



21st March 2024

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

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Dear Secretariat,

RE: Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

Thank you for providing the Queensland Sexual Assault Network (QSAN) the opportunity to respond to this bill. Overall, we are supportive of the intent of the bill, which is to implement trauma-informed measures that better support vulnerable persons when appearing as complainants and/or witnesses in Commonwealth criminal proceedings, whilst maintaining appropriate criminal procedure safeguards. We have made some suggested amendments and comments below.

About QSAN

QSAN is the peak body for sexual violence prevention and support organisations in Queensland. We have 23 member services, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability, young women, men and children and our membership are located throughout Queensland, including in rural and regional locations.

Our network of non-Government services is funded to provide specialist sexual assault counselling, support, and prevention programs in Queensland. QSAN is committed to working towards ensuring all Queenslanders who experience sexual violence recently or historically, regardless of age, gender, sexual orientation, cultural background receive a high-quality response in line with best practice, client-centred principles. Our work and analysis of sexual violence is from a feminist perspective and addressed within a trauma-informed framework.

We are committed to engaging with government and other bodies to raise systemic issues of concern, and to ensure the voices and experiences of victims of sexual violence are considered in the formulation of policy and legislation that impacts on sexual violence victim-survivors in Queensland.

1. Evidence of sexual reputation and experience – Section 15YCA and Section 15YCB

(A) With respect to Section 15YCA – sexual reputation:

We suggest the following additional inclusion in the section:

Evidence of a vulnerable adult complainant's reputation with respect to sexual activities is inadmissible in a vulnerable adult proceeding.

Sexual activities include any consensual or non-consensual acts.

Please see our reasoning below.

(B) Section 15YCB - sexual experience

We suggest the following amendment to ensure the adult complainant also cannot be cross examined about any previous nonconsensual activities. For example, the complainant may have previously seen the police about a prior rape or sexual assault and then withdrawn the complaint for a range of reasons and the matter may not have proceeded. Sometimes the adult complainant may be a victim-survivor of childhood sexual abuse but they did not proceed with reporting or any charge.

These suggested changes would ensure that the defence could not cross-examine about these issues including the failure to proceed with charges unless they have leave of the court. The defence in these situations can insinuate or make statements that the complainant is a person who has the propensity to 'make complaints' and not see them through or is a liar.

Cross examination of this nature occurs in Queensland. There should be no opportunity allowed for this to occur at a federal level by making the following suggested change.

“(1) Evidence of a vulnerable adult complainant's experience with respect to sexual activities (whether they are alleged to be consensual or non-consensual) is inadmissible in a vulnerable adult proceeding ... “

(C) 15YCB(2) – Leave provision

The current provision in the bill reads:

(2) The court must not give leave unless the court is satisfied that:

(a) the evidence is substantially relevant to facts in issue in the proceeding.

or

(b) if the evidence relates to the credibility of the vulnerable adult complainant and is to be adduced in cross-examination of the complainant—the evidence has substantial probative value.

We suggest the following amendments:

(2) The court must not give leave unless the court is satisfied that:

(a) the evidence is substantially relevant to facts in issue in the proceeding.

AND

(b) the evidence has substantial probative value.

This evidence would generally not be relevant to the proceedings and therefore, a high evidentiary bar is warranted to satisfy before leave is granted.

(D) General Disposition – 15YCB(3)

We believe the current proposal could be improved by being informed by the Victorian jury direction on general assumptions about consent by including a definition of ‘general disposition’. In sexual violence matters it can be helpful to be as precise as possible in legislation that is trying to be supportive of victim-survivors, rather than leaving it to the court to determine, as ultimately the court may not adopt a definition that is as supportive as the legislature may have envisaged.

We have adapted this Victorian provision into this current bill and suggest the following additional wording:

Section 15YCB(3) The evidence is not to be treated as being substantially relevant to facts in issue merely because of inferences it may raise as to the vulnerable adult complainant’s general disposition.

A general disposition is an assumption based on discrimination and bias (whether or not that assumption is informed by any particular culture, religion or other influence) and it is not a reasonable belief.¹

(E) Determining probative value

We strongly suggest removing altogether the first subparagraph in Section 15YCB 4(a) as its mere presence infers that sexual assault complainants lie or make up claims of sexual assault, which is exactly the type of thinking these changes are trying to move away from.

We are unsure if the linking paragraphs should be “and”.

In determining probative value, we also suggest consideration of the following:

- the need to encourage victims of sexual assault offences to report these offences.
- the public interest in ensuring victims of sexual assault offences report offences and receive effective counselling, response, and assistance.
- whether granting leave is likely to infringe a reasonable expectation of complainant privacy.
- any other matter the court considers relevant.

2. 15YDB Evidence recording hearings

We note Section 15YDB (2) (b) (iii) envisions a defendant in a sexual violence matter not having legal representation. There is legislation at a state level that does not allow for the defendant to cross examine the complainant and for legal aid to step in. We would suggest this needs to occur as a matter of urgency also at the commonwealth level.

¹ (<https://content.legislation.vic.gov.au/sites/default/files/2023-10/15-14aa014-authorized.pdf>)

We also do not support the defendant being present during the giving of evidence in chief and a legal aid lawyer should be required to step in in these circumstances to protect the rights of the complainant. The defendants' rights are protected as they can watch the recorded evidence at a later stage, in their lawyer's presence and without causing further trauma to the complainant.

3. Self-publication – Section 15YR

We support the clarification around this provision.

4. Interpreter – Section 15YOA

We congratulate the government for the inclusion of right to an interpreter as this can be problematic at the state court level. The provisions places emphasis on English fluency however, we would also advise that the ability to communicate is also impacted on by comprehension and the ability to reason and understand the question.

Also, because of trauma and stress some victim survivors who may otherwise be able to speak in English can sometimes revert to their own language, and the formal and unfamiliar legal language can cause confusion and misunderstandings.

With respect, lawyers, judges, and police officers do not have expertise on determining English proficiency and comprehension. Therefore, we suggest that an interpreter should be an automatic right in cases where English is not the complainant's first language and should not be related to perceived fluency and knowledge of the English language.

5. Right to an intermediary – people with disability

If a person has a communication disability, we strongly support the bill incorporating a right to an intermediary to assist the person to understand and participate in the proceedings. The discussion above about English fluency and comprehension is equally applicable to people with a disability.

6. Other issues

Justice Navigators, Court Support and Funding Specialist Sexual Violence Services

A necessity for many victim survivors going through any sexual assault court processes is to have counselling and therapeutic support and an advocate to assist in the system's advocacy often required. Though many specialist services try to provide the system's advocacy, their resources are stretched, and they are not funded to provide this level of support, though it is in high demand from victim survivors and is often sought out.

If the Federal Government is serious about victim-survivors using formal court processes and the prosecution of sexual violence cases, then it needs to fund specialist sexual violence counselling services to employ justice navigators, to provide specialist system's advocacy to victim-survivors as they engage with the criminal justice system.

Further detail about this proposal is contained in the Victorian Sexual Assault Services Submission.

Justice navigators should be specialist sexual violence professionals who work in existing specialist sexual violence services, rather than establishing another standalone organisation to do this work. This approach is the most trauma informed way of supporting victim survivors who would only have to engage with one organisation, and the approach would support collaboration and would avoid silos.

In 2018, the Queensland Domestic and Family Violence Death Review and Advisory Board commissioned a rapid international review of the evaluation literature on “what worked in the criminal justice system vis a vis domestic and family violence?”

One strong finding in the report was of the efficacy of what they termed, “legal advocacy”. What was meant by this was system’s advocacy, as we have described it above. The findings set out below, included systems advocacy in sexual violence cases.

*“The legal system can be complex to navigate, and thus advocacy services often assist victims of DFV through court and legal proceedings. Legal advocacy is victim-focused advocacy that aims to improve victim safety, to ensure that the legal system responds appropriately and sensitively to DFV cases, and to provide victims with information and support regarding legal policies and procedures (Macy, Giattina, Sangster, Crosby, & Montijo, 2009). We identified one systematic review by Macy and colleagues (2009), which synthesised the extant literature on DFV and sexual assault services, including a section specifically on legal advocacy services for victims of DFV. The relevant synthesised literature mostly comprises court advocacy, including accompanying victims to criminal or civil proceedings and assisting them through related processes. **Evaluations of the summarised interventions have found positive results: victims who receive legal advocacy experience greater social support, better quality of life, reduced likelihood of further abuse, and greater access to community resources (Macy et al., 2009). This review strongly stresses that legal advocacy service providers must be highly knowledgeable about the legal system in order to provide DFV victims with the correct information to navigate the judicial and legal systems. It also indicates that longterm approaches and long-term follow-up with victims should be incorporated into legal advocacy to ensure that services are most efficacious (Macy et al., 2009)”**²*

This evidence makes it clear that specialist sexual violence services are best placed to undertake this work as the advocates or justice navigators must be highly knowledgeable and be able to provide long term approaches and follow up.

Judicial and Legal Education

We support the comments by the Victorian Sexual Assault Services in their submission on the need for judicial education and more broadly, education of the legal profession on sexual assault, trauma and its impacts. This work should be undertaken with specialist sexual violence services.

Bad Character Evidence

Consideration should be given to the UK provision that allows the admissibility of the defendant’s bad character into criminal proceedings if one of the following “gateways” are satisfied.

² [Reports Research and Data | Coroners Court](#) p.47

“In criminal proceedings evidence of the defendant’s bad character is admissible if, **but only if** –

1. all parties to the proceedings agree to the evidence being admissible;
2. the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross examination and intended to elicit it;
3. it is important explanatory evidence;
4. it is relevant to an important matter in issue between the defendant and the prosecution;
5. it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;
- 6. it is evidence to correct a false impression given by the defendant; or**
- 7. the defendant has made an attack on another person’s character.**

Obviously in rape and sexual assault matters, the admission of evidence about the defendant that could correct and false impression and/or bad character of the defendant could be introduced and be triggered by the defence attacking the complainant’s character. This would be extremely useful and potentially protective of the complainant and indeed, would broadly support more just outcomes in these matters.

Please see more information about this legislation below:

<https://www.cps.gov.uk/legal-guidance/bad-character-evidence>

If you require anything further, please do not hesitate to contact the Secretariat.

Kind Regards,

Angela Lynch,
Executive Officer
QSAN