



Submission to the Inquiry into the Crimes Amendments (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

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Committee Secretary

Senate Legal and Constitutional Affairs Committee

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Voices of Influence Australia makes the following submission in response to the Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 ('the Bill').

Voices of Influence Australia

Voices of Influence Australia ('VOI') is a youth-led human rights organisation that functions to move and encourage the masses who are passive, individual consciences into active, collective voices for human rights globally.

As an organisation, VOI recognises and asserts the need for the voices of young people to be heard across the complexity of human rights.

Summary of Recommendations

VOI recommends the Committee acknowledge the following recommendations and refer findings to the Australian Government for action:

1. VOI recommends the introduction of mandatory training for court staff on the sensitivities and needs of vulnerable persons.
2. VOI recommends that vulnerable persons be provided with a dedicated and trained support person when providing recorded evidence.
3. VOI recommends that accessible resources be developed and provided to vulnerable persons to explain the recorded evidence and court process.
4. VOI recommends that due consideration be given to the imputations (including the perpetuation of myths and misconceptions) and to the value (if any) of section 15YCB(4) of the Bill.
5. VOI recommends the Bill incorporate this crucial element, granting survivors the maximum control over their narratives and healing journeys.



Expanding the range of offences to which special rules for proceedings involving children and vulnerable adults apply

1. As an organisation deeply committed to advocating for the rights and protection of victims and survivors of sexual violence, VOI welcomes the opportunity to provide input on the proposed amendments outlined in the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 (the Bill).
2. Expanding the application of special rules for proceedings involving children and vulnerable adults to include crimes against humanity, war crimes, and drug offences involving children is a crucial step forward in safeguarding the most vulnerable members of our society. These offences not only inflict physical harm but also cause severe psychological and emotional trauma, often leaving lasting scars on victims and survivors. By extending special protections to individuals affected by such acts, the proposed amendments demonstrate a commitment to upholding their rights and dignity within the criminal justice system.
3. Children and vulnerable adults are particularly susceptible to exploitation and abuse, especially within the context of crimes against humanity and war crimes.¹ The horrors experienced by individuals in conflict zones or under oppressive regimes are compounded when they become victims of sexual violence or forced into participation in drug-related activities. Providing tailored procedural safeguards for these individuals acknowledges the unique challenges they face in seeking justice and ensures that their voices are heard and respected throughout legal proceedings.²
4. Moreover, addressing drug offences involving children within the framework of special rules for proceedings recognises the intersectionality of vulnerabilities faced by marginalised populations. Children coerced or manipulated into participating in drug-related activities often come from disadvantaged backgrounds, where socioeconomic factors exacerbate their susceptibility to exploitation. By prioritising their protection and well-being, these amendments signal a commitment to breaking the cycle of victimisation and offering pathways to recovery and rehabilitation.
5. VOI strongly supports the proposed expansion of special rules for proceedings involving children and vulnerable adults to encompass crimes against humanity, war crimes, and drug offences involving children. These amendments represent a significant advancement in the pursuit of justice and accountability for victims and survivors of sexual violence and other egregious crimes.

¹ International Criminal Court, Office of the Prosecutor Policy on Children (December 2023) 14 [29].

² Ibid.



6. While we recognise the concerns regarding the potential for increased costs and delays associated with the automatic application of protections to adult complainants, particularly for non-sexual offences such as war crimes and crimes against humanity,³ we maintain that vulnerable adults should not be overlooked in the pursuit of justice. Instead of a blanket application, we suggest a more nuanced approach that identifies vulnerable adults based on specific criteria, such as those with identified risks to their emotional or mental health. By focusing on individuals who are most susceptible to the adverse effects of legal proceedings, we can strike a balance between safeguarding their well-being and ensuring fairness to the accused. This approach not only addresses the concerns raised of increased delays and costs but also upholds our commitment to ensuring that those who engage with the criminal justice system are doing so with the necessary support and safeguards to ensure justice can be carried out.

Addressing Barriers that May Deter Vulnerable People from Giving Recorded Evidence

7. Evidence-recording hearings are essential in ensuring equitable access to justice for individuals with intersectional backgrounds. Domestic Violence Evidence In Chief (DVEC) procedures are particularly vital for enabling marginalised individuals, who may face physical or geographical constraints, to participate in legal proceedings and present their testimony. Experiencing sexual violence has been shown to exacerbate existing traumas for vulnerable persons, compounded by the long-term stress and shame that emerges from the violation of one's bodily autonomy. They may require more personal support, however, may be more reluctant to reach out for this. Consequently, navigating the exceedingly complex legal system becomes even more challenging for those already marginalised. It is therefore vital that the legal process, including the process of recording evidence, avoids dehumanisation and depersonalisation. Instead, the focus must be on empowering vulnerable persons by providing necessary support and resources to make informed decisions while minimising the trauma that may be incurred from exposure to the criminal justice system.
8. There are a range of barriers that need to be addressed to ensure vulnerable people feel as safe and secure as possible when providing recorded evidence. For example, it is crucial to integrate a trauma-informed approach into the court procedure. This can be achieved through the introduction of mandatory training for court staff to

³ Law Council of Australia, Attorneys-General's Department, Exposure Draft: Crimes and Other Legislation Amendment (Strengthening the Criminal Justice Response to Sexual Violence and other Measures) Bill 2022 (1 March 2022), 12.



ensure that the sensitivities and needs of vulnerable persons are both understood and respected in the process of recording.

Recommendation 1: VOI recommends the introduction of mandatory training for court staff on the sensitivities and needs of vulnerable persons.

9. Additionally, another significant barrier that deters vulnerable people from giving recorded evidence is personal risk compounded by mistrust between judicial settings, public institutions and communities. Navigating complex court procedures and legal entitlements while reliving the trauma of recounting experiences of sexual violence can be harmful. To alleviate this challenge, it is imperative to provide support by assigning a dedicated and trained support person to vulnerable individuals during recording sessions. This measure humanises what can often be an intimidating experience, offering reassurance and guidance throughout the process.

Recommendation 2: VOI recommends that vulnerable persons be provided a dedicated and trained support person when providing recorded evidence.

10. Finally, there is a pressing need for clear and accessible information for people who are deemed vulnerable by the criminal justice system. This can be fulfilled by creating and providing concise resources and recordings explaining the procedure and the potential utilisation of recordings in subsequent trials and retrials, in a manner devoid of 'legalese'. To ensure accessibility, this information should include plain language transcripts, translation into other languages, sign language interpretation, closed captioning and braille transcripts. Enhancing communication about the workings of the justice system can empower vulnerable people to share their stories and safeguard their mental health when participating in legal proceedings related to sexual violence.

Recommendation 3: VOI recommends that accessible resources be developed and provided to vulnerable persons to explain the recorded evidence and court process.



Evidence of a vulnerable adult complainant's reputation with respect to sexual activities

11. Complainants and witnesses involved in sexual violence cases have often been severely traumatised by their experiences. Allowing their sexual history to be examined publicly through a court case is not only re-traumatising for victims, this re-traumatisation is especially amplified for designated vulnerable people who often have heightened senses of unsafety, distress and stress.
12. VOI firmly agrees that evidence of a vulnerable adult complainant's reputation with respect to sexual activities should be inadmissible in a vulnerable adult proceeding. We are pleased to see and agree with section 15YCA of the Bill.
13. VOI submits that reforms to the law may serve to counter more effectively the risks that myths and misconceptions will influence criminal trials. Specifically, that there is no typical sexual abuse victim or perpetrator and no single response to rape and sexual abuse. Moreover, a vulnerable person's experience of sexual assault is unique and might be impacted by how it intersects with inequalities they may face in relation to aspects such as sex, age, disability, gender identity, race, ethnicity, religion or belief and class. The subsections of section 15YCB of the Bill ought to carefully consider whether its drafting will counter the risk that myths and misconceptions will influence a jury, or whether those myths and misconceptions will be enabled and weaponised. The following comments are made through this lens. One of the primary concerns of the legislature ought to be to protect complainants in sexual assault cases to the greatest extent possible.
14. It has long been documented that survivors of sexual violence experience feelings of guilt and self-blame, even though they are blameless.⁴ VOI supports the test of substantial probative value in section 15YCB(2)(b) of the Bill. We submit that, alongside appropriate court guidance, it is capable of appropriately protecting complainants from the unnecessary introduction of sexual experience evidence.
15. VOI submit that the risks of myths and misconceptions associated with sexual experience evidence are pervasive and judges are not immune to them. For example, the myths of "the mendacious woman and the deluded complainant", hanging on the "disordered and hysterical character of complainants, and upon

⁴ J Schwendinger and H Schwendinger, "Rape victims and the false sense of guilt" (1980) 13 Crime and Social Justice 4.



the almost ubiquitous defence claim that women's ... stories of assault have been suggested and manipulated".⁵

16. Section 15YCB(4) of the Bill is largely modelled after section 294CB of the Criminal Procedure Act 1986 (NSW). Section 294CB has been subject to criticism; it is argued that a legislated exceptions model tries to foresee the circumstances in which this type of evidence will be relevant without regard to the facts of a case or the purpose of the evidence.⁶

17. The foreseen circumstances in which this subsection purports to extend to is that of false allegations of sexual assault or abuse. VOI submit that the current position with respect to false representations, as provided for in section 15YCB(4) of the Bill, is unsatisfactory. A Victoria Police Face Sheet states: "The rate of false allegations of sexual offences is very low. A range of studies show approximately 5% of rape allegations are proven false."⁷ VOI accept that this percentage may be reflected slightly differently with respect to children. However, we submit that it is important to emphasise that the mere fact that a complaint is raised and is not pursued does not necessarily mean that a complaint is false.

Recommendation 4: VOI recommends that due consideration be given to the imputations (including the perpetuation of myths and misconceptions) and to the value of section 15YCB(4) of the Bill.

18. VOI agree and assert that generally, section 15YCB can work to empower victim survivors with voice and agency, allowing vulnerable persons their right to human dignity as well as appropriate privacy and safeguarding.

Consent for survivors to speak publicly

19. The Bill takes a significant step towards empowering survivors of sexual violence. By clarifying that survivors can choose to share their stories publicly, the Bill upholds their right to free expression, reduces barriers for survivors to tell their story and dismantles the fear of self-identification leading to prosecution for themselves or others. This aligns perfectly with the spirit of the #LetHerSpeak / #LetUsSpeak movement, ensuring all survivors have ownership of their narratives.

20. However, the Bill can be further strengthened by adopting Victoria's recent reforms to the *Judicial Proceedings Reports Act 1958*. These reforms not only allow survivors

⁵ L Gotell, "The Ideal Victim, the Hysterical Complainant, and the Disclosure of Confidential Records: The Implications of the Charter for Sexual Assault Law" (2002) 40 Osgoode Hall Law Journal 251, 256, 258.

⁶ Galvin, "Shielding Rape Victims in the State and Federal Courts: A proposal for the second decade" (1986) 70 Minnesota Law Review 763.

⁷ Victoria Police, January 2019 'Fact Sheet: Challenging misconceptions about sexual offending' found at [FINAL-factsheet-for-web-Challenging-Misconceptions.pdf \(police.vic.gov.au\)](https://www.police.vic.gov.au/FILES/131116/131116.pdf).



to self-identify but also grant them the power to tailor their consent.⁸ Survivors can specify which media outlets can publish their stories, ensuring their message reaches the intended audience.⁹ Perhaps even more importantly, Victoria's reforms empower survivors to withdraw their consent at any time.

21. This additional layer of control is crucial to further empowering survivors, ensuring they have the ultimate say in how, when, and to whom their story is shared. The trauma of sexual violence can have lasting effects, and a survivor's needs and desires may change and evolve over time. The ability to withdraw consent ensures survivors retain maximum control over their healing journey and the sharing of their stories.

Recommendation 5: Voices of Influence Australia recommends the Bill incorporate this crucial element, granting survivors the maximum control over their narratives and healing journeys.

⁸ Let Us Speak. (2024). *What we achieved so far...* <https://www.letusspeak.com.au/>.

⁹ Ibid.



Concluding Comments

Voices of Influence Australia thank you for the opportunity to make this submission. Should you have any queries or require further submissions, please contact the undersigned at your convenience.

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