



Submission on Victims of Crime Assistance and Other Legislation Amendment Bill 2016

To the Legal Affairs and Community Safety Committee

From the Brisbane Rape and Incest Survivors Support Centre
(BRISSC)

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The Brisbane Rape and Incest Survivors Support Centre (BRISSC) firmly supports the objectives of Victims of Crime Assistance and Other Legislation Amendment Bill 2016 as it reduces the barriers to survivors accessing support and justice.

Background

Over forty years of experience working with survivors of sexual abuse in Brisbane have shown that there are a number of structural barriers within the criminal justice system that prevents survivors from accessing support and seeking and receiving justice.

Located at Women's House in Woolloongabba, BRISSC works alongside domestic and family violence services to:

- Offer support to survivors of sexual violence, aged 15 and over
- Support people who support survivors of sexual violence,
- Provide community education to change societal attitudes and behaviours, and,
- Advocate for changes that will benefit and enhance the lives of survivors of sexual violence.

Sexual assault counselling privilege

BRISSC supports the proposed change to ensure sexual assault counselling privilege. Current research and practice knowledge reveals that sexual crimes often result in the violation of victims trust in others. One of the keys to recovering from sexual violence and reducing social isolation is building safe and trusting relationships with others. BRISSC strives to do this within our support and counselling sessions, however one of the ongoing barriers to trust-building and access to support is the absence of sexual assault counselling privilege. Our practice at BRISSC is to inform clients that defendants in rape/sexual assault trials can request and obtain access to a victim's private counselling records to assist their defence at their criminal trial. This has significant implications for survivors. It can lead to:

- Increases in survivors fear, distress and anxieties. It can feel like another act of violence when perpetrators access their private conversations. Survivors' sense of control and emotional and physical safety may be violated again;
- Victims not making or withdrawing a report to the police;
- Victims not accessing support from a counsellor or limiting what they want to discuss in counselling

We strongly advocate for the introduction of a sexual assault counselling privilege, which would afford appropriate protection to victims of sexual crimes, when their complaints are progressing through the criminal justice system.

Special Witnesses

BRISSC recognises that survivors of sexual violence require appropriate support and provisions to ensure their safety and to enable survivors to fully engage in the criminal justice system and to work towards favourable outcomes.

BRISSC advocates for the definition of special witness to include any person who has experienced sexual assault and any person who is giving evidence about the commission of an offence by the other person. BRISSC also advocates for any victim/survivor of sexual assault to be automatically awarded 'special witness' status.

Currently, 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:

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

Given our experience working with survivors of sexual violence, we acknowledge the current special witness provisions do not accurately reflect how survivors can be impacted by trauma and intimidation. Allowing all survivors of sexual violence special witness provisions would better acknowledge the various ways trauma can manifest for survivors of sexual assault. It would also reduce perpetrator intimidation and lead to more witnesses being willing to testify.

Survivors of sexual violence can experience unnecessary and prolonged trauma and severe intimidation when giving evidence about sexual assault in court. While signs of trauma are extensive and varied, the current special witness provisions strongly implies severe trauma can only present emotionally. Allowing special witness provisions only to those who are likely to suffer severe emotional trauma sets a precedent that survivors must display or experience trauma from sexual violence in a public, visible and emotional capacity. Some survivors will outwardly display signs of severe emotional trauma when giving evidence (or talking about) sexual assault; some survivors experience trauma when giving evidence without great displays of emotion. Acknowledging that all trauma is equal and all survivors of sexual violence may experience trauma at any time whilst giving evidence in court, and putting provisions in place to reduce the risk of trauma, will make survivors better witnesses.

Without special witness provisions, many survivors are too intimidated or afraid to give evidence in court, resulting in a low rate of convictions for sexual assault. Putting protection methods in place to reduced trauma and intimidation will increase not only the amount of witnesses, but also increase the witnesses' ability to clearly recall the events of the sexual violence. Affording special witness provisions to all survivors giving evidence could help increase conviction rates for perpetrators and reduce the rates of sexual violence in Queensland.

In summary, BRISSC supports the Victims of Crime Assistance and Other Legislation Amendment Bill 2016, especially in relation to the sexual assault counselling privilege and extending the special witnesses provisions.