

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Justice Miscellaneous (Royal Commission Amendments) Bill 2022

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

The Justice Miscellaneous (Royal Commission Amendments) Bill 2022 implements a number of the Tasmanian Government's commitments to the recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission) and takes proactive action to respond to the experiences of victims and survivors participating in the criminal justice system.

The Bill amends a number of Acts that influence the prosecution of sexual offences and, in particular, child sexual offences in Tasmanian courts. These reforms will make tangible improvements to the experience of people affected by sexual violence to participate in criminal proceedings and will hold people to account for failing to protect our children, as well as better reflecting the nature of offending perpetrated by those in positions of authority.

I would like to personally acknowledge and thank the victims and survivors that shared their stories through the Royal Commission and during the recent public hearings of the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* (the Commission of Inquiry). I have personally been deeply affected and moved by their courage and commitment to improving the systems of government and protecting Tasmania's children. I want to also acknowledge the families of victims and survivors and those people who have not been able to share their stories.

There is still much work to do but it is my genuine hope that this Bill, along with the other work that our Government is progressing, will better protect Tasmania's children in the future. I would like to again acknowledge the experiences of victims and survivors, their families and people who have supported them. The failure of our systems to support you has been abhorrent. I wish to unreservedly apologise and express my personal commitment to protecting children and preventing child sexual abuse.

I will now turn to the amendments contained in the Bill.

New crime of 'Penetrative abuse of a child [or young person] by a person in authority'

The Bill introduces a new crime of 'Penetrative abuse of a child [or young person] by a person in authority'.

A person will be guilty of the new crime if that person is in a position of authority in relation to a child and that person has sexual intercourse with that child. For the purposes of this crime, a child is any young person under the age of 18 years.

A person is in a 'position of authority' in relation to a child if the person:

- is a teacher at an educational institution 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 the employer of the child.

Importantly, a 'parent' of a child in the context of this crime is broadly defined and includes a step-parent, a surrogate parent, an adoptive parent, a foster parent and a guardian of the child.

The new crime does not apply if the accused person is under 18 years of age.

New crime of 'Failure to protect a child'

In addition, the Bill introduces the crime of 'Failure to protect a child'. This crime is a preventative measure against child sexual abuse by promoting personal and professional accountability for people within organisations.

A person within an organisation is guilty of the crime if they form a reasonable belief that there may be a substantial risk of child sexual abuse and fail to take reasonable steps to reduce or remove that risk. The accused person in this crime is not the potential or actual perpetrator of child sexual abuse. The potential perpetrator of sexual abuse, for the purpose of this crime, is a 'person associated' with an organisation. People associated includes employees, managers, volunteers and others, as well as covering sub-contracting

arrangements or other agreements with third party organisations to exercise care, supervision or authority over children.

The crime requires individuals in positions of authority to take appropriate action to protect children from perpetrators associated with the organisation by holding these people to account for wilfully or negligently failing to take all reasonable steps to protect children from child sexual abuse. What constitutes reasonable steps will depend on the circumstances and the nature of their position with the organisation.

This crime will apply to all people in organisations that exercises care, supervision or authority over children, whether as a primary function or otherwise. These types of organisations include: religious organisations, educational settings, hospitals, councils, State Service agencies, organisations providing out-of-home care and accommodation services, education and child care services, sporting groups, and so on.

Those protected by this crime are children and young people under the age of 18 years old, who are under the care, supervision or authority of a relevant organisation.

Importantly, it is not necessary to prove that a sexual offence has been committed for a charge to be brought against a person for failing to protect a child.

The crime also applies to child sexual offences committed outside of Tasmania as long as the substantial risk of sexual offending occurred in Tasmania.

Consistent with the Government's approach to similar crimes, this crime also specifically precludes a person from using the religious defence that the relevant information was obtained in the context of a religious confession.

Mr Speaker, in response to the Royal Commission, the Council of Attorney-Generals (now the Standing Council of Attorneys-General or SCAG) joined together to formulate Model Provisions for Uniform Evidence Law jurisdictions to address barriers to the admissibility of relevant evidence of an alleged perpetrator's tendency to perpetrate sexual violence against children. Similarly, the Royal Commission suggested changes to improve the use of coincidence evidence in relation to child sexual offence cases.

The Bill introduces the Model Provisions developed by the Uniform Evidence Law jurisdictions and reflects current best evidence in responding to child sexual offences.

The new test requires, unless there are exceptional circumstances, the admission of evidence of a defendant's tendency towards a sexual interest in a child or children in child sexual offence matters. The same rule will apply in relation to coincidence evidence, where two or more witnesses declare similar acts were perpetrated on them by a

defendant, being used to prove that a defendant did an act in issue in the proceedings before the Court.

These reforms are important and seek to counter the insidious nature of sexual offenders who often offend opportunistically and in private settings.

The Bill also abolishes statutory limitation periods that apply to some summary sexual offences consistent with the Royal Commission's recommendations.

Accordingly, the existing 12 month limitation period for the offence of 'assault with indecent intent' contrary to the *Police Offences Act 1935* is removed by the Bill. This amendment will have retrospective effect to enable historical offences to be pursued by investigating and prosecuting authorities.

In addition, the Bill abolishes the two year limitation period that applies to the offences of making, reproducing or procuring a child to be involved in making child exploitation material under the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

Mr Speaker, on 1 March 2021, this Government established the Witness Intermediary Scheme Pilot.

I am incredibly proud to advise the House that since the Pilot commenced, witness intermediaries have assisted and supported almost 700 children and adults with communication needs to effectively participate in the criminal justice system. Therefore, I would like to thank all those involved in establishing the Pilot, and I also acknowledge the support for the Pilot demonstrated by Tasmania Police and the judiciary.

There are now 29 specialist witness intermediaries working in all regions of the State. They are making a tangible difference to the experiences of children and adults engaging with police and the courts.

To reflect what we have learned to date, the Bill includes a number of amendments to assist and streamline the use of witness intermediaries.

Specifically, the Bill makes changes to the operation of the Witness Intermediary Scheme Pilot by:

- clarifying 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;
- providing that a court may make orders for the distribution of materials necessary for a witness intermediary to assess a witness and prepare an assessment report; and

- enabling a court to use a witness intermediary without an assessment report in certain circumstances.

In addition, the Bill amends the *Criminal Law (Detention and Interrogation) Act 1995* to enable police officers to reflect that the facilitation of the use of a witness intermediary is a factor in determining what constitutes a 'reasonable time' for questioning or investigation before bringing a detained person before the Court.

The Bill also makes a number of additional changes to the *Evidence (Children and Special Witnesses) Act 2001* that seek to improve vulnerable complainants' engagement with the criminal justice system. These amendments extend the ability to admit audio-visual recordings of police interviews as all, or part of, the evidence-in-chief of adult victims or special witnesses in sexual offence or family violence offence proceedings.

The Bill also extends the use of pre-recording of audio visual evidence to any other witness where it is in the interests of justice to conduct the pre-recording, and the parties agree.

This reform will assist the timely management of criminal trials.

Finally, the Bill amends the *Victims of Crime Assistance Act 1976* to remove the limitation period for a claim of compensation for applications, including child sexual abuse.

This Bill reflects the Tasmanian Government's ongoing strong commitment to support victims and survivors' effective participation in the criminal justice system while strengthening Tasmania's criminal justice system to reflect the current best practice evidence-base for this type of offending.

Mr Speaker, I commend the Bill to the House.