

20<sup>th</sup> December 2019

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

[LACSC@parliament.qld.gov.au](mailto:LACSC@parliament.qld.gov.au)

Dear Committee Secretary,

**RE: CRIMINAL CODE (CHILD SEXUAL OFFENCES REFORM) AND OTHER LEGISLATION AMENDMENT BILL 2019**

**A. Introduction**

The Women's Legal Service Queensland (WLSQ) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic violence, child protection and sexual violence. WLS provides State-wide assistance through our legal Domestic Violence Helpline, and have a designated Rural, Regional and Remote telephone line to increase women's access to our service in non-metropolitan regions.

Over 16 000 vulnerable women were assisted last financial year.

WLSQ generally supports the legislation and in particular:

Amending the Criminal Code to:

- to provide for retrospective application of the offence in section 229B (Maintaining a sexual relationship with a child);
- extend the grooming offence in section 218B (Grooming children under 16) to certain persons other than the child;
- provide for retrospective application of the removal of limitation periods on prosecutions for certain child sexual offences;
- create a new offence of failure to protect a child from child sexual offence that applies in an institutional context;
- ensure that the new failure to report and protect offences apply to information or knowledge gained during, or in connection with, a religious confession.

Amending the PSA to:

- exclude good character as a mitigating factor at sentence where that good character facilitated the child sexual offending;



- provide that when sentencing offenders for historical child sexual offences the court is to sentence offenders in accordance with sentencing standards at the time the sentence is imposed, rather than at the time of the offending;

Amending the Evidence Act 1977 to:

- modify jury directions and warnings in relation to delay and forensic disadvantage; and
- support establishment of a pilot intermediary scheme.

## **B. Comments**

### **229B Maintaining a sexual relationship with a child**

Our only comment is that the provision is out of step with modern understandings of child sexual abuse and send the wrong message to the community. That is, in persistently sexually abusing a child we should be clear the perpetrator is not in any way in a 'relationship with the child'. Section 229B should be changed to an offence of 'persistent child sexual abuse' as this better reflects the issue and removes any notion of mutuality, normalcy or relationship.

### **Section 229BC Failure to report belief of a child sexual offence committed in relation to a child**

WLSQ acknowledges the public policy position behind this amendment is admirable and we support the government's strong stance against child sexual abuse. However, we have concerns about the drafting of this section as it seems to have been drafted too widely and if implemented, will have a myriad of unintended consequences, including negative impacts for victim/ survivors.

These negative impacts might include the following:

- As a new law people will be uncertain about what 'reporting a belief' on 'reasonable grounds' actually means in practical terms and the result may be a lot of notifications to police by people primarily concerned about ensuring they are not committing a crime. This will obviously have resourcing and other implications.
- Although there are exceptions, if a person has a reasonable excuse it place a heavy responsibility on ordinary community members to hear a disclosure and determine whether to report to the police or not taking into account:
  - Has the disclosure already been made to the police?
  - Has the disclosure already been made to another body such as Child Safety, Education or via the Youth Justice Act?
  - Ascertaining whether the adult survivor wants to report the matter to the police?
  - Would reporting to the police endanger the safety of another person other than the offender?

- Would a failure to report to the police be reasonable in all the circumstances?

It is important to be aware that most people disclose they have been a victim of child sexual abuse to friends and relatives. Therefore, it is friends and relatives who would be the most likely in breach of this provision.

With respect, perhaps a more appropriate approach would be for the offence to be activated if the perpetrator of the crime admits child sexual abuse to another person in his or her professional capacity and that person fails to give information to police.

### **Clarify the objective of the criminal justice system**

The first recommendation made by the Royal Commission into Institutional Child Sexual Abuse was:

1. In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met:
  - a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused
  - b. criminal justice responses are available for victims and survivors
  - c. victims and survivors are supported in seeking criminal justice responses.

Despite a number of recommendations from the Royal Commission have been implemented, there has been a failure to address this recommendation. We support the inclusion of these objectives in the Queensland Criminal Code and that they be extended to all criminal offences and not just child sexual abuse.

If you have any queries or seek further information please do not hesitate to contact me.

Yours faithfully,



Angela Lynch  
CEO  
Women's Legal Service Queensland