

FACT SHEET

Justice Miscellaneous (Commission of Inquiry) Bill 2024

The Justice Miscellaneous (Commission of Inquiry) Bill 2024 (the Bill) progresses a number of the recommendations of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (the Commission of Inquiry). The recommendations which this Bill implements, or in some cases partially implements, are numbered 16.9, 16.13, 16.14, 16.18, 17.4, 17.5 and 18.12. Some aspects of these recommendations do not relate to legislative reform, so are not addressed by this Bill.

The amendments all relate to legislation within the Department of Justice portfolio under the Attorney-General's responsibility. The collective theme of the amendments and the Commission's corresponding recommendations is protecting children, improving the law's response to victim-survivors of child sexual abuse, and holding offenders to account.

The Bill makes important amendments to the *Civil Liability Act 2002*, the *Criminal Code*, *Police Offences Act 1935*, *Registration to Work with Vulnerable People Act 2013* and the *Sentencing Act 1997*. It makes minor, consequential amendments to the *Annulled Convictions Act 2003*, *Child and Youth Safe Organisations Act 2023*, *Community Protection (Offender Reporting) Act 2005*, *Corrections Act 1997*, *Evidence Act 2001*, *Evidence (Children and Special Witnesses) Act 2001*, and the *Justices Act 1959*.

The amendments to the *Civil Liability Act 2002* ensure that organisations can make meaningful apologies for past child sexual abuse. They do this by rendering defined expressions of sympathy or regret, or of a general sense of benevolence or compassion, irrelevant to determining fault or liability and inadmissible as evidence in civil proceedings of the organisation's fault or liability for that child abuse. They confirm that such an apology is not an express or implied admission of fault or liability.

The amendments to the criminal law:

- Extend and clarify offences relating to child sexual abuse in the *Criminal Code*, thereby implementing recommendation 16.9. The most significant amendments are:
 - Removing references to 'maintaining a sexual relationship with a young person' in s 125A and replacing it with 'persistently sexually abuses' (or variations of those words).
 - Creating the new offences of indecent act with or directed at a child or young person by a person in a position of authority (section 124B), and indecent assault of a child or young person by a person in a position of authority (section 124C). Consequential amendments are made to a number of other Acts.
 - Inserting a 'similar age defence' into section 124A, as well as the two new position of authority crimes. This means that consent will be a defence to these crimes where the accused is not more than two years older than the complainant. Because these crimes can only be committed by those aged 18 and over, the defence would only arise in respect of complainants who are 16 or 17, with accused who are 18 or 19, respectively.

- Restricting the offence of 'failure by a person in authority to protect a child from a sexual offence' (s 125E) to accused aged 18 and over.
- Improve and clarify the pre-trial argument process, with a view to minimising delay in trial proceedings, as required by recommendation 16.14. This is achieved by amending s 361A of the *Criminal Code* to:
 - Remove the requirement for the accused to enter a plea before pre-trial argument can be conducted. This is intended to reduce barriers to pre-trial legal arguments, and subsequent trials, being heard by different judges.
 - Clarify the circumstances when a decision made by one judge during a pre-trial legal argument may be departed from by a subsequent judge.
- Extend the operation of section 371A of the *Criminal Code* to family violence offences. This would require trial judges, in certain family violence prosecutions, to direct the jury that an absence of complaint, or a delay in complaining, does not necessarily indicate the complaint is false, and there may be good reasons why a person may hesitate in making, or refrain from making, a complaint.
- Allow for evidence relating to a discontinued summary charge to be used as relationship, tendency or coincidence evidence in subsequent proceedings (section 430 of the *Criminal Code*, s 39A of the *Police Offences Act*), thereby implementing recommendation 16.13.
- Confirm that any alleged consent or acquiescence of a victim of child sexual abuse must not be taken into account as a mitigating factor in sentencing (section 11A of the *Sentencing Act*). This reflects existing case law (see *Director of Public Prosecutions v Harington* [2017] TASCRA 4 and *Clarkson v The Queen* (2011) 32 VR 361). This amendment implements part 1 of recommendation 16.18.

In relation to registration to work with vulnerable people, recommendation 18.12 provides a framework for improving the risk assessment process used by the Registrar of the Working with Vulnerable People scheme, who sits within Consumer, Building and Occupational Services (CBOS), to make decisions under the *Registration to Work with Vulnerable People Act 2013* (RWVP Act).

The Bill makes amendments to the Registration to Work with Vulnerable People scheme (RWVP Scheme) to ensure people who pose an unacceptable risk to children cannot work with them. When discussing Registration to Work with Vulnerable People, the Commission noted that various aspects of the risk assessment process which the Registrar applied could be improved to give greater protection to children and young people. In particular, the amendments clarify the power of the Registrar to immediately suspend a person's registration while they are conducting a risk assessment, to ensure that it can be used as intended. The amendments also ensure that once the Registrar makes a final determination that a person poses an unacceptable risk of harm to vulnerable people, they must deny that person registration.

The risk assessment framework for RWVP Scheme is currently split between the RWVP Act and Ministerial Orders, which have been authorised by the Minister to provide guidance. As the Commission requested that this additional guidance be in legislation or regulations, the relevant changes are being made to the RWVP Act, in keeping with the current structure of the framework.