisfied that the child is unable to understand the meaning and implications of the proposed change of name, but is still satisfied that the change is in the best interests of the child. This is consistent with other sections of the Births, Deaths and Marriages Act, such as section 28B which relates to applications to approve the registration of a gender.

A second amendment to the Births, Deaths and Marriages Act arises from a recommendation made by the Tasmania Law Reform Institute (TLRI) in the *Legal Recognition of Sex and Gender Final Report No.31* released in June 2020. The long title of the Act currently reads:

- An Act to provide for uniform legislation in relation to the registration of births, deaths and marriages and to *provide for the rights of persons who have undergone sexual reassignment surgery*.

Following changes made to the Act in 2019, it is not accurate to describe the Act as relating to 'the rights of people who have undergone sexual reassignment surgery'.

The updated long title is based on the recommended wording of the TLRI. Following amendment, the long title will read:

- An Act to provide for the registration of births, deaths and marriages and to provide legal recognition for trans and gender-diverse Tasmanians and those with intersex variations of sex characteristics.

The long title of an Act can be a factor in determining legislative intent in judicial proceedings, so the Bill includes this TLRI-recommended amendment.

Mr Speaker, I acknowledge previous discussion in this place that significant work has been underway both in Tasmania and the Commonwealth on updating terminology in this area. I acknowledge the submissions which recommended the use of 'innate variations of sex characteristics'. The Tasmanian framework to give effect to the revised Commonwealth standards is being finalised, and I understand that is the terminology most likely to be adopted by both jurisdictions.

As 'intersex' is a term used in several Acts, including the *Anti-Discrimination Act*, I believe it is appropriate to make the TLRI-recommended change now, given the other amendment to the Births, Deaths and Marriages Act. With the framework to be finalised in the future, however, my Department will develop a proposal in relation to consolidation of terminology across all relevant Acts for final consultation.

#### Amendments to the *Coroners Act 1995*

The *Coroners Act 1995* (the Coroners Act) sets out the procedures for investigations and inquests by coroners, and in doing so, allocates various rights to a person termed the 'senior next of kin'. The Coroners Act specifies that the senior next of kin is the first available person in a list, contained in section 3A of the Act, commencing with the deceased's current spouse.

The Coroners Act defines 'spouse' as including a person in a significant relationship under the *Relationships Act 2003* (the Relationships Act). The Relationships Act definition starts on the simple principle that a significant relationship is a relationship between two adult persons who have a relationship as a couple and who are not married or related by family. This captures the older term of de facto partners. Under this Act there is a simple, affordable process to register a relationship. However, the Relationships Act also provides for recognition of spouses who have not registered their relationships by reference to all the circumstances of the relationship. No particular item is essential, but it includes the things you would expect as potentially relevant. Such as the duration of the relationship, any common residence or property, any sexual relationship or mutual commitment to a shared life, and so on. The Relationships Act also provides the avenue for the Supreme Court to declare who is in a significant relationship.

This is understandably a very rare necessity – I am only aware of two cited cases, both relating to deceased estate matters.

The Bill's amendment responds to a case in 2015 where the deceased's spouse (as defined under the Relationships Act) was initially, incorrectly, not recognised as the spouse, and thus as the respective senior next of kin. Although that was ultimately corrected by the Coroner, that initial decision was understandably very distressing for that surviving spouse.

Mr Speaker, I have previously expressed the Government's sincere sympathy and deep regret that this occurred, and I would like to restate that regret here and now. The Tasmanian Government recognises that members of the community are often in a very vulnerable and distressed state when they come into contact with the coronial system, which is why we are committed to ensuring the process and avenues of complaint and review are well understood, so both the Court and individuals can be confident the right decisions are made using the information available.

The Coronial Division of the Magistrates Court started important work by producing comprehensive supporting material for those interacting with this Court. In 2016 the *Tasmanian Coronial Practice Handbook* and *The Coroner's Court: A Guide for Families and Friends* were developed. These resources can now be found on the Coronial Division's website, and are intended to assist members of the community who come into contact with the coronial system.

The amendment to the Coroners Act continues this work by legislating a positive duty on the Court for the senior next of kin, along with others who have a 'sufficient interest' in the death, to be provided with prescribed categories of information about the operation of the Coroners Act.

The Coroners Act has several key processes available to persons with a 'sufficient interest', and consideration of who has a sufficient interest is a routine and straightforward part of the Court's everyday work. This term does not place a burden on the individual or the Coroner, but ensures the focus of the duty to provide information is to those people who need it, such as family members and partners – and not simply any member of the public.

This amendment is modelled on a similar provision in the Victorian *Coroners Act 2008*. Regulations will also be developed in consultation with stakeholders that specify the type of information that needs to be provided under this section. It is anticipated that this will include information relating to:

- the rights that exist in the Coroners Act, for example, regarding the viewing of a deceased person or objections to autopsies; and
- the meaning of senior next of kin, and what rights, including dispute resolution and appeal, flow on from that.

Mr Speaker, while the law is now clear, this positive duty supports and reinforces the Court's commitment to providing plain English information on coronial processes to family and others involved. I expect the information will ensure there is now an explicit understanding that the current law provides that spouse includes a person in a significant relationship under the Relationships Act, whether registered under that Act or not. It could also provide information on what information the Court needs to resolve who is the spouse or next of kin where there is any dispute between family members.

#### Amendments to the *Dangerous Criminals & High Risk Offenders Act 2021*

The Director of Public Prosecutions ('the DPP'), under the *Dangerous Criminals and High Risk Offenders Act 2021* (the Dangerous Criminals and High Risk Offenders Act), is required to consider information about whether a prisoner poses an unacceptable risk of committing another serious offence, and accordingly, whether an application for a high risk offender order should be made to the Supreme Court. The DPP needs access to relevant information and documents to undertake this important consideration.

The current Dangerous Criminals and High Risk Offenders Act is intended to ensure appropriate information sharing between relevant bodies in the decision-making process, and already includes provisions to that effect by reference to 'agencies'.

It was identified these provisions did not capture information exchanged between the DPP and the Parole Board. Further, the provision of information about when a prisoner applies for parole, and the reasons for parole decisions, is critical to a fully informed decision by the DPP. While reasons for granting parole are made public, other information is ordinarily considered confidential information restricted from disclosure under section 8 of the *Corrections Act 1997*.

Recognising that some deliberative and other material is appropriate to remain confidential to the Parole Board, this amendment is specific to the information that is to be provided, which is:

- notice that a prisoner has made an application for parole;
- if a parole order is made, a copy of the order and the reasons for making it; and
- if parole is refused, or the making of an order is deferred, a copy of the relevant order and, in the case of a refusal, the reasons for the decision.

Mr Speaker, this amendment is an important correction to the intended information provisions within the current Dangerous Criminals and High Risk Offenders Act, ensuring decision-making processes are properly and fully informed for the protection of the community.

#### Amendment to the *Monetary Penalties Enforcement Act 2005*

The Bill amends s 27(2)(a) of the *Monetary Penalties Enforcement Act 2005* by allowing certain applications in relation to the payment of fines to be made in a 'manner approved by the Director'. The Act currently requires such applications to be made in 'the approved form', which has been interpreted to mean applications need to be made in writing.

The amendment will provide flexibility for the Director to permit applications to be made via other avenues, such as by telephone. This is a practical and more contemporary amendment that will increase efficiency within the Monetary Penalties Enforcement Service, and importantly, reduce the burden on persons by requiring applications in writing.

#### Amendments to the Sex Industry Offences Act 2005

In 2017, legislative amendment was made to the definition of 'sexual intercourse' in the Criminal Code, and the definition was moved from section 1 to a newly created section 2B. Section 3(1) of the *Sex Industry Offences Act 2005* (the Sex Industry Offences Act) still refers to the definition as being in section 1 of the Criminal Code.

This amendment will simply correct section 3(1) of the Sex Industry Offences Act to ensure it refers to the correct section of the Criminal Code.

#### Amendments to the Traffic Act 1925

Mr Speaker, the Bill amends section 32 of the *Traffic Act 1925* (the Traffic Act) to provide for a longer limitation period on the filing of complaints for the offences of negligent driving causing death, and negligent driving causing grievous bodily harm. The amendment was sought by the DPP on the basis that his Office has found, in some cases, the current limitation period does not provide adequate time for proper investigation and review of such files.

Complaints for these offences are currently covered by the default period contained in the *Justices Act 1959*, being six months from the date of the alleged offence. The amendment to the Traffic Act allows for a complaint for those offences to be filed within 12 months after the time when the alleged offence occurred.

It goes without saying that, despite being dealt with in the Magistrates Court, these offences are serious in nature. They often give rise to complex legal and evidentiary issues, particularly where crash investigations must occur. This is a sensible amendment that ensures there is sufficient time for these matters to be appropriately investigated and considered by the relevant authorities.

Mr Speaker, in conclusion, this Bill ensures that our legislation removes doubt, remains contemporary, and is fit for purpose.

I commend the Bill to the House.