

TASMANIA

LAW REFORM

INSTITUTE

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26 October 2018

Dept of Justice
Office of the Secretary
GPO Box 825
Hobart tas 7001

By email: haveyoursay@justice.tas.gov.au

Dear Madam / Sir,

Criminal Code and Related Legislation Amendment Bill 2018

Thank you for the opportunity to provide feedback on the draft *Criminal Code and Related Legislation Amendment Bill 2018* (the **Bill**).

The Tasmania Law Reform Institute (**TLRI**) welcomes, in particular, the proposal to extend access to audio video recordings under the *Evidence (Children and Special Witnesses) Act 2001* to an approved “law reform body” (s.7C(3)(ab)). Allowing TLRI access to recordings for research purposes will assist us in analysing the efficacy of existing provisions and identifying opportunities for improvements to ensure access to justice for vulnerable witnesses.

The definition of ‘law reform body’ proposed in the Bill is “*a body or organisation prescribed for the purposes of this definition.*” To avoid the need for regulatory prescription, we recommend that TLRI be explicitly named in the definition, consistent with the approach adopted in s.11(3)(e) of the *Annulled Convictions Act 2003*.

We also recommend that a further definition be added to clarify that transcripts of recordings can be made available.

Proposed amendment:

(5) In this section –

audio visual recording includes any transcript or other written record based on the content of the audio visual recording

law reform body means the Tasmania Law Reform Institute and any another body or organisation prescribed for the purposes of this **definition section**.

Other brief comments in response to the Bill are set out below.

- TLRI supports the proposed removal of the confessional exemption (s.14(7) of the *Children, Young Persons and Their Families Act 1997*; s.105A(4), *Criminal Code Act 1924*)
- References to “138” in the proposed new s.125D(2)(a) of the *Criminal Code Act 1924* and the definition of “child sexual offence” under the *Evidence (Children and Special Witnesses) Act 2001* should be to “133”
- The definition of affected person under the *Evidence (Children and Special Witnesses) Act 2001* should extend to those alleging offences committed against them as a child.

Proposed amendment:

affected person means the following:

(a) an affected child; or

(b) a person who has attained the age of 18 years upon, or in respect of whom, a child sexual offence was, or was alleged to have been, committed when the person was a child;

- We understand that prosecutors have experienced some judicial reluctance to grant applications for orders allowing witnesses to be screened from the view of the accused in the absence of an explicit head of power. The decision in *R v Sparkes* [1996] TASSC 106 provides a common law basis for such orders, however we recommend that s.8(2)(b) of the *Evidence (Children and Special Witnesses) Act 2001* be amended to remove any doubt that such orders may be made in appropriate circumstances.

Proposed amendment

(2) An order made under subsection (1) may –

(a) be made on the application of a party to the proceeding or the prosecutor or on the motion of the judge; and

(b) include any one or more of the following orders:

...

(i) an order that, while the child or special witness is giving evidence, the child or special witness be screened from the view of the defendant, or any other person specified in the order, in the manner specified in the order

...

If you wish to discuss these comments, please do not hesitate to contact us.

Yours sincerely,



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Tasmania Law Reform Institute



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