

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 - MP for Maiwar Second Reading Speech

We support this Bill and the recommendations of the Committee.

It's clear that the criminal legal system has been a site of re-traumatisation for victim-survivors, offering little in terms of genuine recovery from violence and its consequences, and even less in changing the deeply entrenched social structures that normalise violence in our communities.

While court processes shouldn't be viewed as our default strategy for the prevention of violence nor as the primary redress avenue for those who have experienced violence, at the very least, as one of the tools available, the courts should not be replicating the social structures and narratives that contribute to the kinds of offending they're supposed to deal with.

Protection for victim witnesses

The Bill introduces special provisions for victim-survivors of sexual violence and domestic and famil violence giving evidence in proceedings, to try and accommodate their specific needs and limit the number of times they have to tell their story in order to seek remedy.

The Bill provides that a special witness can choose to give evidence via alternative arrangements, unless it is not in the interests of justice or the facilities are not available. That means a special witness can ask for the person charged to be obscured from view, to give evidence from a different room, to have a support person, or to pre-record video evidence.

It is absolutely vital that victim-survivors are afforded some agency in the criminal law process, where they are not a party to the proceeding and have such little say over the investigation, prosecution and outcome. As such, we strongly support a victim's right to choose how they tell their story during proceedings.

That shouldn't be determined by your postcode or region. As recommended in the Hear Her Voice report, and echoed by QIFVLS in their submission, it is essential that all courts are updated to provide the facilities necessary for victim-survivors to give evidence in the way they choose.

The Bill also provides that video recordings of victim-survivor's statements, given in criminal proceedings, are to be recorded and stored for use in any subsequent proceedings, including civil proceedings, retrials or related criminal proceedings. This is long overdue as a means of limiting exposure to secondary victimisation through repeated re-tellings, and breaks down barriers to seeking redress through multiple avenues.

As part of the changes to support victim-survivors giving testimony, the Bill also introduces specific provision for courts on their own initiative or by application to hold a directions hearing

about evidence to be given by a special witness in relation to domestic and family violence or sexual violence. That means the parties can be clear about the types of questions to expect, the duration of questioning, the use of visual aids and questions that will not be permitted. This approach ensures that expectations are clear for all parties in advance - an important component of trauma-informed practice.

Admission of different evidence types

The Bill also expands the types of evidence that can be admitted in proceedings relating to sexual offending.

Importantly, it allows for the admission of expert evidence about the nature of sexual offences and the impacts of trauma on victim-survivors, and the establishment of a specialised panel of experts to draw from.

Rape culture isn't just about acts of sexual and physical violence but the broader culture that normalises or trivialises sexual assault and abuse against, largely, women and girls. The narratives that perpetuate this culture are used and replicated in courtroom settings to undermine victim-survivors.

We strongly support the objective of these amendments, to ensure that juries can hear from experts about the impacts of trauma and the reality of sexual offending, so that dangerous stereotypes and tropes about 'believable victims' and 'believable offending' aren't just repeated unchecked. This is an important acknowledgment that courts frequently reflect and uphold cultural norms unless made to do otherwise.

Admission of tendency and coincidence evidence

The Bill also provides a mechanism for admission of tendency and coincidence evidence that may otherwise be deemed inadmissible. It is unbelievably difficult to imagine what it must be like for victim survivors who know that a person has a track record of similar kinds of offending, to know that history won't be admitted into evidence. Accordingly, we support these amendments, in the interests of ensuring relevant evidence is admitted, and to reduce the likelihood of unjust acquittals.

Specific offences for people in position of authority

The Bill also introduces specific offences relating to conduct by a person in a position of authority. In recognition of the seriousness of this kind of conduct, we support the introduction of specialised offences and amendments to address the concerns raised by submitters.

The Committee makes recommendations to develop guidelines and undertake reviews into the operation of the new provisions, also in recognition of some of these concerns. We support that approach and urge the government to adopt them.

Non-admissibility of information shared during programs

The Bill also introduces vital changes to remove any doubt that participating in a program while a prisoner is on remand cannot be used in evidence in any proceeding against them, however, this is limited to proceedings relating to the offence for which the prisoner on remand has been charged. It would not expand this protection to cover any admissions made during engagement in these programs, including in relation to matters they have not been charged for.

These programs are a vital component of rehabilitation, and factor into things like parole decisions. It is vital that prisoners are able to participate openly and freely, without fear of self-incrimination.

Collaboration with First Nations

I'm pleased the Government has, at least in principle, accepted the recommendation of the Committee for the Department to develop guidance for law enforcement and judicial officers to work collaboratively, with trauma-informed practices for First Nations peoples involved in the justice system, including as both victim survivors and people accused of perpetrating violence. This work is absolutely critical.

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