
**Draft Evidence (Children and Special Witnesses)
Amendment Bill 2020**

**Joint submission by the Sexual Assault Support Service Inc.
(SASS) and Women's Legal Service Tasmania (WLST)**

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women's
legal
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Sexual
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Introduction

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers, and deliver a Redress Scheme Support Service to survivors of institutional child sexual abuse.

The range of support options available at SASS includes counselling, crisis support, case management and advocacy. In addition, we provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

Women's Legal Service Tasmania (WLST) is a community legal service funded by the Commonwealth Attorney-General's Department. WLST operates a free and statewide service, with offices in Hobart, Burnie and Launceston. The range of services provided by WLST includes confidential and free legal advice and referral to women across Tasmania, client casework for those who require legal representation, community legal education sessions and workshops for the Tasmanian community, the production of legal information publications such as brochures, booklets, factsheets, and websites and law reform to make the legal system more accessible and responsive to the issues affecting women.

SASS and WLST welcome the opportunity to respond to the Draft Evidence (Children and Special Witnesses) Amendment Bill 2020.

General comments

Working with victims of sexual assault - many of whom are children and/or those in a cohort who experience challenges communicating - SASS and WLST are strongly supportive of this Bill and of the implementation of an intermediaries scheme in Tasmania. Although significant strides have been taken in this state to improve the legal justice process for children and other vulnerable witnesses, the fact remains that the ability of a victim to effectively communicate with police, counsel and throughout the court process is a critical factor in their ability to access justice. We commend the Government on the decision to implement the Scheme state-wide, as this is the only way to achieve equitable justice for all Tasmanians.

We do however raise the following points we believe require further consideration if the Scheme is to be as effective as intended.

Use within pre-trial processes

We understand that Police will be able to utilise the Intermediary Scheme on an opt-in basis. We would strongly encourage their use of the Scheme, and note the following important point from the Tasmanian Law Reform Institute (TLRI) in its 2016 paper on the subject,

Communication and comprehension difficulties experienced at the point of entry into the criminal justice system may influence the way matters are dealt with at every subsequent stage in the process and even determine the ultimate outcome of the case.¹

Anecdotal evidence from our work indicates that whilst most police officers are empathetic, non-judgmental and accepting of the survivors they were interviewing, and recognise the distress caused by traumatic events such as sexual assault, there are still communication barriers that can arise for victims. These include language choice and body language of both the interviewing police officers and the victims, disclosure patterns typically seen within different victim cohorts, misunderstanding or a lack of ability to comprehend investigative procedures and misinterpretation of information. We share here a de-identified case example that demonstrates these barriers in action;

A SASS client, victim of a sexual assault, with moderate autism and complex communication needs was initially questioned by police in a manner which did not recognise his needs. Questioning was rushed and he could not answer effectively. He needed a patient approach and to be given the opportunity to hear the questions a few times so that he could feel sure that he was answering them correctly. When an appropriately trained person supported him at a second interview, he was able to answer the questions more easily and effectively.

Enabling the utilisation of the intermediary scheme throughout all aspects of the criminal justice process also means that victims with complex communication needs can be identified as early as possible. Supporting them throughout the process from the first report to police to the conclusion of the criminal trial enhances the likelihood that evidence collected will be accurate and as comprehensive as possible, investigative and prosecution processes can proceed in as timely and efficient a fashion as possible, court cases deliver justice, and last but not least victims and witnesses are supported throughout what can otherwise be a highly traumatic process.

Recommendation

- 1. All parties within the criminal justice process (police, counsel and court) are strongly encouraged and actively supported to utilise the proposed intermediaries scheme. In particular, the participation and role of Tasmania Police in the Scheme be formalised (whilst not legislating for their participation)*

Identification and assessment of people requiring intermediary assistance

Early identification of people with complex communication needs is imperative. The TLRI outlined the various challenges that can occur in early identification and assessment, particularly when the person has developed strategies or defenses to mask their communication differences or when their behaviour is misattributed by the other person as something other than a communication challenge.² For some victims or witnesses, mental health conditions may further mask or hinder identification of communication challenges.

We understand that the Tasmania Police Manual (TPM) provides guidance for police in managing interactions with people with complex communication needs, and that police utilise a standard set of four questions to ascertain comprehension in adults. We suggest that a more comprehensive

assessment tool be developed, in collaboration with experts, as part of the mechanisms of the intermediary scheme, which can be utilised at any stage within the criminal justice process. This would ensure consistency throughout the process, and would also enable police assessment processes to benefit from the broader consideration and focus on the issue that will come as part of the Scheme.

The TLRI also highlighted some oversight, transparency and enforcement issues that arise due to the lack of legal authority of the TPM and associated Guidelines. We appreciate that there are valid reasons for having police participation in the Scheme be on an opt-in basis, rather than being based in statute, and therefore do not advocate for this to be changed. We do however strongly recommend that all efforts be made to include Tasmania Police into the Scheme as active partners, so as to ensure that they can benefit from the resourcing associated with the use of intermediaries, and can participate as active partners in the design, implementation and utilisation of the Scheme.

Recommendation

2. *Development of a formalized assessment tool for the identification of victims and witnesses (of all ages) who have complex communication needs.*

Training and awareness-raising for the legal profession

We fully support that the intermediaries will be more explicit power to intervene in inappropriate cross-examination. Whilst ‘ground rules’ hearings will serve an important function in setting out the framework within which a witness can be questioned, there remains a need for active intervention to ensure fairness during the court case. This will constitute a significant shift in the well-entrenched dynamics of the trial process; adversarial positioning of parties with minimal judicial interference in the examination of witnesses. We recognise that effectively enacting this shift will require ongoing education and support for both counsel and the judiciary to understand and appreciate the role, value of and rationale for intermediaries.

Recommendation

3. *A system of training be implemented for counsel and the judiciary to enable comprehensive understanding of the Scheme.*

Selection, Remuneration and Training of Intermediaries

Statutory provision for intermediaries will be insufficient if provision is not also made for adequate resourcing and governance of the scheme. Witness intermediaries require pre-appointment training, as well as engaging in regular continued professional development (CPD) and clinical supervision. We note that the NSW Witness Intermediary Procedural Guidance Manual outlines a comprehensive framework of CPD and supervision requirements for WI’s operating in NSW, which may provide a useful guide for Tasmania.

We recommend the following:

Recommendations

4. *All witness intermediaries receive comprehensive training (both initial and ongoing) in topics including (but not limited to):*
 - o *Trauma-informed practice;*

- *Impacts of sexual assault (including specific impacts of child sexual assault);*
 - *Child development and communication;*
 - *Culturally competent practice;*
5. *Witness intermediaries are required to engage in regular clinical supervision.*
 6. *Comprehensive screening of all potential witness intermediaries is conducted and includes:*
 - *Prior convictions and police record; suitability to work with children and vulnerable people; and conflict of interest in relation to any aspect of the case.*
 7. *WI recruitment targets diversity to enable appropriate matching of victim/witness needs with witness intermediary.*
 8. *Intermediaries are appropriately remunerated according to the profession and skill level. This is critical in ensuring recruitment of sufficient numbers of intermediaries across the state.*
 9. *Intermediaries are allocated the time they need to provide comprehensive support to the victim/witness they have been assigned to – this includes time for the making of assessments and preparation of assessment reports; building rapport with the witness/victim; consultation with other stakeholders such as teachers/health professionals; preparation for and debriefing after interviews, meetings and court; presence at court, etc.*

Evaluation

Strong evaluation of both the operation of the Scheme and the performance of individual intermediaries will be important in the effectiveness and sustainability of the Scheme.

Recommendation

10. *A comprehensive evaluation structure be designed that explores factors such as:*
 - *Any attitudinal barriers present within the legal system that may be impeding on the operation of the Scheme.*
 - *Utilisation of the Scheme within the different stages of the legal process*
 - *Recruitment and retention of intermediaries, including their availability across the state*
 - *Surveys/feedback from intermediaries, police, counsel, judiciary, witness/victim, parents/carers and other relevant stakeholders (such as professional support services)*
 - *Any reference to the role of an intermediary in a trial as a justification for appeal*
 - *The effectiveness of ground rules hearing in influencing court practice*
 - *De-identified case studies*
 - *Resourcing for Scheme including timeframes*
 - *Case factors such as attrition rates, plea bargains and early pleas.*

¹ Tasmanian Law Reform Institute (2016). *Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania?* Issues Paper No. 22, p7.

² *Ibid*, pp 7-8.