

## **DRAFT** SECOND READING SPEECH

### **HON GUY BARNETT MP**

#### *Evidence (Children and Special Witnesses) Amendment Bill 2024*

*\*check Hansard for delivery\**

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

On 31 August 2023, the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings delivered its final report titled 'Who was looking after me? Prioritising the safety of Tasmania's children' to the Governor. On 26 September 2023, the Final Report was tabled in each House of the Tasmanian Parliament.

The Commission's Final Report made 191 recommendations, with 54 of those recommendations requiring legislative amendments for implementation. One of these 54 recommendations is recommendation 16.11, and I will now read the recommendation into the record:

"1. The Tasmanian Government should introduce legislation to amend the *Evidence (Children and Special Witnesses) Act 2001* to simplify the legislation to clarify when special measures are available to adults who are complainants in trials relating to child sexual abuse and allow them to:

- a. have a support person present when they give evidence in court;
- b. give their evidence at a special hearing before the trial unless the judge considers that this would be contrary to the interests of justice, regardless of whether the accused consents;
- c. be shielded from the view of the accused person by a screen or partition if they choose to give evidence in court.

2. The Tasmanian Government should ensure courts, public defence counsel (such as Tasmania Legal Aid) and the Office of the Director of Public Prosecutions are appropriately funded to carry out this recommendation."

Honourable Speaker, the Evidence (Children and Special Witnesses) Amendment Bill 2024 implements the legislative aspects of recommendation 16.11, which is one of the short-term recommendations of the Commission.

Honourable Speaker, the Bill makes three key reforms to the *Evidence (Children and Special Witnesses) Act 2001*. Importantly, these amendments clarify when special measures are

available to adults who are complainants in trials relating to child sexual abuse.

Firstly, the Bill amends section 4 of the Act to expand the availability of support people to a broader range of eligible witnesses, including the cohort of adult complainants in proceedings relating to child sexual abuse, as recommended by the Commission.

Currently the Act provides entitlement to a support person for a child or a prescribed witness in section 4, and through the special witness pathway through section 8. This means that some adult victims of child sexual offences may not have the option of a support person.

The Bill addresses this issue by replacing the reference to 'prescribed witness' in section 4 with 'affected person', while retaining the reference to all children.

The replacement term, 'affected person' is much broader than 'prescribed witness'. It includes a prescribed witness, being a witness in respect of whom a witness intermediary order has been made because of a communication need. 'Affected person' also includes an 'affected child' and third, an adult in respect of whom a child sexual offence was committed or is alleged to have been committed when the person was a child.

This was identified as the best way to broaden section 4's application without unintentionally omitting other witnesses already protected by it.

Further, section 8 of the Act also provides that a support person can be provided for 'special witnesses', where the judge has made such a declaration because the person is unable to give evidence satisfactorily in the ordinary manner. The Bill does not change this provision.

Secondly, the Bill provides that consent from the accused is not to be required when a judge is making an order under section 6A that a special hearing is to occur, as recommended by the Commission.

A special hearing is where evidence can be given and recorded by audio visual link before the trial. It is played during the trial and the witness does not attend. In a prescribed or specified proceeding, a judge may make an order to hold a special hearing to take and record a witness's evidence in full if the judge is satisfied that it is in the interests of justice to hold a special hearing and both parties consent to the special hearing. This last part of the provision in section 6A is being amended to provide that only the witness consents.

Thirdly, the Bill provides explicit statutory recognition of the use of screens, one-way glass or other devices affected person. This allows their view of the defendant to be obscured, if they choose to give evidence physically in the courtroom, where the defendant is seated.

In particular proceedings, Tasmanian courts currently make arrangements so that witnesses are shielded from the defendant. The Bill intends to support the existing practice of the

courts. Broad wording has been used to ensure that existing devices, for instance frosted glass, can continue to be used and that appropriate upgrades can be made as required in future.

The Bill inserts a new provision, section 7AA, to legislate this special measure for an affected person. As outlined above, importantly this term covers children in particular proceedings, adults in child sexual offence proceedings and a prescribed witness who is assisted by an intermediary because of a communication need. An amendment is also made so that a judge can order this measure in respect of a special witness, through section 8 of the Act.

Importantly, the amendments will apply in relation to proceedings that have commenced before or after the commencement of the Amending Act. This means that once the provisions commence, the enhanced supports will be available to witnesses in any applicable proceedings that are on foot.

The second part of recommendation 16.11 relates to ensuring appropriate funding of Legal Aid, the Director of Public Prosecutions and the courts, to carry out the recommendation. The provisions in the Bill will commence on proclamation so that courts and legal stakeholders can be prepared for the changes. Any funding impacts are being identified and managed by related budget planning that is underway.

Targeted consultation occurred on the policy being implemented by the Bill during consultations with many stakeholders on both this Bill and the Justice Miscellaneous (Commission of Inquiry) Bill. The Department met with legal and non-legal stakeholders. I am pleased that the feedback received in these forums was supportive of these targeted reforms.

Recommendation 16.11 was a short-term recommendation of the Commission and I am pleased that we are able to progress this Bill to meet that intention. This is an important Bill that will assist witnesses when giving evidence in proceedings, including victims of child sexual offences. The Bill does simplify the legislation to clarify when special measures are available to adults who are complainants in trials relating to child sexual abuse. Our Government notes that the Commission also noted wider issues with the Act which will take more time to address. The Commission Report's text supporting recommendation 16.11 stated provisions should be redrafted so the protective measures that apply to children, adult victim-survivors of child sexual abuse and people who are using a witness intermediary are much clearer. They could be simplified and rationalised.

The Government's response acknowledged that the Act has been amended on many occasions in its more than 20-year lifespan. The amendments have all worked towards increasing the support and options available for vulnerable people in Courts. However, the scale of the amendments has resulted in the Act being complex and technical.

With this Bill we make an important start. The work to simplify this essential legislation will be undertaken as a matter of importance; however, it needs to be undertaken methodically

and carefully to ensure that there are no unintended consequences and that rights currently available to vulnerable people are not lost. In the interim, I am pleased by the general agreement of stakeholders that the Act is working well.

Honourable Speaker, I commend the Bill to the House.