

DRAFT SECOND READING SPEECH
HON ELISE ARCHER MP

Evidence (Children and Special Witnesses) Amendment Bill 2020

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

Throughout the Royal Commission into Institutional Responses to Child Sexual Abuse, we heard stories from survivors of their daunting experiences engaging in the criminal justice system.

We heard about the harrowing nature of child sexual abuse offences as being generally committed in private, with no eyewitnesses, and no medical or forensic evidence capable of confirming the abuse. We heard about the importance of a survivor's evidence in a criminal trial, with that evidence typically being the only direct evidence about what has occurred.

From the work of the Royal Commission, we learned that achieving justice in a criminal investigation and prosecution for child sexual abuse often hinges on the survivor's ability to give clear and credible evidence. We learned about the impact of trauma on memory and the limits of traditional methods to accurately assess credibility in child sexual abuse cases.

I wish to take a moment at the outset to again acknowledge and thank those victims and survivors who have bravely and selflessly shared their experiences, so that we may identify where we need to improve the law and practices, and act to ensure that Tasmania's children and our most vulnerable are safe from those that would perpetrate sexual violence and that they can be confident that our criminal justice system provides every opportunity for them to achieve justice.

We know that many survivors and victims of all types of sexual abuse find engaging in the criminal justice system prohibitively difficult, so much so that it can be a barrier for some people to report the abuse they have suffered to authorities, and where they do come forward, can affect the prosecution of the perpetrator of the abuse.

Participation in the criminal justice system is especially difficult for children, for adults who were children at the time of abuse and for many other members of our community with particular vulnerabilities and needs. These victims and survivors have contributed to the extensive research undertaken by the Royal Commission and we must listen, learn and act upon what they have told us of their experiences. It is incumbent on every government to support survivors and victims of sexual abuse to come forward and bring those who would prey upon our most vulnerable members of the community to justice.

Our criminal justice system has changed significantly over time. It has demonstrated the ability to adapt to new technology, science, behavioural awareness and community expectations – especially in improving the way in which crimes are investigated and criminal trials are conducted.

Reforms such as the introduction of audio-visual recording of police interviews, the use of fingerprint and later DNA evidence, the introduction of restrictions on questioning about matters such as victim's sexual history, and more recently the pre-recording of victim's evidence are but

a few examples of significant and important changes to the criminal justice system over the last few decades. Today, the utility of these reforms is unquestioned.

That is why, I am pleased and very proud to introduce the Evidence (Children and Special Witnesses) Amendment Bill 2020 which will establish the legislative framework for the use of witness intermediaries or communications experts in Tasmanian courts.

This Bill fulfils the Tasmanian Government's commitment to establish a Pilot Intermediary Scheme in direct response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in its Criminal Justice Report; and the work of the Tasmania Law Reform Institute (TLRI) in its 2018 report, *Facilitating Equal Access to Justice: An Intermediary/Communication Scheme for Tasmania?*

This Bill will build on our previous reforms as a result of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, and further strengthen Tasmania's criminal justice system by introducing skilled communications experts who will work alongside lawyers and judges to ensure that vulnerable witnesses participating in the criminal justice process are able to communicate to the best of their ability.

Madam Speaker – these communication experts are called 'witness intermediaries.'

Witness intermediaries are neutral officers of the court and will support prosecution and defence lawyers to ensure that vulnerable witnesses are asked questions that they can understand. They will make sure the vulnerable witnesses have access to the materials they need to express themselves in answering questions, and they will make sure that vulnerable witnesses have the time and space they need to communicate their best evidence.

Witness intermediaries have been successfully utilised in the United Kingdom and New Zealand. Closer to home, in recent years Witness Intermediary Schemes have been introduced in New South Wales, Victoria, South Australia and most recently in the Australian Capital Territory.

Tasmania's Pilot Intermediary Scheme will commence in March 2021 alongside the commencement of the legal year and operate for three years. It will undergo a thorough evaluation to ensure its effective operation and review its scope.

To manage the implementation of the Scheme, the Pilot will apply to children and adults with a communication need, who are victims or witnesses in proceedings relating to specified offences, that is, sexual offence matters and homicide matters. Under the Pilot, witness intermediaries will be made available to Tasmania Police during investigation of crimes, and in proceedings in both the Magistrates Court and Supreme Court.

To support the use of intermediaries in court proceedings, the Bill amends the *Evidence (Children and Special Witnesses) Act 2001* by giving the Secretary of the Department of Justice the power to establish and maintain the Intermediaries Panel. A person may be included on the Panel if the person has a tertiary qualification in psychology, social work, speech pathology or occupational therapy, or the person has qualifications, training, experience or skills suitable for the performance of the functions. This will ensure that people, such as teachers with specialist knowledge and experience, are eligible to act as intermediaries.

Under the Bill, the functions of an intermediary include assessing an eligible witness's communication and other related needs, and to prepare and provide an assessment report. A witness intermediary will also provide recommendations to the court and any lawyer appearing in the proceeding as to adjustments to be made in the proceeding.

A witness intermediary assesses the functional communication skills of a witness through observation, conversation of general topics and activities appropriate to the age and skills of the witness. The assessment includes a witness's vocabulary, ability to concentrate, ability to understand complex questions, ability to accurately agree or refute statements, their general understanding of timing and sequencing of events, and management of anxiety and arousal levels.

After assessment, the witness intermediary prepares an assessment report which will include recommendations to the judicial officer as to the type and style of questioning, the need for breaks, the preferred naming of body parts as well as other adjustments such as the use of body maps, language charts, and communication devices.

The Assessment Report is considered by the judicial officer in order to determine whether an order for the use of a witness intermediary in the proceedings should be made. The Bill gives the judicial officer the power to order the use of a witness intermediary if, having considered an Assessment Report, the judicial officer is satisfied that the use of an intermediary will assist the proceeding. For example, a Witness Intermediary may assist proceedings if their assistance will facilitate the witness giving their best evidence and reduce re-traumatisation.

Once the use of a witness intermediary order has been made, a ground rules hearing must be held. The requirement for a ground rules hearing was specifically recommended by the Royal Commission and enables the court to consider the communication and other related needs of the witness, and gives directions on how the proceeding must be conducted to meet those needs fairly and effectively.

Importantly, the Bill provides a witness intermediary must act impartially when performing the functions of the role and requires a witness intermediary to take an oath or affirmation before acting as a witness intermediary in a court proceeding.

The Bill also gives children and adults with a communication need the same rights as an 'affected child' and 'affected person' under the *Evidence (Children and Special Witnesses) Act 2001*. This ensures that children and adults with a communication need have the same rights as other vulnerable people participating in the criminal justice system, such as to the use of a support person, the admission of a prior statement, the conduct of a special pre-recorded hearing and the taking of evidence via audio-visual link.

The Bill extends the definition of 'affected person' to include 'prescribed witness' under section 331B of the *Criminal Code Act 1924*. Section 331B requires a preliminary proceeding order only be made if, in the case of an affected person, the court is satisfied that exceptional circumstances require the witness to give evidence on oath in a preliminary proceedings.

The Bill also amends section 8A of the *Evidence (Children and Special Witnesses) Act 2001* to prevent a defendant directly cross-examining a witness where a witness intermediary order has been made and clarifies the role of a person appointed by the court to assist cross-examination.

The Bill clarifies that the application of the Legal Aid Commission of Tasmania's income, assets and merits test does not apply to an order under section 8A(3) and provides the Director of the Legal Aid Commission with notice to enable the management of potential conflicts and appropriate allocation of staff.

The Bill also consequentially amends section 19 of the *Legal Aid Commission Act 1990* to clarify when the Commission is to provide legal aid to a person in accordance with a section 8A order.

Vulnerable people in our community are over-represented as victims in our criminal justice system. They have communication needs that impede their interactions with police, lawyers and the courts. They are children, people with disabilities, they are people dealing with mental health problems, and those managing the impact of trauma.

The ability for perpetrators of crimes against the community's most vulnerable people to escape justice because of those vulnerabilities is especially heinous. The Tasmanian Government is committed to making sure that every vulnerable Tasmanian can effectively participate in the criminal justice system. Every measure that can assist such perpetrators to be brought to justice, should be implemented.

This Bill is quality, evidence-based reform and yet another example of our Government's strong commitment to ensuring that the voice of every Tasmanian is heard, understood, and acted on.

Madam Speaker, I commend the Bill to the House.