



**21 March 2024**

**SASVic submission to the Senate Legal and Constitutional Affairs Committee  
Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill  
2024.**

*This submission is endorsed by the National Association of Services Against Sexual Violence (NASASV)*

Thankyou for the opportunity to provide feedback on this bill. We commend the Commonwealth Government for taking this important action to partially progress recommendations 52, 53, 56 and 61 of the 2017 Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse ('Royal Commission').

Sexual Assault Services Victoria ('SASVic') is the peak body for specialist sexual assault and harmful sexual behaviour services in Victoria. We work to promote rights, recovery and respect for victim survivors and other people impacted by sexual violence and harm. We seek to achieve this by working collectively to change the attitudes, systems and structures that enable sexual violence to occur. Last year, our member services provided support to close to 20,000 victim survivors.

Overall we support the bill. We provide the following feedback aimed at strengthening the bill and providing victim survivors appropriate choice and agency.

**1. Evidence recording hearings**

We support extending the availability of special procedures to the offences specified in the bill.

Our understanding is that the bill provides that evidence recording hearings would be ordered at the discretion of the court, if satisfied that it is in the interests of justice to do so. We understand that there are a number of practical considerations the court must take into account when determining whether to order an evidence recording hearing, for example, the availability of court and other facilities to enable the evidence recording hearing.

Our firm position is that all victim survivors of sexual violence should have the right to either opt to appear at trial or pre-record all their evidence. As noted by the Royal Commission, "[w]e are satisfied that states and territories should ensure that the relevant legislative provisions and physical resources are in place to allow for the pre-recording of the entirety of a witness's evidence in child sexual abuse matters tried on indictment."<sup>1</sup> In our view, this provision should also be extended to survivors of adult sexual abuse. A lack of available infrastructure should not be a barrier. Investments and arrangements should be made so that the necessary infrastructure and facility requirements are available.



To enable this, it should be legislated that orders for evidence recording hearings must be made where a complainant opts for such. Given the central role of victim survivors in the prosecution of sexual violence crimes and the compounding trauma that can be experienced in participating in a prosecution, the time for allowing complainants the choice over whether to pre-record their evidence is well overdue.

The other 'considerations' included in the bill should never be barriers to a victim survivor's choice to pre-record their evidence. This includes: whether each party has sufficient time to prepare for the evidence recording hearing and the availability of the prosecutor and defence counsel (or defendant). In short, if a complainant wishes to pre-record their evidence, then this should be arranged even if there are challenging logistics involved. The often profound, distressing and life-shifting experience of giving evidence and being cross-examined regarding a sexual violence related offence warrants all logistical arrangements being made to support pre-recording of evidence.

Further, as outlined clearly in the Royal Commission, allowing all complainants (who so chose) to pre-record their evidence, enhances the capacity of complainants to give their best evidence, which is critical to the successful prosecution of sexual offending.<sup>2</sup>

## **2. Allowing defendants to be present at recording hearings**

We are strongly opposed to a blanket provision allowing defendants to be present at recording hearings. A straightforward approach would be to place defendants in the same position as juries, in that they would not be present at a pre-recording hearing but would view the recording after the fact.

Alternatively, legislative arrangements could be considered that allow the defendant to be present upon prior agreement from the complainant (who should have standing on this matter and access to legal advice). Arrangements could be made so that the jury would not be present during the making of an order preventing defendants from observing the recording hearing as it happens, so any potentially prejudicial impact of such an order could be avoided.

Defendants will be able to view the recording of the evidence after the evidence recording hearing in any event, just like the jury. It would make little difference to the defendant on whether they view the complainant's evidence in real time or not; the evidence would be the same either way.

It could, however, be significantly traumatising for a complainant to know that at the very moment that they are giving their evidence, they are being observed, either behind a partition or remotely, by the defendant. This is completely unnecessary and undoes an important benefit of pre-recording evidence. During the Victorian Law Reform Commission's consultation on *Improving the Justice System Response to Sexual Offences*, the County Court of Victoria and the



Victims of Crime Commissioner submitted that the accused should be removed from the courtroom while the complainant gives evidence.<sup>3</sup>

### **3. Admissibility of sexual experience evidence.**

It is an overdue but positive step that sexual reputation evidence is set to be inadmissible under the bill. However, sexual experience evidence should be made entirely inadmissible also. The reasons justifying the inadmissibility of sexual reputation evidence apply equally to sexual experience evidence. For matters where consent is at issue, a complainant's previous sexual experience has no bearing on whether they consented to an entirely different act, at a different time. Allowing the admissibility of sexual experience 'evidence', even in limited circumstances, is a continuation of the legal embodiment of rape myths. Removing the last vestiges of rape myths from our criminal procedures is well overdue. We should not be taking an incomplete step towards this in the form of minimising the circumstances in which such 'evidence' can still be admitted to court. We note that in some contexts, the prosecution may wish to demonstrate a history or pattern of sexual violence. Legislation should be drafted in such a way as to make sexual experience evidence inadmissible but allow evidence about sexual violence; for example, evidence that focuses on a history of abuse of power, rather than sexual acts in isolation.

### **4. Other amendments proposed by the bill**

We commend the introduction of the other changes, including extending special procedures to adult complainants who were children at the time of the alleged offence; permitting recordings to be in audio format; and clarifying self-publication and identification arrangements. With respect to self-publication, victim survivor agency to tell their own story can be an important aspect of recovery and we recognise the victim survivors who have strongly and consistently advocated in this space.

### **5. Omission of ground rules hearings**

Our understanding is that ground rules hearings were initially in scope, but were omitted from the bill because there are no arrangements in place for intermediaries (although this is currently being scoped). We support intermediary programs and ground rules hearings and encourage progress on these important initiatives.

### **6. Related issues**

While clear rights-based legislation that seeks to ensure victims of sexual violence are not unduly disadvantaged or harmed in court proceedings is fundamental to a just response to sexual violence, it is not sufficient. To ensure the intent of legislative reform is realised, other changes are required. We strongly support the consistent roll out of victim support programs, such as Justice Navigators (referred to as Independent Advocates in the VLRC Sexual Offences report), intermediaries, child witness support and independent legal advice. Justice Navigators, for example, would provide additional case management and advocacy for survivors to understand and exercise their rights and help them navigate the various support, compensation, recovery and justice options available to them. Federal policy frameworks and funding mechanisms can facilitate consistent access to such supports across the country.



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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report, Executive Summary and Parts I to II, page 78.

<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report, Parts VII to X and appendices, page 5.

<sup>3</sup> Victorian Law Reform Commission, *Improving the Justice System Responses to Sexual Offences*, Report: September 2021, page 471 [21.107].