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First evaluation of Tasmania's pre-recorded evidence scheme

The Tasmania Law Reform Institute has conducted the first evaluation of the state's pre-recorded evidence scheme, finding it benefits justice outcomes but could also be improved.

Tasmania's special hearings scheme, which allows witnesses to record evidence before a trial, was introduced in 2014.

The Institute found the scheme is viewed positively by legal practitioners.

"Establishing this scheme was a major step forward for our criminal justice system," lead researcher Jemma Holt said. "We found many indicators of how it supports witnesses and this success is due to the hard work and commitment of all stakeholders in the criminal justice system."

The study found key areas could also be improved. While there are some indications pre-recorded evidence may be underutilised in Tasmania, there is a need for improved recordkeeping and data collection, and ongoing monitoring and evaluation, to understand how it is being used in practice.

"The more we know about how the scheme is operating, the more it can be fine-tuned to best meet the needs of witnesses and the criminal justice system more broadly," Ms Holt said.

"Involvement in the criminal justice system is a difficult experience for many people. This is particularly so for some types of witnesses, including children, those who have experienced sexual violence, witnesses with a disability, and those in cases involving serious violence offences and family violence matters."

The study found the use of special hearings in Tasmania remains predominantly for child witnesses. For example, in 2022, over three quarters of cases using the scheme involved child witnesses.

"It may be that pre-recordings are not being used enough in cases involving adult witnesses where it may be appropriate – for example, in relation to family violence and sexual assault," Ms Holt said.

In its report, the Institute endorsed several of the recommendations made by the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings. They include simplifying the eligibility criteria for pre-recorded evidence, training for police who are responsible for conducting pre-recorded interviews, specialist training in trauma-informed practices for police and prosecutors, and improvements to key technology.

The Institute's report contains a total of 17 recommendations for amendments to the *Evidence (Children and Special Witnesses) Act 2001* and other reforms, including:

- improved systems and supports for witnesses giving evidence in the Magistrates Court;
- best practice guidelines for the preparation and briefing of witnesses;

- not requiring witnesses to be present when their pre-recorded evidence is replayed;
- greater clarity on when a witness can be recalled to give further evidence after a pre-recording; and
- guidelines to achieve greater consistency in key procedural aspects of the scheme.

“Pre-recorded evidence is an important way to improve witness participation in and experiences of the criminal justice system,” report co-author Dr Rebecca Bradfield said.

The study was funded by a grant from the Tasmanian Solicitor’s Guarantee Fund.

The Tasmania Law Reform Institute is Tasmania’s peak independent law reform body and was established in 2001 by agreement between the Tasmanian Government, the University of Tasmania and The Law Society of Tasmania. The Institute undertakes impartial and independent reviews or research on areas of law and legal policy.

A link to the report can be found at utas.edu.au/law-reform

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