Justice and Other Legislation Amendment Bill 2023

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See attached:

28 June 2023

Legal Affairs and Safety Committee
Parliament House
George St
BRISBANE QLD 4000
By email: lasc@parliament.qld.gov.au

Dear Committee Secretary,

Australia's Right to Know coalition of media organisations (**ARTK**) appreciates the opportunity to make this submission to the Queensland Legal Affairs and Safety Committee inquiry into the *Justice and Other Legislation Amendment Bill 2023* (t**he Bill**). The submission comments only on Part 9 of the Bill which amends the *Criminal Law (Sexual Offences) Act 1978* (**the amendment**).

ARTK has been actively engaged with matters the amendment addresses over several years including making submissions to the Women's Safety and Justice Taskforce consultations, responding to the Department of Justice regarding the Women's Safety and Justice Taskforce *Hear Her Voice Report Two*, and providing feedback to the Attorney-General regarding a consultation draft of the amendment. As those submissions address the policy matter in detail which we refrain from repeating here.

ARTK broadly supports the amendment. However, we recommend the following amendments be made prior to passage of the Bill to ensure it meets its policy intent and provide the maximum support to sexual assault survivors:

- Section 7C(3)(b) – replace 'must' with 'may'
  - As currently drafted, this section <u>requires</u> the court to consider specific issues that should not be required, rather it should be up to the court itself of decide what it is that could be considered in hearing and determining an application for a non-publication order
  - The list of considerations the court is required to consider puts more weight on the consideration of the court granting an application for a non-publication order including in circumstances that do not warrant such. This would be a significantly detrimental to survivors of sexual assault and undermine survivors from being empowered to own their own story
  - To meet the policy intent of the amendments, and provide survivors with the greatest ability to own their own story, we strongly recommend 'must' be replaced with 'may'

- Section 7B(4) – add a requirement for the court to give a statement or judgment for the order being made (if the court grants the non-publication application)
  - If the courts grant an application for a non-publication order it is best practice for the court to be required to give a statement or judgment for the order being made
    - For example, this is a requirement in the Victorian legislation
  - It is also key that this the decision and the reasons for the decision are communicated contemporaneously and a clear record of such is made
    - Reasons for the decision allow any party wanting to challenge the making of an order with the ability to make the arguments in a contemporaneous fashion or, just as importantly, to determine that any challenge would be a pointless pursuit
    - It also ensures the public that the court applied itself to the task of how it decides non-publication orders, which supports open justice
    - It is ARTK's experience that unless a judgment is required, what is actually and eventually made available will be simplistic and lacking in detail which does not serve justice, nor the public, nor the victim/survivor well
  - It is important that this information be available immediately to interested parties, including the media, to ensure publications that comply with the orders made

  ARTK recommends the following drafting to rectify this issue:

7B(4) If the court grants the application, the court must give a statement or judgment that sets out the reasons for the order being made and state in the order—

(a) the grounds on which the order is made; and

(b) any identifying matter that is not covered by the order; and

(c) the extent to which publication of identifying matter is prohibited; and

(d) that the order ceases to have effect when the defendant is committed for trial or sentence or sentenced on the charge or when the charge is withdrawn, whichever happens first.

- Section 7F(1)(a) – delete the imprisonment elements of the penalty applying to individuals
  - A criminal penalty of imprisonment for two years, or indeed an length of time, for an individual is inappropriate and unnecessary
  - A fine is sufficient

- Definitions inserted to section 3 – delete 'sentenced' and the whole of the proposed definition
  - It is unnecessary. "Sentenced" has a clear meaning that does not required further clarification.
  - Further, the definition is incorrect and introduces significant uncertainty as to how the amendments will operate
    - The definition included in the Bill is that "**sentenced** means sentenced by a Magistrates Court"
    - It is an important term in the context of the amendments the Bill introduces because the non-publication orders proposed can only remain in effect "before the defendant is committed for trial or sentence or **sentenced** on the charge" [emphasis added]
    - The prescribed sexual offences which trigger the ability to make such a non-publication are rape, attempt to commit rape, assault with intent to commit rape and sexual assault which currently carry maximum penalties of a life sentence, 14

years imprisonment or 10 years imprisonment: see ss. 350 through 352 of the Criminal Code

- As such, each prescribed sexual offence is indictable and can result in an offender being sentenced in the District or Supreme Courts
- If the Bill provides that a non-publication order can only lapse when an offender is "sentenced by a Magistrates Court", orders made in relation to offenders sentenced in the higher courts either have a status that is unclear and highly likely to cause confusion or will never lapse
- Open ended non-publication orders are unnecessary and contrary to the interest of open justice

ARTK thanks the Committee for considering these important amendments.

Yours sincerely,

Georgia-Kate Schubert
On behalf of Australia's Right to Know coalition of media organisations