



THE CHIEF MAGISTRATE OF THE LOCAL COURT

31 May 2017

Ms T Matulick
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Matulick

Re: Inquiry into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017

I am writing in response to your recent invitation to make a submission to the Committee's inquiry into the above Bill on behalf of the Local Court of New South Wales.

Most matters contained in the Bill have little or no direct impact upon the Local Court. My comments are accordingly limited to the proposed amendment of s 15YR of the *Crimes Act 1914*, which concerns the notification of a 'vulnerable person' involved in certain criminal proceedings of an application for leave of the court to publish a matter identifying that person.

In light of the Court's experience of other legislative measures designed to afford vulnerable persons the opportunity to be heard where they would not otherwise have standing in the proceedings, further consideration of the procedure in s 15YR to successfully facilitate that objective would in my submission be beneficial.

The Bill presently provides for an applicant to take reasonable steps to give written notice of an application to the vulnerable person, namely, a child witness or a vulnerable adult complainant (subsection (7)). In the case of the former, the notice is to be given to the child's parent, guardian or legal representative (subsection (8)). In referring to the vulnerable person as a "party" (subsection (7)), that individual is presumably entitled to be heard by the court and make submissions in respect of the application (subsection (10)).

In practice, provisions requiring notice to be given to a person who is involved in but not a party to substantive criminal proceedings can create difficulty and protract the proceedings, because the notice giver may encounter difficulties in locating and contacting the person. In the case of a complainant or other witness, those with knowledge of the person's whereabouts (such as the prosecutor) may understandably be reluctant to divulge those details in the absence of a clear obligation or authority to do so.

In the present case, it is not difficult to foresee that a third party applicant who is not involved in the substantive proceedings may have difficulty in attempting to locate and notify a vulnerable person of their application.

It is noted that the proposed amendments would still enable the court to determine an application without notice having been given to the vulnerable person where it is satisfied that reasonable steps have been taken by the applicant (s 15YR(10)(a)). However, in view of the stated protective purpose of the proposed amendment, presumably it would be preferable for the legislation (or if appropriate, the regulations under the Act) to enable an effective method for notice to be given to the vulnerable person. One option would be for the written notice to be given to the prosecutor, who is required to ensure that a copy is provided to the vulnerable person (for instance, see s 299C, *Criminal Procedure Act 1986* (NSW), which concerns the notification of an application for leave to seek the production of counselling documents relating to a complainant in sexual assault proceedings).

Thank you for the opportunity to make a submission to this inquiry.

Yours sincerely,

Judge Graeme Henson AM
Chief Magistrate
Local Court of New South Wales