



12<sup>th</sup> January 2017

The Research Director  
Legal Affairs and Community Safety Committee  
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**To whom it may concern**

**Submission for Victims of Crime Assistance and Other Legislation Amendment Bill 2016**

The Centre Against Sexual Violence Inc. (CASV) is a not-for-profit non-government community organisation funded by the Queensland State Government. The core business of the organisation is to provide sexual assault counselling, advocacy and support to all women 12 years and over residing in the Logan, Beaudesert and Redlands region who have experienced sexual assault at any time in their life.

The CASV welcomes the new legislation '*Victims of Crime Assistance and Other Legislation Amendment Bill 2016* to:

- implement the recommendations of the *Final Report of the Review of the Victims of Crime Assistance Act 2009* (review report) and ensure the *Victims of Crime Assistance Act 2009* (VOCA Act) continues to provide an effective response to assist victims of crime;
- introduce a sexual assault counselling privilege; and
- give victims of a sexual offence who are to give evidence in a criminal proceeding against the accused automatic status as a special witness.

As a sexual assault counselling and support service the CASV would like to put forward further suggestions and support for the new legislation as follows:

**Ensure the *Victims of Crime Assistance Act 2009* (VOCA Act) continues to provide an effective response to assist victims of crime**

The CASV supports the:

- introduction of a Charter of Victims' Rights to ensure that victims receive consistent treatment across both government and non-government services;
- extension of victims of crime financial assistance scheme to include victims of domestic and family violence;
- increase in amount of funeral assistance payable to the family members of a victim who has tragically died because of a violent crime from \$6000 to \$8000; and
- streamlining of timely special assistance as a lump sum payment in addition to financial assistance to help victims recover from acts of violence when they need it during the process rather than at the end of a lengthy court process.

While Category A, (\$10,000) would provide some special assistance relief to a rape victim/survivor, the financial impacts of sexual violence can be far reaching and often hidden. If a survivor loses their capacity to engage in employment as a consequence of being raped, this can place enormous strain on the victim/survivor and their family far exceeding \$10 000 if the family is dependent on

that income. Consideration of special assistance geared towards individual circumstances and need may be more helpful in providing special assistance to sexual assault survivors rather than categories measured according to whether a sexual assault survivor was raped or not raped.

### **Sexual Assault Counselling Privilege**

The CASV welcomes moves to bring Queensland legislation in line with all other states in regards to introducing sexual assault counselling privilege. It is important that counselling is seen as a safe and confidential space for survivors. Issues discussed in counselling are often deeply personal and it has often been detrimental to the client's process of healing for counselling notes to be available during a criminal justice process. Merely knowing that counselling notes can be subpoenaed, this is also likely to change the information included and excluded in a sexual assault counsellor's notes.

#### **Circumstances where the use of counselling documents may be permitted in the court**

All decisions regarding access to privileged documents should be decided upon by the court and not by the prosecution.

- **Victims/Survivors waiving privilege**

Even though the legislation makes provision for victims/survivors to waive the privilege of sexual assault counselling documents, children under the age of 16 and people with impaired capacity should not be able to waive the privilege. Both groups deserve the full protection of the court around any decision making regarding privilege.

- **Application to the court from person wishing to access a protected counselling communication**

All forms of communication where a survivor has sought support in confidence from another person should also be treated as privileged and should be subject to the same protection as a counsellor's notes. For example, there are many informal avenues a victim/survivor may seek the support that is right for them to gain control of their lives from the impacts of a sexual assault trauma including but not limited to Aboriginal and Torres Strait Islander Elders, Clergy and other allied health professionals. Excluding these forms of support from privilege, places barriers to victims/survivors who rely on these support pathways to heal from the impacts of sexual violence.

It is essential that the preliminary complaint evidence also be afforded privilege. Otherwise the whole objective of the new legislation will be lost. Counselling is often one of the first places that a victim/survivor makes a first disclosure, it is essential that this be subject to the privilege. Victim/survivor's must have control over how this information is adduced. To dismiss this information from privilege would yet again be taking away the rights of the victim/survivor to expect counselling communication to be privileged and that they be allowed to disclose in the manner and timing that best suits their particular circumstance. Anything else will further undermine their rights to a therapeutic process that best suits them.

It is important for the court to consider problems that may arise with the granting of leave to access and use counselling documents. For example applications requesting permission to access counselling documents have the potential be used by the defence or the alleged perpetrator to dissuade or intimidate the victim/survivor. Currently our judicial system sees a very high rate of fallout at many steps along the judicial process for sexual assault. Every

time there is an application, adjournment or other interruption the chances of a drop out in pursuing a case, increases.

It is important that once this privilege is introduced, adequate funding is provided to sexual assault services to be informed and trained around the legislation. It could be a function of Victim Assist to inform service providers and users of their rights under any new legislation.

### **Automatic status as a 'Special Witness'**

The CASV welcomes the proposed changes to Section 21A of the Evidence Act 1977 to automatically include all alleged victims/survivors of sexual assault under the definition of 'Special Witness'.

Sexual assault results in severe and lasting consequences for a victim/survivor. One of the greatest impacts experienced, is the fear of being in the court room with the alleged perpetrator. Their trauma is likely to be triggered in this presence and they are less likely to give clear concise evidence whilst in the grips of trauma symptoms. These can include but are not limited to:

- a sense of powerlessness;
- fear;
- numbing;
- dissociation;
- anxiety;
- flashbacks
- nightmares; and
- sleep disturbances and suicidal ideation leading up to the court hearing.

Therefore automatic status of 'Special Witness' for all sexual assault victims/survivors is likely to not further exacerbate some of these debilitating impacts of sexual violence and would consume one less area to devote precious therapeutic time. It would also encourage more victim/survivors to come forward and report sexual assault in the first place.

Ultimately, it should be the survivor's choice as a 'Special Witness' to decide how they are most comfortable giving evidence. Therefore, they should be afforded multiple choices for how they provide this evidence including:

- the use of a pre-recorded interview;
- the use of a pre-recorded cross-examination and re-examination;
- the survivor having a choice to give evidence in a room away from the courtroom using CCT;
- the survivor having the choice to have a support person with them when giving evidence;
- the use of partitioning screens or one-way glass if evidence is given in the courtroom;
- automatic closed court to the public;
- the judge and counsel removing their wigs and gowns when requested;
- restriction on the scope of questions that can be asked in cross-examination;
- disallowing improper questions in cross-examinations;
- allowing expert evidence about the impacts of childhood sexual abuse; and
- the automatic use of intermediaries and interpreters to assist vulnerable witnesses.

It is important that both sexual assault counselling privilege and Special Witness changes to the criminal justice legislation are made retrospectively so that all survivors have access to the same justice process regardless of when the sexual assault occurred.

The CASV appreciates the opportunity to provide input and suggestions from the perspective of victims/survivors of sexual assault towards the new legislation. We hope that you will find this submission useful. The CASV will look forward to some of the above suggestions given due consideration in the legislation '***Victims of Crime Assistance and Other Legislation Amendment Bill 2016***'.

Yours sincerely



On behalf of the CASV Association