

Submission to the Criminal Law (Domestic Violence) Amendment Bill 2015

The Queensland Sexual Assault Network welcomes the opportunity to provide a written submission to the Communities, Disability Services and Domestic Violence and Family Violence Prevention Committee (the Parliamentary Committee) in response to the draft *Criminal Law (Domestic Violence) Amendment Bill 2015*.

This written submission has been developed within significant time constraints and does not attempt to address all provisions outlined in the Bill. The Queensland Sexual Assault Network respectfully submit recommendations relating to a specific area of expertise based on our extensive knowledge and experience in providing Sexual Assault Support and Prevention Services to people who have been victims of violent crime, namely sexual offences. This submission will address the following provision of the draft *Criminal Law (Domestic Violence) Amendment Bill 2015* that is Part 4 Amendment of Evidence Act 1977.

Network Details

The Queensland Sexual Assault Services Network (QSAN) is a State-wide Network comprised of twenty Non-Government Services that provide specialist Sexual Assault Support and Prevention Programs throughout Queensland. QSAN is committed to working collaboratively towards ending all forms of sexual violence in Queensland through the provision of specialist knowledge and state-wide consultation on issues of sexual violence, and best practice for sexual assault service provision.

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 victim/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.

Part 4 Amendment of Evidence Act 1977

The draft *Criminal Law (Domestic Violence) Amendment Bill 2015* includes provisions to amend the *Evidence Act 1977* to ensure the availability of protections for special witnesses apply to all victims of domestic violence (Taskforce Recommendation 133). These provisions are outlined as follows:

1. Clause 10 states that Part 4 of the Bill amends the *Evidence Act 1977*.
2. Clause 11 subsection (1) inserts a new definition of *domestic violence* into section 21A (1). The new definition adopts the definition of domestic violence contained in section 8 of the *Domestic and Family Violence Protection Act 2012*.
3. Subsection (2) amends the existing definition of *special witness* in section 21A(1) to include within that definition a person who is a victim of domestic violence and who also is to give evidence about the commission of an offence committed by the person who committed the domestic violence.

These provisions aim to ensure 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*.

QSAN supports the proposed expansion of the definition of 'special witness' to automatically include victims of domestic violence, and we seek 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. Currently the special witness provisions 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.

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 Court.

Recommendations

1. **A commitment from the Queensland Government to ensure similar protections are available to all victims of sexual violence who are giving evidence in criminal proceedings. This can be achieved by enacting additional provisions to those outlined in the *Criminal Law (Domestic Violence) Amendment Bill 2015* to amend the *Evidence Act 1977* to ensure the availability of protections for special witnesses apply to all victims of sexual violence who are to give evidence about the commission of a sexual offence committed by any person.**
2. **Amendments to the *Evidence Act 1977* to ensure that special witness provisions are routinely offered 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.**

- 3. A commitment from the Queensland Government to fund appropriate upgrades to all regional Queensland Courts to ensure availability of the 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.**

- 4. 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 Stephanie Anne (Secretariat) on behalf of QSAN. A full list of QSAN Member Services is provided below. It is acknowledged that this submission has been developed within significant time constraints and QSAN invites opportunities to provide further comment to any recommendations made herein.

For further information or commentary please contact:

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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.

QSAN Member Services

The Queensland Sexual Assault Services Network (QSAN) is a State-wide Network comprised of twenty Non-Government Services that provide specialist Sexual Assault Support and Prevention Programs throughout Queensland. Member Services comprise a mix of Statewide, Regional and Specific-Focused Services.

Statewide Services

1. DV Connect Statewide Sexual Assault Helpline

Regional Services

1. Brisbane Rape and Incest Survivors Support Centre (BRISSC)
2. Cairns Sexual Assault Service (Family Planning Queensland)
3. Logan Centre Against Sexual Violence
4. Gladstone Women's Health Centre
5. Gold Coast Centre Against Sexual Violence
6. Phoenix House Bundaberg
7. Rockhampton Women's Health Information & Referral Service Central QLD
8. South Burnett Women's Service (Centacare)
9. Sunshine Cooloola Services Against Sexual Violence
10. Tablelands Sexual Assault Service
11. North Queensland Combined Women's Services - The Women's Centre (Townsville)
12. Whitsunday Crisis and Counselling Service
13. Wide Bay Sexual Assault Service

Specific – Focus Services

1. Migrant Women's Emergency Support Services trading as Immigrant Women's Support Service (IWSS) – working with women from non-English speaking backgrounds and culturally and linguistically diverse communities.
2. Murrigunyah Aboriginal and Torres Strait Islander Corporation for Women – working with Aboriginal and Torres Strait Islander women and communities.
3. Sisters Inside – working with criminalised women in custodial and non-custodial settings.
4. Working Alongside Women with Intellectual and Learning Disabilities – Sexual Violence Prevention (WWILD-SVP) – working with people with intellectual and learning disabilities who have experienced sexual violence.
5. Zig Zag Young Women's Resource Centre – working with young women aged 12 – 25 years who have experienced sexual violence.
6. Living Well (Anglicare) – working with men who have experienced sexual violence.