



**Submission prepared by Zig Zag Young Women's Resource Centre to
the Legal Affairs and Community Safety Committee**

January 2017

Zig Zag Young Women's Resource Centre Inc welcomes the opportunity to provide a written submission to the Legal Affairs and Community Safety Committee for consideration in relation to the proposed *Victims of Crime Assistance and Other Legislation Amendment Bill 2016*. We respectfully submit recommendations relating to specific areas of expertise based on our extensive knowledge and experience in providing sexual assault support and prevention services to young women who have been victims of violent crime, specifically sexual offences.

Organisational Details

Zig Zag Young Women's Resource Centre Inc. (hereafter referred to as 'Zig Zag') was established in 1988 to respond to specific identified needs of young women, namely sexual violence, accommodation, and the provision of a safe and confidential place for young women to obtain information, advice, and support. Zig Zag is an incorporated community managed organisation that currently receives funding from the Department of Communities, Child Safety and Disability Services (DCCSDS) and the Department of Housing and Public Works (DHPW) to provide two programs to young women in the wider Brisbane region and one program specific to young women in the Inala and surrounding region:

1. Sexual Assault Support and Prevention Program:

This program provides direct support services to young women aged 12 years to 25 years who have experienced sexual assault at any time in their lives. Services include:

- Information, referral and advocacy;
- Individual counselling (including crisis support);
- Court support (limited availability as this is not directly funded);
- Therapeutic group work; and
- Community education to prevent and reduce sexual violence.

2. Supported Accommodation and Assistance Program:

This program provides direct support services to young women aged 16 years to 25 years who are experiencing or at risk of experiencing homelessness. Services include:

- Information, referral and advocacy;
- Supported medium term accommodation; and
- Practical assistance to access emergency accommodation and long-term, secure, and affordable housing.

Zig Zag welcomes the proposed 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.

Prevalence of Sexual Violence

Sexual violence continues to be one of the most significantly underreported types of criminal offences in Australia. Data indicates that sexual violence is endemic with one in three young women experiencing some form of sexual violence before the age of 18 years, and one in four women in Australia reporting sexual violence over their lifetime. Sexual violence is a largely hidden crime that often occurs within the family and other private contexts; it is primarily perpetrated by males who are known to the victim such as family members, intimate partners, friends, colleagues, neighbours, and acquaintances.

Sexual violence against women in Australia frequently occurs within intimate partner relationships as observed in the following statistical snapshot:

- More than a quarter of a million women (272,300, or 24%) reported having been sexually assaulted by a previous partner since the age of 15ⁱ.
- In a study on young people and domestic violence, 14% of surveyed women aged 12–20 had been sexually assaulted by a boyfriendⁱⁱ.
- Specialist domestic violence prevention services report that between 90-100% of women who have experienced domestic violence, namely physical, emotional, financial, and social abuse are also experiencing intimate partner sexual abuseⁱⁱⁱ.

There are significant barriers for victims / survivors in disclosing and reporting experiences of sexual violence and rates of disclosure are even lower for intimate partner sexual violence. A range of factors including safety concerns and fear of further violence; stigma and shame; limited understanding as to what constitutes 'consent'; lack of recognition of sexual assault as being a crime; and lack of trust in police and/or service responses, are all observed as the primary deterrents for victims in disclosing intimate partner sexual offences^{iv}. Many women who are experiencing intimate partner sexual violence may have difficulty identifying the experience as sexual assault or rape as male partners who engage in domestic violence may apply a range of subtle, coercive and/or violent behaviours to deny their partner capacity to voluntarily consent to sexual activity^v.

Early intervention and access to specialist sexual assault counselling immediately following sexual assault has been shown to decrease the long term impacts of trauma. Timely access to specialist counselling also decreases the likelihood of victims / survivors having long-term engagement with primary health care service delivery, such as mental health, drug and alcohol, and other intensive family support services. Additionally, access to specialist sexual assault counselling can provide victims / survivors with essential information in relation to their options for reporting these crimes; and provide ongoing counselling, advocacy, and Court support that is required for victims of crime throughout lengthy criminal justice proceedings. Access to specialist sexual assault counselling is currently compromised by the lack of protection for counselling communications in Queensland. The introduction of a sexual assault counselling communication privilege is both timely and necessary to provide adequate protections for victims of crime, specifically sexual offences, in Queensland.

Counselling Communications Privilege

The introduction of sexual assault communications privilege in Queensland will significantly reduce some of the known barriers experienced by victims / survivors of sexual violence in accessing essential counselling and support services; and simultaneously increase the effectiveness of counselling through the assurance of confidentiality and privacy.

Zig Zag supports counselling privilege being introduced in Queensland, in line with all other Australian jurisdictions, which have some form of statutory evidential privilege to limit the disclosure and use of sexual assault counselling communications during legal proceedings. We also support that this privilege be extended to similar proceedings relating to domestic violence protection orders under the *Domestic and Family Violence Protection Act 2012* and other civil proceedings.

Zig Zag maintains that sexual assault counselling communications privilege should apply to all forms of sexual violence, that is all offences of a sexual nature including rape, attempted rape, assault with intent to commit rape, and sexual assault as outlined in S349 – S352 of the *Queensland Criminal Code 1899*. Additionally Zig Zag asserts that sexual assault counselling communications privilege should apply to all sexual offences relating to a child, even if the complainant is now an adult, including indecent treatment of a child under 16 years (S210), carnal knowledge with or of children under 16 years (S215), procuring sexual acts (S217-S219), and incest (S222).

Zig Zag maintains that full and complete protection should apply to all counselling communications between a victim of a sexual assault and counsellor irrespective of whether the counselling occurred *before or after* the sexual assault. Victims / survivors of sexual assault should feel confident to access counselling services knowing that information they choose to disclose will be kept confidential. Privacy is a fundamental principle of justice and victims of crime, specifically sexual offences, must be supported to have their rights to privacy maintained through the introduction of an *absolute* legal privilege of counselling communications.

Queensland is in a unique position of being able to introduce 'best practice' legislation, as we can benefit from the experience of the other States and Territories. Zig Zag strongly advocates for the introduction of an *absolute privilege* that provides complete protection and peace of mind for all victims of sexual offences, as operates in Tasmania.

The legislative option that is currently being considered in Queensland is a *qualified privilege* (Taskforce Recommendation 130) which would require additional resources within the Office for the Director of Public Prosecutions, acting on behalf of the victim of crime, to argue their case before a judge, alongside the Defence who would have similar rights to argue their case. In practice this means that there is no guarantee that appropriate protection could be provided to victims of crime at the time that they are initially accessing counselling, which often occurs prior to the commencement of criminal proceedings. Legal aid funding for victims / survivors would also be necessary to ensure that victims / survivors could engage their own lawyer where required to protect their rights during criminal proceedings.

Without the introduction of an *absolute privilege* providing full and appropriate protection during all stages of criminal justice proceedings (e.g. bail, committal, trial, and sentencing), victims of crime may continue to refuse to report a crime, and/or may not seek essential counselling as confidentiality cannot be assured. The effectiveness of specialist sexual assault counselling for

the victim may also be impaired without the assurance of confidentiality, and there may be continuing trauma caused to victims/survivors knowing the alleged perpetrator can access their counselling files at some stage during the criminal proceedings.

There are substantive time and resource issues involved as each subpoena received by specialist sexual assault support and prevention services for counselling records currently involves many hours by staff to appropriately respond to, for example, time is required to locate and review the counselling records; initiate contact with the victim / survivor to advise them of the subpoena and offer follow up support; access legal advice in every instance to ensure appropriate options on whether to comply or contest the specific scope of each subpoena are considered; delivery of the counselling records to Court; and other follow up as may be required. This level of resourcing would not be required with the introduction of an *absolute privilege* for sexual assault communications.

Recommendations Relating to Sexual Assault Counselling Privilege

- 1. Sexual assault counselling communications privilege should apply to all sexual offences as outlined in the *Queensland Criminal Code 1899* including rape, attempted rape, assault with intent to commit rape, and sexual assault. Additionally, this communications privilege should apply to all sexual offences relating to a child, even if the complainant is now an adult, including indecent treatment of a child under 16 years, carnal knowledge with or of children under 16 years, procuring sexual acts, and incest.**
- 2. The Queensland Government should support 'best practice' legislation through the introduction of an *absolute privilege* for sexual assault counselling communications to provide complete protection and peace of mind for all victims of sexual offences, as operates effectively in Tasmania.**
- 3. Sexual assault communications privilege should apply to all counselling communications between a victim of a sexual assault and counsellor irrespective of whether the counselling occurred *before or after* the sexual assault.**
- 4. Sexual assault counselling communications privilege should be extended to similar proceedings relating to domestic violence protection orders under the *Domestic and Family Violence Protection Act 2012* and other civil proceedings.**

Special Witness

In New South Wales, the Northern Territory, Victoria and Western Australia, victims / survivors of sexual offences are automatically afforded special witness status. Zig Zag 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'. The victim / survivor should have the choice around how they are most comfortable to give evidence, from the options available:

- 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.

The *Criminal Law (Domestic Violence) Amendment Act 2015* came into effect in December 2015 and included amendments to the *Evidence Act 1977* to ensure the availability of protections for special witnesses automatically applied to all victims of domestic violence (Taskforce Recommendation 133). These amendments ensured that victims of domestic violence who are giving evidence about the commission of an offence by the perpetrator automatically fall within the definition of 'special witness' under the *Evidence Act 1977*.

Zig Zag supported the expansion of the definition of 'special witness' to automatically include victims of domestic violence, and we sought a commitment from the Queensland Government to ensure the same protections are available to all victims of sexual violence who are giving evidence in criminal proceedings; and to ensure consistency in Queensland with other Australian jurisdictions where victims of sexual offences are automatically afforded special witness status.

In Queensland the special witness provisions currently only apply automatically to children / young people under the age of 16 years who are victims of sexual violence and who are giving evidence in criminal proceedings. Under Section 21A of the Evidence Act 1977, special witness provisions are only made available to adult victims of sexual violence upon application to the Court where they must demonstrate to the Court that they:

1. Would, as a result of mental, intellectual, or physical impairment or a relevant matter be likely to be disadvantaged as a witness; or
2. Would be likely to suffer severe emotional trauma; or
3. Would be likely to be so intimidated as to be disadvantaged as a witness.

Many victims of crime who are giving evidence as a witness in criminal proceedings require assistance and advocacy by specialist sexual assault support and prevention services to make an application to the Court for special witness provisions to be considered. Applications for special witness provisions are not always successful and many victims of sexual violence aged 17 years and over face significant disadvantage, unnecessary and prolonged trauma, and substantial intimidation when giving evidence about the commission of sexual violence in criminal justice proceedings. Additionally, Zig Zag and other specialist sexual assault counselling services in Queensland have observed that when formal advocacy letters are provided by specialist services to the Court on behalf of victims of crime, these same services are immediately issued with a subpoena by the Defence for all counselling records held by this service. Automatic access to special witness provisions would provide greater protection to victims of crime and improve the quality of their evidence during criminal proceedings.

Recommendations Relating to Special Witness Provisions

- 1. 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.**
- 2. A commitment from the Queensland Government to fund appropriate upgrades to all regional Queensland Courts to ensure availability of the CCT video technology required by special witnesses when giving evidence in Court. This technology should not be limited to special witnesses residing in the Brisbane metropolitan area.**

3. **Development of appropriate and safe mechanisms to facilitate greater participation and inclusion of the victim in Court proceedings; with recognition for alternative options and choice to be made available to victims of sexual offences.**

This submission has been prepared by [REDACTED] and [REDACTED] on behalf of Zig Zag Young Women's Resource Centre Inc. It is acknowledged that this submission has been developed within significant time constraints and Zig Zag invites opportunities to provide further comment to any recommendations made herein.

For further information or commentary please contact:

[REDACTED]

Manager,

Zig Zag Young Women's Resource Centre Inc.

Telephone: [REDACTED]

Email: [REDACTED]

References

ⁱ Australian Bureau of Statistics. (2006), *Personal Safety Survey, Australia 2005*, ABS, Canberra.

ⁱⁱ National Crime Prevention. (2001), *Young people and domestic violence: National Research on Young People's Attitudes and Experiences of Domestic Violence*, Fact sheet, Australian Government, Canberra.

ⁱⁱⁱ Heenan, M. (2004), *Just 'Keeping the Peace': a Reluctance to Respond to Male Partner Sexual Violence*, ACSSA Issues Paper, No 1, Australian Institute of Family Studies, Melbourne.

^{iv} Lievore, D. (2003), *Non-Reporting and Hidden Recording of Sexual Assault: An International Literature Review*, Australian Institute of Criminology, Canberra, p8.

^v Duncan, J. and Western, D. (2011), *Addressing 'the Ultimate Insult': Responding to Women Experiencing Intimate Partner Sexual Violence*, ADFVC Stakeholder Paper, No 10, University of New South Wales, Sydney.