DRAFT SECOND READING SPEECH

HON GUY BARNETT MHA

Justice and Related Legislation (Miscellaneous Amendments) Bill (No.2) 2025

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

This Bill contains minor and non-controversial amendments that update and clarify a number of different Acts, eleven of which are within my Justice portfolio and one that falls under the responsibility of the Minister for Police, Fire and Emergency Management.

The amendments arise from requests from the Chief Justice, Department of Police, Fire and Emergency Management, Office of the Director of Public Prosecutions, Tasmanian Electoral Commission, Ombudsman and outputs within the Department of Justice who frequently deal with particular legislative provisions.

This Bill was previously passed by the House of Assembly on 8 April 2025, and progressed to second reading in the Legislative Council on 29 May 2025, but lapsed with the calling of the 2025 Tasmanian state election. The Bill tabled today is the same as the Bill which progressed to the Legislative Council, including the amendments I moved in the House.

I will now outline the reasons for each of the proposed amendments in turn.

Amendments to the *Criminal Code Act 1924*

This Bill amends section 2B of the *Criminal Code*, as requested by the Director of Public Prosecutions, to make the definition of 'sexual intercourse' retrospective.

The change in the definition of 'sexual intercourse' in the *Criminal Code* in 2017 was not made retrospective. To address some practical problems that have arisen since 2017, 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, being the date when the *Criminal Code* commenced. Making the definition retrospective avoids any confusion as to what constitutes sexual intercourse for the purposes of sexual offences across the relevant time period under the *Criminal Code*. Importantly, this change does not criminalise any conduct that was not otherwise unlawful. It does however simplify and

clarify the charges that are laid, particularly where an offender is charged for unlawful conduct of the same nature that occurs both before and after 2017.

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.

The Bill also responds to a request from the Director of Public Prosecutions to include further relevant offences into the operation of section 14A of the Code. These include both offences in the originally tabled Bill, plus two more recent offences that were included after I moved amendments to the original Bill on the floor. The offences are:

- Section 124A (penetrative sexual abuse of child or young person by person in position of authority);
- Section 124B (indecent act with or directed at a child or young person by person in position of authority);
- Section 124C (indecent assault of child or young person by person in position of authority).
- Section 125A (persistent sexual abuse of child or young person);
- Section 125C (procuring child or young person for sexual abuse);
- Section 126 (penetrative sexual abuse of a person with a mental impairment); and
- Section 170A (persistent family violence in respect of some of the preceding offences).

These are offences in which, subject to any limitations in the provisions, consent is relevant. For some child sexual offences, for example, a similar age defence provides for the consent of the relevant child if the other person is within a prescribed similar age range. The similar age defence reflects that young people may engage in consensual sexual relations, which would be unlawful if engaged in by an older person.

Section 14A of the Code provides for when a mistaken belief by the accused as to the existence of consent is not honest or reasonable.

For example, a mistaken belief is not honest and reasonable if the accused was in a state of self-induced intoxication or was reckless, or did not take reasonable steps to know the complainant was consenting.

This improves the consistency of the law in the protections for victims, and restrictions on offenders relying on alleged mistake as to consent.

Amendments to the *Dangerous Criminals and High Risk Offenders Act 2021*

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 a final decision can be made as to the appropriateness or otherwise of a 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 offender order (HRO). Currently under the Act a judge must assess such an application using the same criteria as when making a final assessment about a HRO order which is too high a standard to meet for an interim HRO order where all evidence is not yet available.

This Bill amends section 37(1)(b) to clarify the criteria a judge is to consider when an application for an interim High Risk Offender (HRO) order is made to the Supreme Court and distinguishes the criteria on which interim HROs are based from the criteria that apply to a final HRO.

Amendments to the *Electoral Act 2004*

Currently the *Electoral Act* provides that it is an offence to vote at an election in a division after having voted in an 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(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 Legislation Council elections.

Amendments to the *Evidence Act 2001*

Section 194M of the *Evidence Act 2001* operates in relation to specified sexual offences and precludes adducing 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.

Amendments to the *Family Violence Act 2004*

The *Family Violence Act 2004* contains a Serial Family Violence Perpetrator (SFVP) declaration framework, which is designed to identify perpetrators who repeatedly commit family violence offences.

Currently the Act provides for a process for SFVP 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 declaration in the Magistrates Court and therefore have ready access to the relevant material for review purposes.

Amendments to *the Forensic Procedures Act 2000*

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 the then Australian Police Ministers' Council in 1998. Similar forensics procedure legislation was enacted in other states and territories in the early 2000s, with the intention that a fingerprint may be used, subject to the requirements of the legislation, to match in relation to offences in any jurisdiction.

Under section 63(1) of the Act it 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".

The amendment to section 63 is an 'avoidance of doubt' clause, to clarify that the meaning of 'offence' is an offence under the law of Tasmania, another state or territory or the Commonwealth. This is the understanding across jurisdictions since similar legislation was enacted around the country in the early 2000s, so that a fingerprint may be used, subject to the requirements of the legislation, to match in relation to offences in any jurisdiction.

The need for this amendment arose as it was noted that section 27 of the *Acts Interpretation Act 1931* has a general provision that provides "references to

localities, jurisdictions, and other matters and things shall be construed as references to such localities, jurisdictions, and other matters and things in and of this State." In other words, the issue the amendment is intended to clarify is to avoid any concern that the reference to the offence in section 63 is a "thing" limited to Tasmania.

This Bill takes the same approach to the previous Bill following my amendment on the floor to the previous Bill to reflect a simpler, clearer approach to this issue.

It is important to note that the amendment does not reflect any change in the longstanding practice of the model legislation introduced across Australia in relation to management and sharing of fingerprint information in relation to offences.

Amendments to the *Gas Safety Act 2019* and *Occupational Licensing Act 2005*

The current existing legislative licencing 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 as 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 Schedule 2 to the *Occupational Licensing Act 2005* to cover the qualifications, training and safe work standards for those working on hydrogen fuel cell vehicles.

Amendments to the *Health Complaints Act 1995*

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 Tasmania can implement the National Code of Conduct for health care workers who provide a health service but who are not registered under the National Health Practitioner Regulation Law, and who fail to comply with proper standards of conduct or practice.

Amendments to the *Integrity Commission Act 2009*

Under this Act a Joint Standing Committee on 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 3 members from each House of the Parliament, and from the members of the House of Assembly there must be at least one member of any political party that has 3 or more members in the House of Assembly.

The Bill allows some fluctuation in the number of Committee members (6 or 8) should there be up to four parties with 3 or more members in the House of Assembly, while maintaining equal representation from both House. There is also an associated amendment to the quorum required for the Committee.

Amendments to the *Justices Act 1959*

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 253A 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 $5,000 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.

Amendments to the *Justices of the Peace Act 2018*

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 (JPs), 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:

- 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 6 months or 6 months after as is the current requirement;
- the period of reappointment to be extended from the current 2 year period to a period of 5 years;
- validating the act of appointed JPs who are no longer appointed as a JP (whether through expiration of appointment or reason other than suspension) but who is 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 that 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.

I commend the Bill to the House.