JUSTICE AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL (No. 2) 2024 (No. 45)

Second Reading

[3.47 p.m.]

Mr BARNETT (Lyons - Minister for Justice) - Deputy Speaker, I move -

That the bill be now read the second time.

The bill contains minor and non-controversial amendments that update and clarify a number of different acts, 10 of which are within my Justice portfolio and two fall under the responsibility of the minister for Small Business and Consumer Affairs.

The amendments arise from requests from the Chief Justice; Department of Police, Fire and Emergency Management; Office of the Director of Public Prosecutions; the Tasmanian Electoral Commission; the Ombudsman; and outputs within the Department of Justice, who frequently deal with particular legislative provisions. I will now outline the reasons for each of the proposed amendments in turn.

The bill amends Section 2B of the Criminal Code, as requested by the Director of Public Prosecutions, to make the definition of 'sexual intercourse' retrospective. When the change in the definition of 'sexual intercourse' in the Criminal Code occurred in 2017, it was not made retrospective to avoid encountering practical problems, for example, with charges for the crimes of penetrative sexual abuse of a child or young person under Section 124, persistent sexual abuse of a child or young person under Section 125A, and indecent assault under Section 127, that are retrospective.

This bill provides for the expanded definition of 'sexual intercourse' to be taken to have applied in relation to a crime since 4 April 1924. That is the date when the Criminal Code commenced. By making the definition retrospective, it will avoid future confusion as to what constitutes 'sexual intercourse' for the purposes of sexual offences across the relevant time period under the Criminal Code. What constitutes unlawful conduct for the purposes of the definition of 'sexual intercourse' under the Criminal Code will not criminalise any conduct that was not otherwise unlawful. The bill also makes a necessary amendment with the insertion of Section 466 to provide that the definition of 'sexual intercourse', being retrospective, does not affect proceedings that have already been determined.

During the progress of the *Justice (Miscellaneous Commission of Inquiry) Bill 2024*, it was identified that a position of authority offence in that bill to which the 'difference of age' defence supplies should be included in Section 14A of the Criminal Code. In proceedings for specified sexual offences, Section 14A of the Criminal Code provides instances in which a mistaken belief by the defendant as to the consent is not honest and reasonable and therefore the defence under Section 14 may not be relied upon.

The Director of Public Prosecutions has requested the inclusion of:

- Section 12 A -'penetrative sexual abuse of child or young person by person in position of authority';

- 125A - 'persistent sexual abuse of child or young person';

- 125C - 'procuring child or young person for sexual abuse';

- 126 - 'penetrative sexual abuse of a person with a mental impairment; and

- 170A - 'persistent family violence in Section 14 A to avoid negative implications for victims, where the specific age, defence or where an accused raises the defence of mistaken belief, can arise.

Under the *Dangerous Criminals and High Risk Offenders Act 2021*, the Director of Public Prosecutions may apply for a high-risk offender (HRO) order in relation to serious offenders who do not meet the threshold for being declared a dangerous criminal but may nevertheless pose a risk to the community if no supervising conditions are in place when they are released post sentence. This act also allows for an interim HRO order, the purpose of which is to provide the public with temporary protection until such time as the final decision can be made as the appropriateness or otherwise of the HRO order.

The Chief Justice has requested an amendment to the *Dangerous Criminals and High Risk Offenders Act* to clarify the criteria to be relied upon when making an interim high risk order. Currently, under the act, a judge must assess such an application using the same criteria as when making a final assessment under an HRO, which is too high a standard to meet from interim HRO order where all evidence is not yet available. This bill amends section 37(1) subsection (b), to clarify the criteria a judge is to consider when an application for an interim high-risk offender order is made to the Supreme Court and distinguishes the criteria on which interim HROs are based for the criteria that apply to a final HRO.

Amendments to the *Electoral Act*. Currently the *Electoral Act* provides that it is an offence to vote at an election in a division after having voted in election in respect of another division held contemporaneously with the first mentioned election. The intention of this offence provision is to preclude an elector from voting in more than one division at either a House of Assembly election or a Legislative Council election. The bill amends section 186, subsection 1 to clarify this and avoid any confusion in the rare event that there is a dual polling day for House of Assembly elections and periodic Legislative Council elections.

In terms of the *Evidence Act*, section 194M of the *Evidence Act* operates in relation to specified sexual offences and precludes inducing or eliciting evidence that discloses or implies the sexual reputation of the complainant, unless leave is granted by the judge or magistrate where particular requirements are met. The Director of Public Prosecutions requested that section 194M be amended to include a reference to the crime of persistent family violence under section 170A of the Criminal Code to avoid negative implications for victims of persistent family violence and to remedy the omission of this section from when the crime was inserted into the Criminal Code in 2018. This bill extends the operation of section 194M of the *Evidence Act 2001* to include the crime of persistent family violence.

The *Family Violence Act* contains a serial family violence perpetrator declaration framework which is designed to identify perpetrators who repeatedly commit family violence offences. Currently, the act provides for a process for serial family violence protection declaration to be reviewed, but only on application to the relevant court by the Director of Public Prosecutions or the declared offender. This bill amends section 29D to provide for Tasmania Police to make applications for review of declarations that have been made in the Magistrates Court. This will be a more efficient process, as police prosecutors make applications for such declarations in the Magistrates Court and therefore have ready access to the relevant material for review purposes.

Fingerprint evidence is obtained in Tasmania under the provisions of the *Forensic Procedures Act 2000*, an act which is administered by the Department of Justice. Forensic procedures legislation seeks to facilitate the sharing of forensic material such as DNA and fingerprint information with other Australian jurisdictions for law enforcement activities consistent with an agreement made by the then Australian Police Ministers Council in 1998. Under section 63, subsection (1) of the act is an offence to disclose information obtained by a forensic procedure that is forensic material taken by police to discover the identity of a person. There are exceptions within section 63 to enable Tasmania Police to undertake investigations, including 'for the purposes of the investigation of any offence or offences generally'.

Tasmania Police requested that section 63 of the act be amended to clarify the lawful purposes for which forensic material may be provided to other law enforcement agencies in other Australian jurisdictions.

The current existing legislative licensing requirements for automotive gas-fitting work under the *Gas Safety Act 2019* and the *Occupational Licensing Act 2005* do not cover the technology of vehicles that derive energy from hydrogen fuel cells. The reason is that hydrogen-consuming fuel cells produce electricity to propel vehicles and so do not fall within a traditional internal combustion engine in the existing legislation.

This means there is a regulatory gap once the technology and associated servicing industry develop. This bill amends section 3 of the *Gas Safety Act 2019* to expand the definition of automotive gas fuel system to include hydrogen fuel cells. Further, the bill amends section 2 of the *Occupational Licensing Act 2005* to cover the qualifications, training and safe work standards for those working on hydrogen fuel cell vehicles.

The definition of health service within the *Health Complaints Act* is 'a service provided to a person for, or purportedly for, the benefit of human health'. It has been recognised that it would be preferable for this definition to be amended to capture certain procedures, for example some cosmetic medical procedures, where there may arguably be no benefit to physical or mental health.

This bill amends the definition of health service to ensure that Tasmanians can implement the National Code of Conduct for healthcare workers who provide a health service but who are not registered under the National Health Practitioner Regulation Law and who failed to comply with proper standards of conduct or practice.

Under this act, a joint Standing Committee of Integrity is established with a number of functions, including monitoring and reviewing the performance of the functions of an integrity entity and reporting to parliament on such performance. For the purposes of this part of the act, an integrity entity includes the Integrity Commission, the Ombudsman, or the custodial inspector.

This bill amends section 23 to future-proof the act to cover potential changes in the future composition of the parliament. Currently, the act requires the committee to consist of three members of each house of the parliament and from the members from the House of Assembly there must be at least one member of any political party that has three or more members in the House of Assembly.

The bill allows some fluctuation in the number of committee members. Six or eight

should there be up to four parties with three or more members in the House of Assembly, while maintaining the equal representation from both houses. There is also an associated amendment to the quorum required for the committee.

The Director of Public Prosecutions requested that sections 71 and 72 of the *Justices Act 1959* be amended to reinstate the crime of fraud under section 253 Capital A of the Criminal Code in the operation of these sections to reduce the backlog of criminal matters in the Supreme Court.

In 2020, the *Justices Act 1959* was amended by the *Justices Miscellaneous Court Backlog and Related Matters Act 2020*. This legislation was to address certain issues rather than waiting for the finalisation of the *Magistrates Court (Criminal and General Division) Act 2019*.

Two of particular note are: duplicating the list of minor offences and electable offences in the new Magistrates Court legislation, and increasing the property value thresholds for minor offences dealt with summarily from $5000 to $20,000 and for electable offences that can be dealt with summarily from $20,000 to $100,000 in line with the provisions in the later act.

The *Justices of the Peace Act 2018* introduced a new and more comprehensive framework for the appointment and regulation of the conduct of Justices of the Peace (JP); in particular to increase the transparency of the process of appointing JPs. In administering this act, the Department of Justice has identified some small amendments that are required to meet the original intentions of the act, including the following: requiring prospective JPs to undertake training; clarifying when a JP may commence the exercise of their powers of office; an application for reappointment to be made 12 months before an appointment expires, instead of six months before or six months after, as is the current requirement; the period of reappointment to be extended from the current two-year period to a period of five years; validating the act of appointed JPs who are no longer appointed as a JP, whether through expiration or appointment or reason other than suspension, but who are unaware of this and acts in good faith; enabling the Secretary of the Justice Department to contact JPs more regularly in order to efficiently maintain the register of JPs.

My department has been in contact with all three of the Justice of the Peace Associations in Tasmania in relation to the matters that this bill covers, and each has indicated support for the amendments. In addition, I thank those stakeholders who were consulted where necessary during the drafting of this bill. Given that the amendments are non-controversial and minor clarifications, a public consultation process was not required before presenting this bill to parliament.

Having said that, Speaker, I commend the bill to the House.