

Our Ref: WGS:LH

Please reply to: Brisbane office

16 April 2020

Ms Ginna Webster
Secretary
Department of Justice
GPO Box 825
HOBART TAS 7001

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

Dear Ms Webster

**Submission on the Consultation Draft of the
Evidence (Children and Special Witnesses) Amendment Bill 2020**

Thank you for the opportunity to comment on the Consultation Draft of the Evidence (Children and Special Witnesses) Amendment Bill 2020 (the Bill). As a legal service dedicated to helping victims and survivors of child sexual abuse, knowmore strongly supports the proposed amendments. We also raise a small number of issues for the government's further consideration.

Overall support for the pilot intermediary scheme

knowmore welcomes the Tasmanian Government's commitment to establishing a pilot intermediary scheme supported by ground rules hearings, consistent with Recommendations 59 and 60 from the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).¹ The benefits of intermediaries were made very clear by the Royal Commission, particularly in assisting the most vulnerable victims of child sexual abuse, including children and those with significant communication problems, to give their best evidence when they would not otherwise be able to do so.² Intermediaries who can ensure witnesses' communication needs are taken into account during questioning by police and in court are essential for making the criminal justice more accessible to survivors, and for increasing the likelihood of perpetrators being brought to justice. A powerful example of this in New South Wales was highlighted at the Royal Commission.

We recently did an intermediary matter at Ballina, and although it was outside of the pilot scheme, [the Department of Justice] assisted us in interviewing a little girl there who was suffering from cerebral palsy.

It was a matter that, more than likely, police wouldn't have been able to gain a disclosure from the child. Because of the input from the intermediary, the police were enhanced in relation to the way that they interviewed that child and they got a full disclosure from that child, and, as a result of that disclosure, the person pleaded guilty and got a custodial sentence. That more than likely wouldn't have happened unless for that intermediary.^{3,4}

In light of the Royal Commission's recommendations, we strongly support the proposed amendments in Part 2 of the Bill that will provide the legislative basis for Tasmania's pilot intermediary scheme. We particularly support:

- The application of the provisions to proceedings for a range of specified child sexual offences, in addition to other serious offences [as per the proposed amendments to section 3 of the *Evidence (Child and Special Witnesses) Act 2001* in clause 4].
- The application of the provisions to all child complainants and all other child witnesses required to give evidence about the offence [as per proposed sections 7H(2)(a) and (b) in clause 9].
- The application of the provisions to all adult complainants who have a communication need [as per proposed section 7H(2)(c) in clause 9].
- The requirement that an assessment report be prepared by a witness intermediary for any witness to which the provisions apply [as per proposed section 7H(2) in clause 9].
- The requirement that a ground rules hearing be held for any witness for whom a witness intermediary order is made [as per proposed section 7J(2) in clause 9], consistent with Recommendation 60 from the Royal Commission.

Issues for further consideration

Acknowledging that the government's intention is to establish a pilot scheme in the first instance, we raise the following issues for further consideration.

- We note that 'a communication need' is not defined in the Bill, and will be subject to the interpretation of judges and lawyers involved in relevant proceedings. knowmore emphasises the importance of communication needs being considered broadly, having regard to:
 - a) The fundamental purpose of witness intermediaries being to enable witnesses to give their best evidence when they would not otherwise be able to do so.
 - b) The vulnerability of many survivors of child sexual abuse, which can affect their capacity to give evidence. As the Royal Commission stated: *It is clear to us... that many survivors of institutional child sexual abuse who are now adults and do not have disability are 'vulnerable', particularly when they are describing their experiences of abuse and particularly in the very unfamiliar and stressful environment of a court.*⁵ This observation completely accords with the experience of our service in working with survivors; many struggle in making any form of detailed disclosure about their experience of abuse, and require support to do that in a way that helps to ensure their wellbeing and safety.
- We note that, before a judge is required to make a witness intermediary order, they must be satisfied that the use of a witness intermediary "will assist the proceeding" [proposed sections 7I(1)(a) and (b)(ii)]. We support this requirement being interpreted broadly in practice, consistent with the purpose of witness intermediaries as outlined above.

- We note that comparable provisions in other jurisdictions specifically enable eligible witnesses to give evidence without a witness intermediary if they prefer and are able to do so.⁶ We recommend that similar provisions be inserted into proposed section 7I to empower complainants, and to ensure that they retain the right to choose how they give evidence in court where appropriate.
- We note that the Bill only proposes to make witness intermediaries available a) in court proceedings and b) for child witnesses and adult complainants. To ensure Tasmania implements Recommendation 59 from the Royal Commission in full, witness intermediaries should ultimately also be made available a) at the police interview stage and b) to any prosecution witness with a communication difficulty. This would also be consistent with relevant recommendations from the Tasmania Law Reform Institute.⁷

As a final point, we note that legislative provisions are not sufficient to implement Recommendations 59 and 60 in and of themselves. To be effective in reducing the stress experienced by vulnerable witnesses in child sexual abuse proceedings and enabling them to give better evidence, the pilot intermediary scheme must be adequately resourced and appropriately supported by the judiciary and legal practitioners. We would fully support the Tasmanian Government taking all necessary steps to ensure that these and other practical matters critical to the success of intermediaries⁸ are addressed in the operationalisation of the scheme.

Thank you again for the opportunity to provide these comments on the Consultation Draft of the Bill. We have no concerns about this letter being published.

Yours sincerely



WARREN STRANGE
Executive Officer

- 1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Parts VII–X and Appendices*, 2017, p. 101.
- 2 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*.
- 3 Evidence of Detective Chief Inspector P Yeomans, New South Wales Police Force Child Abuse Squad, cited in Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 69.
- 4 We also note that the use of witness intermediaries as part of New South Wales’s three-year Child Sexual Offence Evidence Pilot was strongly supported by all stakeholder groups. It was widely perceived to make child complainants less stressed and more confident in court, and allow them to give better evidence. See J Cashmore and R Shackel, *Evaluation of the Child Sexual Offence Evidence Pilot: Final Outcome Evaluation Report*, Social Policy Research Centre, University of New South Wales, Sydney, 2018.
- 5 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 91.
- 6 Section 4AJ(2), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); section 389J(3), *Criminal Procedure Act 2009* (Vic); proposed section 21AZL(6), *Evidence Act 1977* (Qld), as per clause 44, Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019 (Qld).
- 7 Tasmania Law Reform Institute, *Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania?*, TLRI, Hobart, 2018, Recommendations 2 and 3.
- 8 See Tasmania Law Reform Institute, 2018.