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**Submission to the Legal Affairs and Community Safety Committee re:
Victims of Crime Assistance and Other Legislation Amendment Bill 2016**

The Domestic Violence Action Centre (DVAC), Service Against Sexual Violence welcomes the opportunity to provide a written submission to the Legal Affairs and Community Safety Committee in response to the Sexual Assault Counselling Privilege Consultation Paper.

The Service Against Sexual Violence respectfully submit recommendations relating to a specific area of expertise based on our specialist knowledge and experience in providing sexual assault support services to individuals who have experienced sexual violence.

This submission will address two objectives of the bill.

Service Details

The Domestic Violence Action Centre (DVAC) has a long-standing history of providing a range of services and support. The Service Against Sexual Violence, an initiative of DVAC, provides specialist sexual assault support services within the Ipswich region to individuals who have experienced sexual violence and non-offending family and friends.

Sexual Violence within our community

Sexual violence is one of the most significantly underreported types of criminal offences in Australia. Only 11 – 25% of people take the step to come forward to authorities (Australian Bureau of Statistics, 1996). Research indicates that one in three young women will experience some form of sexual violence before the age of 18 years, and one in four women in Australia will report sexual violence throughout their life (ABS, 2006). Predominantly offenders of sexual violence are males (93%) who are known to the victim, which often makes disclosing or reporting the abuse even harder (ABS, 2006; ABS, 2013-14).

Individuals who have experienced sexual violence feel a range of emotions including shock, shame, guilt, fear, depression and difficulty trusting others. Other impacts include, but are not limited to: anxiety, post-traumatic stress disorder, chronic fatigue/pain, sleep disturbances, gynaecological and obstetric problems, substance abuse, increased risk of suicide, major depressive episodes, obsessive compulsive disorder, self-harm, isolation, relationship difficulties, dissociative disorder, maladaptive eating patterns, antisocial behaviour, psychosis, poor maternal-infant relationships, mental health,



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personality disorders, sexually transmitted infections and repeated attendance at GP's or Emergency Departments (Australian Women's Coalition (AWC), 2010, p. 30; Cook, David & Grant, 2001).

The experience of sexual assault can be highly traumatic and have long standing impacts on the mental health, functionality and overall well-being of victims (Briere & Scott, 2013). Many victims and support agencies also report the existence of social stigma and judgement attached to sexual assault experiences. Common are beliefs or thinking that supports or reinforces 'victim-blaming' attitudes, such as questions about where victims were at the time of the assault (ignoring that most sexual violence occurs in private or in the home); what victims were wearing (which implies that some women are "asking for it" and reinforces the incorrect assumption that sexual violence is about "uncontrollable" desire of perpetrators rather than power and control); or whether victims were under the influence of drugs or alcohol (and therefore somehow complicit in their own violation).

There are significant barriers in disclosing and reporting experiences of sexual violence including safety concerns; fear of further violence; stigma and shame; limited understanding as to what constitutes as consent; lack of recognition of sexual assault as being a crime; and lack of trust in police and/or service responses. Despite the underreported nature of sexual offences, statistically only 1 in 6 police reports of rape and less than 1 in 7 police reports of incest or sexual penetration of a child, result in prosecution (Victorian Law Reform Commission, 2004). Additionally, only about 17% of reported sexual offences result in a conviction, which is a figure consistent with data from other States (ABS, 2013). Such statistics increase the need for counselling and support throughout and long after court cases and prosecutions are finalized.

Access to specialist counselling immediately following sexual assault has shown to decrease the long term impact of the trauma, which is likely to reduce the need for long term support from primary health care services, such as mental health, drug and alcohol and other intensive family support services. The Service Against Sexual Violence (DVAC) believes that the introduction of the communication privileges in Queensland will significantly reduce some of the barriers experienced by victims of sexual violence in accessing support services and will also increase the effectiveness of counselling and support through the assurance that confidentiality and privacy is maintained.

Responses and recommendations to the outlined objectives of the Bill

1. Introduce a sexual assault counselling privilege

The Service Against Sexual Violence (DVAC) maintains that sexual assault counselling privilege should apply to all forms of sexual violence, including rape, attempted rape, assault with intent to commit rape and sexual assault as outlined in sections 349 – 352 of the *Queensland Criminal Code 1899*. Additionally, The Service Against Sexual Violence (DVAC) asserts that sexual assault counselling communications privilege should apply to all sexual offences relating to a child, even if they are now an adult. This includes indecent treatment of a child under 16 years (section 210), carnal



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knowledge with or of children under 16 years (section 215), procuring sexual acts (sections 217 – 219) and incest (section 222).

The Service Against Sexual Violence (DVAC) maintains that full and complete protection should apply to all counselling communications between a victim of sexual violence and the counsellor irrespective of whether the counselling occurred before or after the sexual assault or if it is related to the sexual assault. Individuals who have experienced sexual violence should feel confident that the information they chose to disclose to a counsellor will be kept confidential. Privacy is a fundamental principle of justice and victims of crime, particularly individuals who have experienced sexual violence, must be supported to have their rights to privacy maintained through the introduction of an absolute legal privilege of counselling communications.

The Service Against Sexual Violence (DVAC) strongly advocates for the introduction of absolute privilege that provides absolute protection for all individuals who have experienced sexual violence. This should apply to committal proceedings and proceedings relating to bail, including proceedings during the trial or sentencing. Without the introduction of an absolute privilege providing full and appropriate protection during all stages of the criminal justice proceedings, individuals may continue to be reluctant to report sexual violence and/or may not seek essential counselling as confidentiality cannot be assured. Specialist sexual assault counselling support for the individual may also be impacted as a result of the lack of confidentiality during legal proceedings. Additionally, the individual may experience further trauma knowing that the alleged offender can access their counselling communications during the proceedings. This is particularly important as many victims experience fear and anxiety in relation to the offender and court proceedings, and some even experience ongoing fear or control tactics from the offender to intimidate and manipulate court proceedings.

Recommendations:

- Sexual assault counselling communications privilege should apply to all sexual offences as outlined in the *Queensland Criminal Code 1899*. Additionally, this communications privilege should apply to all sexual offences relating to a child, even if the complainant is now an adult. This includes the indecent treatment of a child under 16 years, carnal knowledge with or of children under 16 years, procuring sexual acts, and incest.
- The Queensland Government should support the introduction for absolute privilege for sexual assault counselling communications to provide complete protection for all victims of sexual offences.
- Sexual assault communications privilege should apply to all counselling communications between a victim of sexual assault and counsellor irrespective of whether the counselling occurred before or after the sexual assault.

2. Give victims of a sexual offence who are to give evidence in a criminal proceeding against the accused automatic status as a special witness.

The Service Against Sexual Violence (DVAC) strongly advocates for individuals who have experienced sexual violence automatic status as a special witness. Applications for special witness provisions are not always successful and many victims of sexual violence aged 17 years and over can face significant



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disadvantage, prolonged trauma and substantial intimidation when giving evidence throughout the criminal justice proceedings. For example, it is imperative for victims of sexual abuse to be able to give clear testament to their experiences without fear of seeing the accused.

It is a common experience for counselling services to be issued with a subpoena, following counsellor representation of clients for court support or when providing formal client advocacy letters. This results in the counselling service being forced to share all counselling communications, including sensitive and personal content, regardless of whether the counselling occurred prior to or after the sexual assault. As already highlighted in this submission, this can significantly impact the victims access to counselling and support throughout a highly stressful, anxiety-provoking and often re-traumatizing experience of the sexual offence or offences.

Recommendations:

- A commitment from the Queensland Government to ensure all victims of sexual violence who are giving evidence in criminal proceedings are automatically provided with special witness protection status.
- Amendments to the *Evidence Act 1977* to ensure that special witness provisions automatically apply, and are routinely made available, to all victims of sexual violence, irrespective of their age, who are giving evidence in criminal proceedings to enable their participation, with respect to their informed choice. This should not be limited to special witnesses residing in the metropolitan area and may require upgrades to regional Queensland Courts to ensure adequate video, audio and other information technology is available.

This submission has been prepared by the Service Against Sexual Violence, DVAC.

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