

DRAFT SECOND READING SPEECH

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Criminal Code and Related Legislation Amendment (Child Abuse) Bill 2018

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

All Tasmanians were appalled by the shocking revelations of child sexual abuse that have emerged from the Royal Commission into Institutional Responses to Child Sexual Abuse.

On 20 June 2018, I tabled the Government's response to the Royal Commission into Institutional Responses to Child Sexual Abuse Final Report and earlier Working with Children Checks, Redress and Civil Litigation and Criminal Justice reports.

The Final Report was the culmination of the work of the Royal Commission over its five-year inquiry. It sets out what the Royal Commission heard, concluded and recommended to better prevent and respond to child sexual abuse in institutions.

In the 17 volumes of its Final Report and its earlier reports on specific areas, the Royal Commission made 409 recommendations across a wide range of policy areas aimed at improving institutional responses to child sexual abuse.

Broadly speaking, the Royal Commission's recommendations aim to:

- prevent abuse or, at the very least, identify it as early as possible;
- improve the way perpetrators are investigated, prosecuted and sentenced; and
- improve survivors' access to justice and ongoing support.

The Royal Commission's recommendations recognise that governments, institutions and the broader community share responsibility for keeping children safe.

I again wish to acknowledge the courage of people affected by institutional child sexual abuse who shared their stories with the Royal Commission. Without the bravery of those victims and the families of victims, we would not have the benefit of the vast work of the Royal Commission. Not just that work contained in its final reports, but also that work that can assist us to address the evils of child sexual abuse derived from the Royal Commission's case studies and enormous body of commissioned research.

The Tasmanian Government remains committed to better protecting our vulnerable children, and the work of the Royal Commission will help shape future reforms to achieve this. This Bill is just one of many significant systems and legislative reforms we will implement to continue to work towards a safe Tasmania for our children.

This Bill fulfils the Government's commitment to introduce a Bill to introduce various legislative amendments by the end of 2018.

The *Criminal Code and Related Legislation Amendment (Child Abuse) Bill 2018* addresses a number of recommendations made by the Royal Commission, particularly in the area of criminal justice as well as mechanisms to improve child safety through the reporting of concerns relating to children at risk.

Specifically, the Bill amends the *Children, Young Persons and Their Families Act 1997*, the *Criminal Code Act 1924*, the *Evidence (Children and Special Witnesses) Act 2001* and the *Sentencing Act 1997*. I will now address the proposed amendments in turn.

The Bill amends the *Children, Young Persons and Their Families Act 1997* to include members of religious ministry and members of the Tasmanian Parliament as 'notifiers' for the purposes of mandatory reporting risk to children under section 14 of that Act.

This inclusion of people in religious ministry as mandatory reporters or notifiers is a specific recommendation in the Final Report of the Royal Commission – recommendation 7.3.

Further, the Bill specifies that such members of religious ministry may not rely on confessional privilege to refuse to disclose information under section 14.

I appreciate the significance of this amendment and in particular the opposition made by Church authorities. However, it is for the State to legislate in relation to the safety of the community and in particular our children.

This area was the subject of significant work and consideration by the Royal Commission. The abrogation of the confessional privilege in so far as it relates to the requirement that clergy be included as mandatory reporters is a specific recommendation of the Royal Commission – Final Report, recommendation 7.4.

The Bill also includes Members of the State Parliament as notifiers or mandatory reporters. This reflects that, through positions held in Parliament, many of us may receive disturbing information about the safety of children. We should also be required to report any information or concerns that we may have for the welfare of children to appropriate authorities.

The Bill also amends the *Children, Young Persons and Their Families Act 1997* to clarify that the identity of 'notifiers' may be provided to law enforcement agencies.

The Bill amends the *Criminal Code Act 1924* to provide a new crime of 'Failing to report the abuse of a child'.

A person is guilty of the new crime of 'Failing to report the abuse of a child' where a person reasonably believes that a child abuse offence has been committed and fails without reasonable excuse to inform a police officer as soon as practicable.

The crime applies only where information is obtained on or after the commencement of this Act but applies regardless of the date of the alleged child abuse offence. That is, the information may relate to a child abuse offence that is alleged to have been committed prior to the commencement of the Act.

A 'child abuse offence' is defined in the Bill to include child sexual offences and any serious assaults against a child or ill-treatment of a child.

Importantly, the new crime provides a number of safeguards that protects the rights of victims and the vulnerable. The crime does not apply to knowledge held by the victim of the child abuse offence. Nor does the new crime apply to information where:

- it is received by a child; or
- by a person from a victim who has attained the age of 18 years and who wants the information to remain confidential.

A person is not guilty of the new crime if the information relating to a child abuse offence was not provided to a police officer where:

- the information is already generally available to members of the public; or
- a person has a reasonable belief that:
 - the information has been reported or is known to a proper authority; or
 - reporting the information may endanger the safety of any person (other than the alleged perpetrator).

The new crime specifically excludes a member of clergy of a church or religious denomination from relying on confessional privilege as a reasonable excuse for failing to report a child abuse offence. This is consistent with the recommendations of the Royal Commission – Criminal Justice Report, recommendation 35.

Finally, the new crime cannot be commenced without the written approval of the Director of Public Prosecutions.

The Bill also amends the *Criminal Code Act 1924* to extend the Tasmanian 'grooming offence' under section 125D of the *Criminal Code* to include communications with third parties with intent to procure a child for unlawful sexual activity or exposure to child exploitation material.

The Bill also amends the *Criminal Code* by inserting a transitional provision to clarify that the repeal of section 18(3) of the *Criminal Code* applies retrospectively. This is also a recommendation of the Royal Commission – Criminal Justice Report, recommendation 83.

The Bill amends the *Evidence (Children and Special Witnesses) Act 2001* to strengthen important protections that will assist people to participate in the criminal process.

The Royal Commission undertook a significant body of work in this area given its importance. The Royal Commission concluded that supporting victims and witnesses of child sexual abuse to give evidence is critical if the criminal justice system is to work effectively and appropriately in relation to child abuse offences.

The Bill extends the pre-recording of audio-visual evidence to all victims in child sexual abuse, any children who are under 18 years, and any other witness ordered by the court upon application by the prosecution where it is in the interests of justice to conduct the pre-recording. This follows recommendation 53 in the Royal Commission's Criminal Justice Report.

Consistent with recommendation 84 in the Royal Commission's Criminal Justice Report, the Bill also clarifies that the use of earlier audio-visual recordings of evidence is to be tendered as the relevant witness's evidence where relevant to any subsequent proceedings and it is not contrary to the interests of justice. This amendment will assist to reduce the number of times a witness has to give evidence in criminal proceedings and reduce the risk of re-traumatisation by multiple criminal trials and appeals.

In line with recommendation 9(g) of the Royal Commission's Criminal Justice Report the Bill provides that audio-visual recordings of evidence may be used for training purposes by police officers to enable best practice approaches to police interviewing and ongoing training for specialist officers.

The Bill also provides the Attorney-General with the power to approve on specific conditions the viewing of audio visual recording of evidence by a prescribed law reform body for the purposes of a review of the laws of evidence.

This may only occur in circumstances where the audio-visual recording is de-identified or alternatively, the witness whose evidence has been recorded has attained the age of 18 years and consents to the use by the law reform body.

The Bill amends the *Sentencing Act 1997* to require sentencing courts to indicate the sentence that would have been imposed for each offence had separate sentences been imposed when setting a sentence in relation to child sexual abuse offences involving multiple discrete episodes of offending and/or where there are multiple victims. This is in line with recommendation 75 of the Royal Commission's Criminal Justice Report.

Finally, the Bill also amends the *Sentencing Act 1997* to require sentencing courts to consider current sentencing standards when sentencing offenders for child sexual abuse offences, consistent with recommendation 76 in the Royal Commission's Criminal Justice Report.

The findings of the Royal Commission threw a spotlight onto the way in which institutions across the spectrum have failed children in the past. This Government is committed to doing all that is in its power to prevent it happening again.

In particular, the Royal Commission highlighted the need for all members of the community to do everything in their power to prevent child abuse and the failure of institutions to protect children in the past.

This Bill represents an important step in implementing a number of the Royal Commission's recommendations, and in doing so provide a number of important protections to some of the most vulnerable Tasmanians.

I commend the Bill to the House.