

Our Ref: KW
Reply to: Hobart Office

21 March 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: seniorclerk.committees.sen@aph.gov.au;
legcon.sen@aph.gov.au

Dear Committee,

**Tasmania Legal Aid Submission: Inquiry into the Crimes Amendment
(Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024**

TLA welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee in relation to the *Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024*.

About Tasmania Legal Aid (TLA)

Tasmania Legal Aid (TLA) is a main provider of legal assistance in Tasmania. In 2022-2023 we were responsible for delivering over 72,000 client services. TLA is the largest government funded assistance service in Tasmania, with four offices across the State. TLA provides services to victims and also to alleged perpetrators.

TLA supports the intent of the bill to implement trauma-informed measures that better support vulnerable persons, as well as strengthening the protections afforded to survivors of child sexual abuse and vulnerable persons in Commonwealth criminal proceedings. We also support the balance that is required to maintain appropriate criminal procedure safeguards to ensure the fundamental rights of an accused person.

Our submission regarding the Bill

Criminal law Response

Proposed Section 15YDF Access to recordings and transcripts

The proposed section is as follows:

HOBART

158 Liverpool Street
Hobart TAS 7000

LAUNCESTON

64 Cameron Street
Launceston TAS 7250

BURNIE

50 Alexander Street
Burnie TAS 7320

DEVONPORT

8 Griffith Street
Devonport TAS 7310

15YDF Access to recordings and transcripts

Defendants' access to recordings

- (1) Neither a defendant in the proceeding nor the defendant's legal representative is entitled to be given a video or audio recording (the **original recording**) made in an evidence recording hearing, or a copy of the original recording.
- (2) However, they must be given reasonable access to the original recording in order to view or listen to it.

Note: This may require access on more than one occasion.

- (3) Neither the defendant nor the defendant's legal representative may:
 - (a) make a recording (or other copy) of the original recording; or
 - (b) do anything (whether directly or indirectly) that would damage or alter the original recording.

Transcripts

- (4) The court must give each party to the proceeding and the jury (if any) access to, or a copy of, a transcript of the original recording.
- (5) To avoid doubt, subsections (1), (2) and (4) do not apply in relation to any part of a recording the court has refused to admit (see section 15YDE (admissibility of evidence))

Proposed section 15YDF prohibits the defendant and their legal representative from being provided with the video or audio recording of evidence. However, they are entitled to "reasonable access". They are also entitled to a copy of the transcript of the original recording.

It is the view of TLA that exclusion of the provision of the video or audio recording should extend to all parties in the proceeding

Legislation in Tasmania (*Evidence (Children and Special Witnesses) Act 2001*) deals with evidence of an affected child or witness, allowing for their evidence to be pre-recorded prior to trial. Pursuant to 7C of that Act, a person must not have, without authority, an audio-visual recording of evidence in their possession. Pursuant to a Practice Direction of the Supreme Court of Tasmania relevant to the Act, both parties to the proceeding are entitled to a copy of the transcript of the recording. However the original recording of the evidence remains with the court and is not released to either party.

TLA would support an amendment to the proposed section to exclude *both* prosecution and defence in a proceeding from possessing a video or audio recording of the original evidence. The recording, which would later be tendered into evidence (unless ruled inadmissible) should not be provided to one party at the exclusion of the other prior to the trial. This supports the principles of transparency in court proceedings, fairness to the defendant and their right to a fair trial. Access to recordings and a transcript of the recording would fairly enable

legal representatives for both the Crown and the defendant to discharge their duties to the court and their client.

Victim-survivor perspective:

TLA provides services to victim of sexual assaults where there are related family violence and family law matters (family and SAH). TLA considers that the Bill makes positive changes for the protection of vulnerable witnesses with respect to Commonwealth crimes.

Section 15YOA – Right to an interpreter – Subsection 2(c) appears to only allow an interpreter for a person who has a language or physical disability barrier when giving evidence. This is to be compared to Subsection 7F (1) of the *Evidence (Children and Special Witnesses) Act 2001* (Tas) which talks of a communication need of a witness which refers to their evidence being “significantly diminished by [their] ability to understand, process, or express information”. This includes a communication need which is caused by disability, illness, injury, trauma or some other cause (not just an inability to understand English). Under this legislation, such a witness can have a witness intermediary present. Further Section 8 allows for a declaration of a special witness which can lead to that witness having a support person with them when giving evidence.

Recommendation: Sections 7F(1) and 8 of the *Evidence (Children and Special Witnesses) Act 2001* (Tas) be adopted.

Yours sincerely

Kristen Wylie
Director of Tasmania Legal Aid