

DRAFT SECOND READING SPEECH

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Evidence and Related Legislation Amendment Bill 2017

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Madam Speaker, the Evidence and Related Legislation Amendment Bill 2017 makes amendments to the *Evidence Act 2001* and the *Criminal Code Act 1924*. I am pleased to announce that this Bill introduces measures to support victims of crimes, particularly sexual crimes, through the criminal trial process.

This Bill seeks to implement recommendations of the Australian Law Reform Commission and the Tasmania Law Reform Institute. In developing this Bill, regard has also been had to the extensive work conducted by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Madam Speaker, sexual offences perpetrated against children are difficult to prosecute for a number of reasons. Child sexual abuse occurs in covert circumstances, children often do not report these crimes until later in life and there is often little or no corroborative evidence.

These heinous crimes often involve a single perpetrator abusing multiple child victims. Consequently, any evidence in relation to an alleged perpetrator's character or reputation and similar conduct is very important in a criminal trial. Evidence of this type is referred to as evidence of tendency or coincidence.

The significance of tendency and coincidence evidence is that if evidence of one victim is not considered by the Court to be admissible in a criminal trial as tendency or coincidence evidence relating to another victim, then separate trials are required for each victim. Generally, a judge and not the jury makes decisions on the admissibility of evidence.

Where separate criminal trials are ordered in relation to each victim of the same alleged perpetrator, juries may be prevented from hearing relevant evidence from other victims. Such evidence can provide context or demonstrate a capacity for the same perpetrator to act in a particular way. As a consequence of separate trials being ordered, jurors may not be presented with the full picture.

Applications to order separate trials can have a profound effect on victims. Sexual assault trials are delayed by the need to determine the admissibility of disputed evidence in the absence of a jury. To determine this issue of admissibility, defence lawyers are permitted to cross-examine the victim, with the result that a victim will have to give evidence on more than one occasion.

The potential inadmissibility of the key evidence of a perpetrator's tendency to act in particular way poses significant challenges for investigating and prosecuting authorities in mounting a successful prosecution.

The Director of Public Prosecutions has observed that applications for separate trials also makes it very difficult to pre-record children's evidence in line with recent reforms to the *Evidence (Children and Special Witnesses) Act 2001*. These reforms were designed to allow child sexual assault victims to give their evidence shortly after the offending occurred and get on with their lives before the criminal trial process is complete.

I will now address the specific provisions of the Bill.

This Bill amends the *Criminal Code Act 1924* to introduce a presumption that where an accused perpetrator of multiple sexual offences is charged on the same indictment, there is a presumption that the charges are tried together.

This Bill also provides that this presumption of a single trial in relation to multiple sexual offences is not displaced merely because the evidence on one charge is inadmissible on another charge.

The introduction of a presumption of joint trials will reduce the trauma for victims, particularly children, in sexual assault cases. It will reduce the number of times a victim gives evidence and provide juries with a fuller picture of the circumstances and facts surrounding allegations, rather than the artificial and individualised context to the alleged offending as occurs where charges are tried separately.

In 2001 Tasmania adopted a national model for uniform evidence law. The *Evidence Act 2001* provides the rules in relation to the evidence that may be heard and used to support a verdict by a jury in a trial, otherwise referred to as the admissibility of evidence.

This Bill amends the *Evidence Act 2001* in relation to the admissibility of tendency evidence and coincidence evidence.

Tendency evidence is evidence of character, reputation or conduct of an alleged perpetrator, or a tendency for an alleged perpetrator to act in a particular way or to have a particular state of mind.

Coincidence evidence invites a jury to reason that similarities in two or more events or circumstances make it improbable that the events occurred coincidentally.

For tendency and coincidence evidence to be admissible in a criminal trial, the evidence cannot be used against an alleged perpetrator unless the probative value of the evidence substantially outweighs any prejudicial effect it may have on the accused person.

In Tasmania, the courts have interpreted this test to mean that a jury is not able to hear the evidence if there is a possibility that the evidence is a result of concoction, suggestion or collusion between victims of the same alleged perpetrator. In circumstances where victims are known to each other such a possibility is usually present. The result is that the jury is unable to hear the evidence of character or similar conduct of an alleged perpetrator.

This is not the approach in other Australian uniform evidence law jurisdictions. In those jurisdictions their uniform evidence Acts have been interpreted by the Courts to enable the jury to consider the evidence of tendency or coincidence where concoction, collusion or suggestion is a possibility. In other words, the issue of possible concoction is left for a jury to determine.

Similarly, the Australian jurisdictions that have not adopted the model uniform evidence laws have specifically legislated so that the possibility of concoction is a matter for the jury to assess.

This Bill amends the *Evidence Act 2001* to clearly state that evidence of concoction, collusion or suggestion is not relevant to the admissibility of the evidence in a criminal trial bringing the approach to tendency and coincidence evidence in this State into line with other Australian jurisdictions.

The Government is committed to introducing reforms to criminal practice and procedure that recognise the special characteristics of sexual crimes and reflect best practice to enable vulnerable victims to effectively participate in the criminal trial process.

I commend the Bill to the House.