



Your Reference: M. Piesse
Our Reference: LSCEC/24/702
Date: 21 March 2024

Mr Mervyn Piesse
Senior Research Officer
Standing Committee on Legal and Constitutional Affairs
Department of the Senate
Parliament House
CANBERRA

By Email Only: Legcon.sen@aph.gov.au

Dear Mr Piesse,

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

I refer to your letter of 5 March 2024 and to the Amendment Bill.

The Legal Services Commission (Legal Services) supports the proposal to allow victims and survivors to give evidence in a safe and less traumatic way through audio visual and aural recordings. Our then Advice Branch and our Criminal Law Practice were extensively involved in the development of similar legislative provisions assisting vulnerable witnesses in the South Australian *Evidence Act 1929*.¹

We have considered the draft Bill and we would like to make the following comments.

Clause 26 of the Bill is largely similar to s34L of the South Australian *Evidence Act*. An important distinction is that the proposed amendments seek to limit evidence in relation to the sexual experience of the alleged victim to those activities that occurred with the defendant (new s.15YCA). We submit that there are likely to be instances where evidence of sexual activity with individuals other than the accused may be considered to have highly significant probative value for the defence. We consider that rather than simply forbid cross-examination, a degree of judicial discretion should be allowed in line with the particular circumstances of the case.

Under the South Australian *Evidence Act* permission is not necessary to cross examine regarding recent sexual activities with the accused, by contrast the Amendment Bill requires permission be obtained (new s.15YCB). In granting such permission, the court is required to take into account a number of very specific factors but the general requirement to consider the "interests of justice" is not included. We submit that the proposed restrictions may constitute an unfair fettering of the areas for cross examination.

¹ *Evidence Act (SA) 1929*, Part 2, <https://www.legislation.sa.gov.au/lz/path=/c/a/evidence%20act%201929>

While we support the need to protect vulnerable witnesses, we submit that this protection needs to be balanced with the right of the accused to a fair trial.

Thank you for the opportunity to comment on the draft amendments.

Yours sincerely,

Gabrielle Z Canny
Director (CEO)