

ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY
to Reduce Violence against Women & their Children

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By email: legcon.sen@aph.gov.au

Re: Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

Dear Ms Dunstone

ANROWS thanks the Senate Legal and Constitutional Affairs Committee for the invitation to respond to the Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 ("the Inquiry").

ANROWS is an independent, not-for-profit company established as an initiative under Australia's *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan). Our primary function is to build the evidence base that supports ending violence against women and children in Australia. ANROWS is embedded in the National Plan architecture and will continue to deliver and develop this function across the next decade under the *National Plan to End Violence against Women and Children 2022–2032*. Every aspect of our work is motivated by the right of women and children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and children, and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

Primary funding for ANROWS is jointly provided by the Commonwealth and all state and territory governments of Australia. ANROWS is also, from time to time, directly commissioned to undertake work for an individual jurisdiction, and successfully tenders for research and evaluation work. ANROWS is registered as a harm prevention charity and deductible gift recipient, governed by the Australian Charities and Not-for-profit Commission (ACNC).

ANROWS is pleased to provide a submission to this Inquiry supporting the intent of the Bill, identifying opportunities to strengthen support for the safety and wellbeing of victims and survivors. This submission draws on evidence from rigorous peer-reviewed research, including relevant ANROWS research. We would be very pleased to assist the Committee further, as required.

Yours sincerely

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Overall comments

ANROWS is pleased to note the intent of the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 (“the Bill”) to strengthen protections afforded to victims and survivors of child sexual abuse and vulnerable persons in Commonwealth criminal proceedings. ANROWS also supports recognising the need to offer protections to victims and survivors of sexual violence in the context of a broader range of circumstances and offences under the *Criminal Code Act 1995* (Cth).

It is important that these protections are underpinned by genuine and extensive consultation with people with lived expertise and affected communities. ANROWS encourages the Committee to ensure that the community stakeholders consulted during the development of this Bill include people with lived expertise.

ANROWS recognises that this Bill forms part of broader efforts to address gender-based violence that are occurring under the recently released *Working for Women: A Strategy for Gender Equality* (Department of the Prime Minister and Cabinet, 2024). This includes the Australian Law Reform Commission’s Inquiry into Justice Responses to Sexual Violence (2024).

ANROWS has previously made submissions in relation to child safety (ANROWS, 2019, 2021b, 2021c) and criminal legal process reform with an emphasis on victim and survivor safety (ANROWS, 2022, 2023b). These submissions have emphasised the need to be child-centric and to improve protections for, and experiences of, victims and survivors in contact with the legal system.

ANROWS is pleased to provide a submission to this Inquiry supporting the intent of the Bill and identifying opportunities to nuance and practically support the safety and wellbeing of victims and survivors.

Recommendations

Recommendation 1: Ensure victims and survivors maintain autonomy and choice throughout the criminal legal process, wherever possible.

Recommendation 2: Complement legislative reform with an authorising environment for the effective implementation of reform. This could include resourcing, training and support for people working in the criminal legal process.

Embed safety and wellbeing in criminal legal processes

Criminal legal systems can be re-traumatising

Criminal legal systems are not often designed to accommodate people who have been affected by trauma. ANROWS research indicates that victims and survivors of domestic, family and sexual violence (DFS) specifically can be apprehensive about approaching police, making a statement, and testifying in court (Salter et al., 2020). Victims and survivors can also experience disempowerment and re-traumatisation during their interactions with the criminal legal system. For example, they may feel invalidated where an offence is not prosecuted or conviction is not achieved due to the criminal standard of proof (ANROWS, 2021a; Salter et al., 2020). As many victims and survivors impacted by legislative reform under the Bill will have experiences of trauma, it is important that consideration is paid to the re-traumatising elements of criminal legal systems.

However, ANROWS research highlights that trauma-informed approaches can increase the likelihood of victims and survivors reporting and help to mitigate the ongoing serious health and psychological impacts of sexual violence (Blagg et al., 2018; Hegarty et al., 2017; Hegarty et al., 2022; Maher et al., 2018; Townsend et al., 2022; Vaughan et al., 2016). Trauma-informed approaches are underpinned by an understanding of complex trauma, the impacts of sexual violence, cultural competency and disability awareness (Blagg et al., 2018; Kaspiw et al., 2017;

Maher et al., 2018). Examples of trauma-informed practices include workers within the legal system learning to identify trauma, explaining court processes, desensitising the victim and survivor by rehearsing testimony, encouraging support people to attend court and managing the risk of vicarious trauma (Salter et al., 2020, p. 33).

Victims and survivors deserve choice and control

ANROWS is pleased to note that the Bill intends to reduce re-traumatisation through structural and systemic changes. In particular, the Bill requires all evidence given by a vulnerable person outside of an evidence recording hearing to be recorded so that it may be used in later proceedings. The intent of this is to reduce re-traumatisation through repetition of evidence. While the inclusion of an *option* to record evidence is beneficial, victims and survivors must be given choice and control over whether this happens. In the context of experiences of victimisation and patterns of harmful behaviour, victims and survivors can experience a complete loss of autonomy and personal agency, including in the context of technology-facilitated abuse (Tarrant et al., 2019). This can actively disempower and exert control over victims and survivors. ANROWS research demonstrates that some responses within the mental health and prison systems can mimic dynamics of DFSV, including disempowerment (Watson et al., 2020; ANROWS 2020). This has negative impacts on a victim and survivors healing, overall wellbeing and future help-seeking behaviours (Salter et al., 2020). It is therefore imperative that the criminal legal systems do not inadvertently mimic abusive dynamics through taking away the autonomy and decision-making power of victims and survivors. Victims and survivors may wish to actively participate in ongoing criminal legal processes as part of their healing and recovery and, therefore, not want to rely on a recording of evidence. For others, particularly those who have experienced technology-facilitated abuse, the experience of recording testimony may be triggering, and they may hold concerns about how the footage will be stored and used.

Restrictions on sexual reputation evidence could help mitigate the impacts of problematic attitudes

The restriction on sexual reputation evidence relating to a vulnerable person is a positive shift. Problematic attitudes towards gender inequality, mistrust of women and victim-blaming attitudes persist in Australia (Coumarelos et al., 2023). Evidence from the 2021 NCAS indicates that women who are perceived as being “too sexual”, or even just sexual at all, can be the targets of victim-blaming attitudes. For example, 1 in 10 (10%) of NCAS respondents agreed that, since some women are so sexual in public, it’s understandable that some men think they can touch women without permission (Coumarelos et al., 2023, p. 143). Another 7 per cent agreed that if a woman meets up with a man from a dating app, she’s partly responsible if he forces sex on her (Coumarelos et al., 2023, p. 143). A recent ANROWS study investigated Australians’ attitudes towards women’s reports of sexual assault and found that participants viewed allegations with a default position of mistrust, informed by an interplay of rape myths and problematic stereotypes about women (Minter et al., 2021). These myths and misunderstandings about sexual consent and sexual violence can undermine police, legal, and juror perceptions about the credibility of sexual violence allegations (Coumarelos et al., 2023; Salter et al., 2020). In this context, legislation that precludes information about a victim and survivors’ sexual reputation could be beneficial.

Complement legislative reform with training, resourcing, and an enabling authorising environment

Legislative change must be underpinned by an enabling environment that supports the effective implementation of protections for victims and survivors. A report from the Queensland Women’s Safety and Justice Taskforce (2022) on women’s and girls’ experiences across the criminal legal system found that laws do not always result in cultural change in their own right. It is important to

implement mechanisms that foster cultural change in workplaces that make up the criminal legal system to create an authorising environment for individuals to effectively implement reforms.

Victims and survivors of sexual violence are not a homogeneous group, and the criminal legal process must be responsive to these dynamics. Trauma may be experienced differently by women from diverse groups (Mitra-Kahn et al., 2016). Additionally, children and young people may experience the impacts of DFSV differently (ANROWS, 2023a). Research highlights that there can be additional barriers to reporting and accessing services for victims and survivors from specific population groups, including women with disability, people with diverse genders and sexualities, women from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women (Mitra-Kahn et al., 2016; Ussher et al., 2020). These barriers include, but are not limited to, historical and cultural distrust of authorities, language barriers, geographical isolation, inaccessibility of services for women with disability, the cultural appropriateness of services (Mitra-Kahn et al., 2016), and blame and mistrust from police (Ussher et al., 2020). People working to implement protections under criminal legal processes must recognise and be responsive to the various and complex experiences of victims and survivors of sexual violence. This could be informed through engagement with people with lived expertise from specific population groups to inform relevant training and capacity building.

Accompanying law reform with training initiatives may help to support people working in the criminal legal system to effectively and meaningfully implement these reforms. This is particularly important in contexts where Commonwealth criminal proceedings are undertaken in jurisdictional courts and people across different jurisdictions are responsible for implementing reforms consistently and effectively across Australia. As outlined in this submission, misunderstandings about sexual violence persist in the Australian community (Coumarelos et al., 2023).

Effective training for police and judicial officers is critically important for the appropriate application of the law in sexual violence cases (Nancarrow et al., 2020) and may help to mitigate unintended consequences. ANROWS research has also indicated that, even where legal provisions have been designed to protect victims and survivors, their application in practice can be limited or can counterintuitively place victims' and survivors' safety at risk (Sleep, 2019; Wangmann et al., 2020). It is therefore important that actors within the criminal legal system are supported to understand the intent of legislative change and to translate this into practice, and that this training is undertaken in the context of broader cultural change.

ANROWS emphasises that any legislative responses that aim to support victims and survivors should be underpinned by evidence and undergo ongoing monitoring and evaluation to identify their implementation, impact and effectiveness. Monitoring and evaluation will support the government to identify unintended consequences and to demonstrate continuous improvement in legislative responses to support the safety of victims and survivors.

Concluding remarks

ANROWS appreciates this opportunity to assist the Committee in their Inquiry into the Bill. ANROWS supports reform that is intended to enhance the safety and wellbeing of victims and survivors and emphasises that this reform must be informed by lived expertise, adequate training and resourcing, cultural change, and be subject to ongoing monitoring and evaluation.

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