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# *COMMUNITY SUPPORT AND SERVICES COMMITTEE*

**Members present:**
Mr A Tantari MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP
Ms CL Lui MP
Dr MA Robinson MP
Mr RCJ Skelton MP

**Staff present:**
Ms L Pretty—Committee Secretary
Dr A Lilley—Assistant Committee Secretary

## PUBLIC BRIEFING—INQUIRY INTO THE CRIMINAL JUSTICE LEGISLATION (SEXUAL VIOLENCE AND OTHER MATTERS) AMENDMENT BILL 2024

### TRANSCRIPT OF PROCEEDINGS

**Monday, 10 June 2024**

**Brisbane**

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# MONDAY, 10 JUNE 2024

**The committee met at 10.01 am.**

**CHAIR:** Good morning. I declare open this public briefing for the committee's inquiry into the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024. My name is Adrian Tantari. I am the member for Hervey Bay and the chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest living cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share. With me here today are Stephen Bennett, the member for Burnett and the deputy chair; Michael Berkman, the member for Maiwar; Cynthia Lui, the member for Cook; and Mark Robinson, the member for Oodgeroo. Joining us shortly will be the member for Nicklin, Mr Rob Skelton.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited guests may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the briefing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or on social media pages. Please assist the committee by turning your mobile phones off or to silent mode. I note that we have a new AV system in the red chamber with push-on, push-off microphones. When you are intending to speak, please remember to turn on your microphone and turn it off again when you have finished.

**BOURKE, Mr Greg, Acting Executive Director, Strategic Policy and Legislation, Department of Justice and Attorney-General**

**CORRIGAN, Ms Ellen, Principal Legal Officer, Strategic Policy and Legislation, Department of Justice and Attorney-General**

**HISLOP, Ms Emma, Acting Principal Legal Officer, Strategic Policy and Legislation, Department of Justice and Attorney-General**

**McGREGOR, Ms Emily, Acting Senior Legal Officer, Strategic Policy and Legislation, Department of Justice and Attorney-General**

**McQUEENIE, Ms Bridie, Acting Director, Strategic Policy and Legislation, Department of Justice and Attorney-General**

**CHAIR:** Good morning. I invite you to make an opening statement, after which members will have some questions for you of the

**Mr Bourke:** First and foremost, I too would like to acknowledge the traditional owners and custodians of the land on which we meet this morning and pay my respects to elders past and present. Thank you, Chair, for the opportunity to brief the committee today on the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024. By way of background, in 2021 the government established the independent Women's Safety and Justice Taskforce, led by the Hon. Margaret McMurdo AC, which undertook extensive consultation in preparing both its reports that examined coercive control and the experience of women across the criminal justice system. This bill implements the third major tranche of legislative reforms arising from the recommendations made by the taskforce.



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The department undertook targeted consultation on a draft of the bill with key legal, domestic and family violence and sexual violence stakeholders. The feedback received during this consultation process was taken into account in finalising the bill. I note that the majority of the amendments in the bill will commence on proclamation, to allow time for relevant implementation activities to occur. I will now briefly outline the key reforms in the bill.

The bill amends the Criminal Code to establish a standalone position-of-authority offence titled 'Sexual acts with a child aged 16 or 17 under one's care, supervision or authority'. This makes it an offence for an adult to engage in sexual interactions with a child aged 16 or 17 where the adult has the child under their care, supervision or authority. The bill also expands the existing offence in the Criminal Code of repeated sexual conduct with a child to also apply in circumstances where an adult maintains a sexual relationship with a 16- or 17-year-old child under their care, supervision or authority. Depending on the acts engaged in, an accused adult will be exposed to a maximum penalty of 14 years or 10 years imprisonment under the new position-of-authority offence. Where an adult is convicted of the expanded offence in section 229B of the code, the existing maximum penalty of life imprisonment will apply.

The terms 'care', 'supervision' and 'authority' are not defined within the bill. The bill does, however, include an evidentiary provision that deems certain people as being taken to have a child under their care, supervision or authority. This will operate to ensure the prosecution does not have to prove the dynamic of care, supervision or authority in cases involving identified cohorts of adults, such as a teacher at a school where the child is a student. Other adults in the community may also be captured by the offence despite not appearing in the deemed list of people. Where an adult is not captured by the list of deemed categories, it will be a question of fact for a jury to determine whether the child was under the defendant's care, supervision or authority based on the particular evidence presented in the case.

The bill provides three defences to this offence. First, the defence will operate if an accused adult and the child are lawfully married. This defence operates in other jurisdictions and recognises that children over the age of 16 may be married in particular circumstances under Commonwealth legislation. Second, a defence may operate if the accused adult believed on reasonable grounds that the child was at least 18 years of age. Finally, a similar-age defence may apply where the accused person is no more than three years older than the complainant child and the acts did not constitute the sexual exploitation of the child. This defence is not, however, available to those adults captured in the deemed list. These defences apply both to the standalone offence and to the expanded offence.

The bill also amends the Evidence Act to codify rules around the admissibility of tendency evidence and coincidence evidence in Queensland and will replace the common law on the admissibility of such evidence. For background, tendency evidence is evidence of a person's character, reputation or conduct, which is adduced to show that the person has or had a tendency to act in a particular way or to have a particular state of mind. Coincidence evidence is evidence of previous events to show that a person did a particular act or had a particular state of mind on the basis that it is improbable that the previous events and the charged event occurred coincidentally, having regard to any similarities in the events.

The Royal Commission into Institutional Responses to Child Sexual Abuse found that Queensland has the most restrictive approach to the admission of such evidence of any Australian jurisdiction. Therefore, as recommended by the taskforce, the bill amends the Evidence Act to bring the law on the admissibility of tendency evidence and coincidence evidence in Queensland into line with the uniform evidence law, otherwise referred to as the UEL, which operates in a number of jurisdictions across Australia. I note the amendments in the bill are largely modelled off provisions in the Evidence Act of New South Wales, which is a UEL jurisdiction.

Under the bill, tendency evidence or coincidence evidence will only be admissible in criminal proceedings if it satisfies a two-limb test regarding its probative value. This two-limb test requires, firstly, that the evidence will have significant probative value and, secondly, that the probative value of that evidence outweighs the danger of unfair prejudice to the defendant. The bill introduces a rebuttable presumption that tendency evidence about a defendant's sexual interest in children will have significant probative value for the purposes of that two-limb test. This presumption only operates in criminal proceedings where a child sexual offence is a fact in issue. This rebuttable presumption is already in place in almost all UEL jurisdictions, namely, New South Wales, the Australian Capital Territory, Tasmania and the Northern Territory. The taskforce identified that introducing these uniform evidence law provisions in Queensland will better facilitate the admissibility of this evidence, allowing more trials with multiple victims of the one accused person to be joined.



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I turn now to the amendments to the Evidence Act to improve protections for victim-survivors in the court process. First, the bill introduces a presumption in favour of granting certain alternative arrangements for special witnesses in domestic violence offence and sexual offence proceedings. The bill provides that, on an application of a party to the proceeding, the court must order these alternative arrangements unless it is not in the interests of justice or appropriate facilities and equipment are unavailable. The taskforce considered that providing an entitlement to alternative arrangements would reduce the need for victim-survivors to justify having the measures, which would improve their experience of the court process and reduce retraumatisation.

Second, the bill introduces directions hearings for special witnesses in domestic violence offence and sexual offence proceedings. These hearings are based on provisions for ground rules hearings in Victoria and will provide the court an opportunity to consider the communication needs of the witness and give any directions about the giving of evidence by the witness that the court considers appropriate for the fair and efficient conduct of the proceeding.

Third, the bill introduces a requirement that, where appropriate equipment and facilities are available, the evidence of all special witnesses in sexual offence proceedings, except for the person charged, is videorecorded and stored for use in subsequent trials, such as retrials or appeals. The taskforce found that this will minimise the number of times a victim-survivor has to give evidence, further reducing retraumatisation. The witness will still be able to be recalled by a court order to give evidence in a subsequent trial in certain circumstances.

The bill also makes amendments to the Evidence Act to allow for the admission of expert evidence about the nature of sexual offences and factors that may impact a victim-survivor's behaviour in sexual offence proceedings. The taskforce received feedback supporting the view that rape myths sometimes operate within the criminal justice system to the detriment of victim-survivors and that impacts of trauma on victim-survivors are sometimes not well understood. The taskforce found that the admission of expert evidence is likely to help address this lack of understanding of sexual offending. In facilitating this objective, the bill expands the sexual offence expert evidence pilot, established but not yet commenced under the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024, passed in March of this year, so that an expert can also be appointed to the panel for the purpose of giving expert evidence on the nature of sexual offences and the factors that might impact the behaviour of victims.

The bill finally makes a range of other amendments that I will briefly outline. The bill extends the maximum duration of non-contact orders from two to five years and increases the maximum penalty of breach of a non-contact order from one to three years, for greater consistency with the approach to domestic violence orders and restraining orders for unlawful stalking, intimidation, harassment or abuse. The bill includes amendments to the Corrective Services Act that are intended to remove any doubt that participation in a program while on remand in custody cannot be used in evidence in proceedings relating to the offence for which the person has been charged.

The bill contains amendments to ensure that a statutory review is carried out into the operation and effectiveness of the legislative amendments made in response to taskforce recommendations from both reports. This review is to occur as soon as practicable five years after the last relevant amendment commences. Finally, the bill clarifies the admissibility of recorded evidence-in-chief in committal proceedings for domestic and family violence offences including, significantly, that the complainant does not need to be present at court for the recorded statement to be tendered.

I thank you for the opportunity to provide information on this bill. We are happy to assist the committee by taking any questions.

**CHAIR:** Thank you Mr Bourke. I will pass to the deputy chair for the first question.

**Mr BENNETT:** Good morning. I refer to the targeted consultation on this bill—and you have some very admirable technical and legal minds with you today. Considering the targeted consultation that you mentioned on this bill, who would those stakeholders be? Could you perhaps give an overview? I suspect some of this high-level information might be missed on general people working in the sector.

**Ms McQueenie:** As you have mentioned, the government did undertake targeted consultation on a draft of the bill. That included a broad range of legal, domestic and family violence and sexual violence stakeholders as well as relevant statutory bodies and members of the judiciary. That involved consultation on the draft bill, briefings that the department conducted and consultation meetings with those entities.



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**Mr BENNETT:** Based on the consultation, I am wondering about reports 1 and 2 and the number of recommendations that were made, of which there were nearly 200. I have to be careful to not put you in a position of commenting on what is government policy. How many of the recommendations are still to be made in terms of some sort of future policy position? Am I able to ask that? How many of the nearly 200 recommendations from reports 1 and 2 have been included in the last tranche and the previous tranches of legislation? How many are still to be considered?

**Ms McQueenie:** I do not have an exact number in front of me, but I can refer the committee to the second annual report from the Women's Safety and Justice Taskforce. That was tabled by the Attorney-General recently. That report provides an overview of the government's progress in implementing all of the recommendations across both of the taskforce reports. That includes a status update with respect to each of those recommendations. If it would be helpful, I can talk about some of the reforms that have been implemented across the two bills that have come before us.

**Mr BENNETT:** Probably not. I would not like to tie you up. Can I get clarity about the annual report and maybe a tabling date for ease of sourcing it?

**Mr Bourke:** We can provide that to the committee if that would be useful.

**Mr BENNETT:** Are you happy for that, Chair?

**CHAIR:** Yes, I am.

**Ms McQueenie:** It is the Women's Safety and Justice Taskforce second annual report. I do not have the exact date. I believe it was last month.

**Mr Bourke:** It was quite recent.

**Ms LUI:** The bill provides that evidence from a special witness will be recorded so that the evidence can be reused in future proceedings where necessary. From a security perspective, Mr Bourke, would you mind going through how this will be stored and protected and who will have access to it?

**Ms Corrigan:** The bill imposes a requirement essentially on the courts to videorecord and store those recordings. The evidence would be stored in accordance with what currently occurs. I believe there are already frameworks in place in terms of who may have access to those recordings.

**Ms LUI:** Would you mind going into further detail about how it would be stored and protected?

**Mr Bourke:** We could take that on notice to get more specifics for you, if you would like, around the court processes. There are existing protocols and practices in place, but we could take on notice to provide more detail on the storage requirements and how that is maintained, if you would like.

**Ms LUI:** Yes, thank you.

**Dr ROBINSON:** In terms of the introduction of tendency evidence and of coincidence evidence, could it be potentially seen as a relaxation of the evidentiary standards in any way? Can you talk us through these types of evidence and why it is important to introduce them? I realise that you started to talk about this in your opening statement.

**Ms Hislop:** I might explain what the current test is in Queensland for the admissibility of this type of evidence. Currently in Queensland, the law concerning the admissibility of tendency and coincidence evidence is found in the common law. In particular, it is found in a case called Pfenning v The Queen, which was a 1995 High Court decision. In short, that test is that the evidence must have sufficient probative force that when it is considered alongside the other evidence in the case there remains no reasonable view of the evidence that is consistent with the innocence of the accused. The Royal Commission into Institutional Responses to Child Sexual Abuse considered that this threshold which operates in Queensland is the most restrictive in the country. It has been referred to as onerous even by recent Queensland Court of Appeal decisions.

In uniform evidence law jurisdictions, which is what we are seeking to move towards with this bill, tendency evidence or coincidence evidence will be admissible if the court thinks it will have significant probative value and if the evidence is adduced by the prosecution about the defendant that the probative value of the evidence outweighs the danger of unfair prejudice to the defendant. This is a much less onerous test than what is in Queensland currently.

**Dr ROBINSON:** I am getting my head around that detail. There is no risk of unintended consequences in any way?

**Ms Hislop:** Perhaps if I can speak to some of the matters that the taskforce considered.

**Dr ROBINSON:** Please do.

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**Ms Hislop:** In the second report the taskforce acknowledged that a person's right to a fair trial could be limited to some extent by enabling this evidence to be more easily admitted. However, the taskforce considered that, when considering this concept of a fair hearing, consideration must also be given to the rights of the victim and the community, which are promoted by these amendments. The taskforce also found that these reforms will not limit a defendant's right to cross-examine, it will not limit the defendant's right to put their case directly to victims nor will it limit their right to call evidence or to address the court. The taskforce found that limitation was justified by the purpose of these amendments.

The Royal Commission into Institutional Responses to Child Sexual Abuse also examined the assumption that juries could use tendency or coincidence evidence unfairly or in a way that would cause prejudice to an accused person. However, the royal commission commissioned research using mock juries. This research found that it is unlikely that a defendant will be unfairly prejudiced in the form of impermissible reasoning as a consequence of the admission of this type of evidence. They found that historically the risk of unfair prejudice to an accused person has been overstated in terms of the admission of this type of evidence.

**Mr SKELTON:** Proposed section 210A(3) includes a list of individuals who might be considered to have a child under their care, supervision or authority. Could you please provide some detail about this list and what would determine whether a person does or does not fit into this category?

**Ms Hislop:** The list in 210A(3) is intended to relieve prosecutors of the burden of proving that people who are captured by that list did, in fact, have a child under their care, supervision or authority. This list includes people such as teachers and medical practitioners. Proving that the defendant is, in fact, a person captured by that list should be relatively easily proven; and the jury, being satisfied that the defendant is, in fact, a person in that list, without receiving any further evidence, may be satisfied as a matter of law that that person, for the purposes of the offence, has the child under their care, supervision or authority.

A jury may otherwise be satisfied that an adult has a child under their care, supervision or authority although the particular defendant is not captured by that list. In that case, it will always be a matter for a jury, having regard to the particular facts of the case, to determine whether that particular element is satisfied. The evidence that might help a jury, for example, where the person is not captured, is evidence about the duration of the relationship between the defendant and the complainant child; the circumstances of their contact including the frequency or any age disparity between the complainant and the adult; any dependencies that exist between the two; and any responsibilities that the accused adult may have in relation to the child, whether those responsibilities are set out in law, policy or just by agreement. That is the type of evidence that might help a jury come to that conclusion.

**Mr Bourke:** I would add that, beyond the deemed list, the legislative provision includes examples of some of outside the deemed list—for example, a tutor or a sports coach or a religious or spiritual leader. You have the deemed list and then the legislation also suggests some illustrative examples as to what might also be captured. The fact, as Emma outlined, will be critical to establishing that care, supervision or authority between the two parties.

**CHAIR:** In terms of that list contained within the act, I noted other jurisdictions have exhaustive or inclusive lists. What is the proposal for this bill: an inclusive or an exhaustive list?

**Ms Hislop:** This is not inclusive in the sense that, despite the fact that certain people are listed in this list, it will not limit the operation of the offence more generally. Despite the fact that an adult is not captured in that list, they could still be captured by the offence more generally.

**Mr BERKMAN:** Before I move to my substantive question, I want to follow up on the member for Oodgeroo's question. The tendency and coincidence evidence are components of UEL. Can I clarify whether we are still a non-UEL jurisdiction?

**Ms Hislop:** That is right.

**Mr BERKMAN:** Are they the two isolated examples of movement towards that?

**Ms Hislop:** Yes, that is right. We are just picking up this aspect of the UEL provisions and adopting them in Queensland.

**Mr BERKMAN:** I also want to ask about the provision in the Evidence Act for admission of expert evidence and how that might affect the behaviour of victim-survivors. Also in the explanatory notes there is clarification that the evidence must be relevant and it cannot be led or used to reason that it is more or less likely that the complainant is telling the truth or that the offending occurred as alleged. Can I get clarification, first of all, that the explanation is not found within the legislation itself? Beyond that, can you talk us through the clarification in the explanatory notes?



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**Ms McGregor:** The intent of the expert evidence provisions starts from the principle that opinion evidence is normally not admissible in a criminal trial. Expert evidence is an exception to that rule. You need to demonstrate specialised knowledge in an area that you can use to then provide opinion based on that knowledge where it is relevant. The comments in the explanatory notes are really to help practitioners understand how these reforms work in the broad criminal justice sphere.

As we said earlier, this is not a UEL jurisdiction; we still operate heavily within common law bounds. Some of those common law rules, for example, include that you cannot admit evidence that is not relevant. This evidence must be relevant to be admitted. There are rules regarding how evidence can be used in terms of propensity, which is related similarly to my colleague's area of expertise in tendency. What this evidence might look like in practice is really an educative tool for juries. These provisions were modelled on very equivalent provisions in Victoria, and we have the benefit of their Court of Appeal authorities where that has been tested. I have examples of how it has been used in those jurisdictions, but I do not know if that goes beyond the scope of your question.

**Mr BERKMAN:** That is a very helpful response, thank you.

**CHAIR:** I note that within the establishment of the bill you are going to establish an expert panel. Would you be able to advise the committee what the make-up of that panel would be?

**Ms McGregor:** The expert panel was in fact established by the second taskforce act, which was passed earlier this year. It has not yet commenced. This aspect of the bill in terms of expert evidence in sexual offence proceedings is really an expansion of that panel. As I was indicating earlier, expert evidence really needs to be demonstrated. Your expert knowledge or specialised knowledge in a particular field needs to be demonstrated by qualification—that is, degrees—experience, training or otherwise. For example, in Victoria, in the appellate authorities, they have consultant psychiatrists who are giving evidence about victim-survivors' behaviour. This bill also allows for the chief executive to consider cultural competence, where that might operate in First Nations communities, where behaviour of particular groups of people might be quite relevant to a trial. The expert panel will be comprised of what we expect to be a range of different types of experts. However, the test for expert evidence is always that you need to demonstrate specialised knowledge.

**CHAIR:** Is there a particular number for an expert panel? How many participants would you think would be appointed to an expert panel?

**Ms McGregor:** I am not sure I can answer that. The expert evidence panel currently has a steering committee being set up about how to establish this. It might be a bit early to say.

**Ms McQueenie:** I would add for the committee's benefit that the legislation my colleague referred to—the second taskforce act—is the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act, and that was the act that established that panel. I understand that, under that legislation, the appointment of panel members is for the chief executive of the Department of Justice and Attorney-General.

**Mr Bourke:** It would be fair to say that there is a range of implementation issues currently being worked through in the context of establishing that panel for the act that has already passed, and then it will have that expansion to this new area in the third bill, so work is well and truly underway in developing all of the necessary operational things that obviously need to be put in place to facilitate it. That is obviously a piece of work currently being undertaken by the department.

**Mr BENNETT:** The recommendation is that a statutory review be undertaken five years after the amendments come into play. Can you speak to that statutory review and how we see that playing out? Is there any other legislation that comes to mind where statutory reviews are conducted within DJAG at the moment?

**Mr Bourke:** It was a specific recommendation to establish the statutory review.

**Mr BENNETT:** From the taskforce?

**Mr Bourke:** From the taskforce specifically, yes.

**Mr BENNETT:** Is it starting in five years or are you accumulating information during this period? I know it is five years away, but you obviously have a lot of experience at the table there, Mr Bourke.

**Ms Corrigan:** I am happy to take the question. As Greg said, it was a recommendation of the taskforce. The provision is set up whereby it is intended to capture all of the relevant taskforce related legislation as at the time of introduction of this bill. In terms of the timeframes of the review, as recommended by the taskforce, the review is to commence as soon as practicable five years after the commencement of the last of those amendments. I guess the intention is that the statutory review provision will commence at the same time as the last of those amendments, and then the five years will start from that time.



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**Mr BENNETT:** The second part of the question is: are there other statutory reviews carried out currently on other legislative reforms that we could be alerted to?

**Mr Bourke:** Without combing the legislative portfolio within the department of justice—obviously, statutory review provisions are a matter for government, but they are often inserted when there is a brand new scheme or a brand new act established. Reviews still can occur without a statutory basis and can be undertaken by government at particular junctures. We could otherwise take on notice and see if we can come back with further information about specific statutory reviews actually on foot now, but they can be a common feature, particularly where you want a juncture to review how we have gone and establish that under legislation. It is mixed, where that does and does not exist across the portfolio, but we can perhaps come back to you if there are any specific ones on foot right now.

**Mr BENNETT:** No, I do not think it is necessary to put you through that. It was just a question trying to get my mind around whether this is common.

**Mr Bourke:** It is not uncommon, but I suppose, as I said, there is nothing stopping a review being established that does not have a statutory basis anyway to consider the effectiveness of an offence or a particular scheme that has been put into legislation. I guess the statutory basis mandates that it must occur.

**Mr BENNETT:** I am happy with that. I do not need to you to do any more work on that, thank you, Mr Bourke.

**CHAIR:** With regard to the admissibility of recorded statements, I noted a draft in looking at the bill that that was an area that had been considered in the bill. Would you like to elaborate on the reasoning for having that particular admissibility of recorded statements put into the bill?

**Ms Corrigan:** The amendments will mean that in certain proceedings the court must direct that the evidence of special witnesses be videorecorded and then that will be stored. The bill then sets up when those video recordings will be admissible in subsequent proceedings, and those proceedings include any retrial or appeal, another proceeding for the charge or another charge arising out of the same circumstances, and a civil proceeding arising from the commission of the offence. If admitted in a later proceeding, the special witness can then only be compelled to give further evidence if the court is satisfied that the witness could be recalled to give further evidence if they had given evidence in the ordinary way, and if it would be in the interests of justice. That might be, for example, to clarify any matters relating to their original evidence or to canvass information that has become available since the original evidence was given. The intention behind the amendments, as set up by the taskforce, was really to avoid witnesses having to give evidence again in subsequent proceedings on numerous occasions and to avoid that retraumatisation.

**Dr ROBINSON:** In terms of determining a tendency and coincidence, would a person need to have some kind of previous conviction? It goes to the question of balancing the prejudicial implications of the evidence. Can you tease that out for us?

**Ms Hislop:** In short, no, you do not necessarily need to have a prior conviction. For example, tendency evidence and coincidence evidence can also operate in cases where you have multiple complainants—for example, where you have one accused person and you have multiple people accusing them of sexual offences. Each complainant will give evidence to prove the offence as it relates to them, but there is also cross-admissibility. For instance, when one complainant gives evidence about particular sexual offending, that can operate as tendency evidence or coincidence evidence in respect of another complainant in the same trial. That is just an example where you do not actually have a prior conviction. It can all occur within a single proceeding.

**Mr BERKMAN:** In relation to the provisions that propose to make evidence inadmissible around participation in programs while on remand, can someone flesh that out for us a little bit in terms of both the basis in the taskforce reports and the rationale for these particular changes?

**Mr Bourke:** I will throw to Bridie. We do have some information from our Corrective Services colleagues that we can relay to you, but Bridie will talk to that.

**Ms McQueenie:** The taskforce in report 2 found that women in custody may be concerned that participation in programs while on remand might be perceived as an admission of guilt or might detrimentally impact their defence. I am advised by Corrective Services colleagues that this could be the case regardless of the type of program that is offered, as prisoners may not always be aware of whether a program will involve the discussion of the offending that they are remanded for. Accordingly, this may present as a barrier for those women participating in programs and other



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interventions while in custody and on remand. In response to recommendation 149 of report 2, which is the relevant recommendation for these reforms, amendments have been made to the Corrective Services Act by the bill to insert a new section which is that inadmissibility of evidence provision.

**Mr BERKMAN:** Not to say that I necessarily agree with this position, but it might be asserted that that kind of inadmissibility provision favours the accused over victims in some circumstances. How would you respond to that suggestion or concern?

**Ms McQueenie:** I am not sure that we are in a position to discuss that rationale or that policy decision. We could take that on notice.

**Mr BERKMAN:** No, that is fine. I have strayed into policy without intending to. I appreciate that.

**CHAIR:** In your brief to the committee, and also in your statement, Mr Bourke, you spoke about a reference to rape myths being detrimental to victims and survivors and how the trauma in victims is not well understood. Can you elaborate to the committee on the reasoning for that statement and what experiences the courts have seen in the past that come to the conclusion that there are rape myths?

**Ms McGregor:** The taskforce took submissions from various ranges of stakeholders, and that is really where that concern was born out of. An example of some of those might be that a victim-survivor did not immediately report an offence; therefore, that becomes used as a tool to attack their credit or to suggest that they must not be telling the truth because a victim-survivor would never behave in that particular way. Of course, we know through not only the taskforce reports but also general learnings in our community that there is no correct way to respond to sexual violence, so really it is those types of rape myths; it is about behaviours that are just not well understood by the community and might be unfairly used to discredit a witness.

**Mr BENNETT:** On a similar line to that which the chair raised, it is interesting that it was talked about the trauma suffered by victims. Earlier, Mr Bourke, you talked about the defences, and issues around marriage consent and 16-plus. In reading the defences within the explanatory notes, what has changed within the bill to tighten those issues? It seems to me that, in relation to age, you can claim that you thought 18 was part of the consensual arrangement et cetera, and that all seems to still be in existence. Is there anything you can headline to the committee that demonstrates more protections within the system to victims?

**Mr Bourke:** The defences in the new 10A, the position-of-authority offence?

**Mr BENNETT:** Yes.

**Mr Bourke:** It is probably worth acknowledging also that the sexual age of consent is 16, so this is capturing that 16- to 17-year-old cohort. The general position is that the age of consent is 16. This is a specific offence targeted at people exercising positions of authority and control over 16- and 17-year-olds. It is a specific offence—Queensland is largely the outlier across the country without a specific offence—capturing that particular cohort post 16 but before becoming an adult.

**Mr BENNETT:** Ms Hislop, the defences still seem to exist for an alleged perpetrator that still have plenty of defence opportunities. What has changed within this legislation to perhaps give victims more protections?

**Ms Hislop:** There are three defences to this particular offence: the lawful marriage defence; the mistake-of-age defence; and the similar-age defence.

**Mr BENNETT:** Two or three years or something?

**Ms Hislop:** Yes, that is right. There is a defence where the accused person is no more than three years older than the complainant. That will provide a defence for people up to 20 years of age. There is a second limb to it: they must also point to evidence that there was no exploitation of the child. Whether or not there was exploitation will be a matter for a jury to assess having regard to all of the facts of the case. The department observed that a similar-age defence also operates in New South Wales. There they have a two-year age disparity. It operates in other jurisdictions as well.

**Mr BENNETT:** Just recently legislation was passed where consent had to be proved and had to be—

**Mr Bourke:** Clearly and voluntary given.

**Mr BENNETT:** There had to be evidence that consent was obtained before interactions. Does that now make it more difficult for consent to be proved in a court?

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**Ms Hislop:** For these particular offences, consent is irrelevant to proving the offence. Provided that child was under the care, supervision or authority of the adult and the physical acts occurred, the offence will be established.

**Mr Bourke:** That is probably the point. That is the gap that it is bridging for victims in these particular circumstances.

**Mr BERKMAN:** You mentioned that there is a two-year age gap used in other jurisdictions. I am curious as to how we have arrived at a three-year age gap. Is there a particular rationale for that?

**Ms Hislop:** As I indicated before, we looked to the New South Wales example, where there is a two-year age disparity; however, we also were guided by stakeholder feedback on the issue. Ultimately, it was determined to expand that age disparity but to also add the additional limb requiring that there was no exploitation of the child. Whilst there is that three-year disparity, which is greater than what we see in New South Wales, the offence is more targeted because there has to be an absence of exploitation for that defence to operate. In answer to your question, we looked to New South Wales but were also guided by stakeholder feedback.

**CHAIR:** In relation to the bill, I noted there was a discussion from the taskforce around the ground rules hearings and directions hearings. I understand that currently there is no equivalence to ground rules hearings in Queensland. Can you advise the committee what the purpose of a ground rules hearing or directions hearing would be?

**Ms Corrigan:** Essentially, the taskforce found that the hearings would assist victim-survivors to give their best evidence and minimise retraumatisation by the court process. Again, in certain proceedings where a special witness is involved, the court may order that a directions hearing is to be held. At that hearing, the court will consider the communication needs of the witness and give any directions about the giving of the witness's evidence that it considers appropriate for the fair and efficient conduct of the proceeding. You are correct that we do not currently have those, but we do have something similar for where an intermediary is appointed in those proceedings. The provisions in the bill have been inspired by some of those provisions but also from the position in Victoria.

**CHAIR:** They are put in place to stop that retraumatisation of the victim, to assist them along the path; is that correct?

**Ms Corrigan:** That is correct. An example of the type of direction that perhaps could be ordered would be that questions be kept simple or that there be one topic per question, depending on the needs of the witness in question.

**CHAIR:** I assume that directions hearings are culturally informed as well. Who would be assisting in the direction of those hearings? For instance, if a First Nations person were in a directions hearing like that, would an individual of First Nations background be assisting that person, or is somebody just generally appointed to do that role?

**Ms Corrigan:** The bill does not specifically contemplate that there would be an additional person appointed to assist in that role during the hearing, but I suppose the court would not be prevented from seeking that information from the parties.

**Mr BENNETT:** Mr Bourke, in your opening statement you talked about non-contact orders. How do they work with other jurisdictions—that is, child safety, family law and others? I think you said it could be expanded to five years or three years? I am not trying to put words in your mouth, but I would like to hear more about non-contact orders. Is that something new we are seeing in this legislation?

**Ms Corrigan:** The bill will expand the maximum duration of non-contact orders to five years, which is more consistent with domestic violence orders and restraining orders for unlawful stalking, intimidation, harassment and abuse.

**Mr BENNETT:** In some cases we are talking about reunification as some sort of solution here as well. Specifically, non-contact orders are for five years with completely no contact. Is that the interpretation we would apply or assume?

**Ms Corrigan:** The bill will amend the maximum duration to five years.

**Mr BENNETT:** At the judge's discretion?

**Ms Corrigan:** That is correct. Every case will depend on the circumstances. There are provisions in the Penalties and Sentences Act that guide the judge's discretion, but the maximum will now be five years.



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**Mr BENNETT:** In terms of non-contact within this legislation, how does that sit with Child Safety and the other jurisdictions that would have a role as stakeholders in that family's and that child's wellbeing and future? Is there one act or regulation that would be above? Do you understand what I am saying? This is under this particular legislation, but Child Safety would also have issues around non-contact and what that means and I guess the police and others would have some role to play in the safety and wellbeing of this family and this child. Does that make sense?

**Ms McGregor:** Yes. I think it is important to understand that non-contact orders are under the Penalties and Sentences Act. They are only for when somebody is convicted of an offence. There are going to be orders made by a judicial officer in the exercise of his or her sentencing discretion as a matter of course. They will also consider the circumstances of the personal offence. It does not always need to be a domestic violence offence; it is an offence against the person, which is in the Criminal Code and includes things such as assault. A domestic violence order operates in the domestic violence space, which is I think what you are referring to. Each of these orders can apply together. They are not exclusive of each other; however, there are different considerations when creating a domestic violence order versus a non-contact order versus a restraining order. They operate for different purposes and they operate under different legislation.

**Ms McQueenie:** It is also worth pointing out that these orders already operate. The amendments contained in the bill are largely technical, to increase that penalty and the maximum duration, but that intersection or the way in which those orders play out together in practice is already alive. That is the state of things currently.

**CHAIR:** Earlier we spoke about tendency evidence and coincidence evidence. Obviously that is always a bone of contention within the legal fraternity about how that is used. I did note in the statement you provided to the committee that the royal commission found that Queensland had the most restrictive approach to the admission of that evidence. What has been the observed consequence of that approach until now?

**Ms Hislop:** The royal commission spoke generally about how perhaps relevant evidence is not making its way into criminal trials. The royal commission spoke about how this perhaps has led to unjust acquittals. They also spoke about how, where there are perhaps multiple complainants of a single accused person, it has led to multiple trials occurring instead of all of the complainants' evidence being heard in a single trial before a single jury. It has led perhaps to occasions where individual complainants have been heard in isolation from one another. Those are some of the consequences that have flowed from a restrictive approach to the admission of this evidence.

**CHAIR:** That concludes this briefing. I thank everyone who has participated today. There is one question on notice regarding storage requirements for special witness statements by the courts.

**Mr Bourke:** We can provide the date for—

**Ms McQueenie:** Just circling back to that question around the annual report, the full title is the *Women's Safety and Justice Reform second annual report 2023-24*—

**Mr BENNETT:** The secretariat actually pulled it up while you were talking. Thank you so much; that was excellent.

**CHAIR:** That concludes the briefing. Thank you to everyone who has participated. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. Responses to questions on notice will be required by Monday, 17 June so that they can be included in our deliberations. I declare this public briefing closed.

**The committee adjourned at 10.56 am.**

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