



Submission

Senate Standing Committee on Legal and Constitutional Affairs Crimes Amendment (Strengthening the Criminal Justice System Response to Sexual Violence) Bill 2024

March 2024

Introduction

The Youth Affairs Council of South Australia (YACSA) is the peak body representing young people aged 12 to 25 years as well as the non-government services that support them. YACSA is a member-based organisation, and our policy positions are independent and not aligned with any political party or movement. We aim to achieve meaningful improvements in the quality of young people's lives. YACSA advocates for the fundamental right of all young people to contribute to all aspects of community life, including decision-making processes that impact them, and we recognise the barriers young people experience to engaging with government decision-making processes.

YACSA is pleased to provide this contribution to the Senate Standing Committee on Legal and Constitutional Affairs regarding the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024.

Gender inequality, including the prevalence of sexual violence, remains a significant concern for young people in Australia. Young people are a significant stakeholder in reform on responses to sexual violence as young women are the most likely cohort to experience sexual assault and young men the most likely cohort to perpetrate sexual assault.

While consultation on the Bill focuses on legislative reform, the importance of prevention through awareness and education must be recognised, and YACSA urges the Federal Government to significantly invest in evidence-based consent education as a preventative measure against sexual assault in Australia. YACSA contends that governments, both state and federal, play an important role in violence prevention and funding vital services needed.

Young people in context

Young people must be considered a priority cohort in consultation relating to sexual violence legislation as they are the most likely cohort to be victimised and perpetrate sexual violenceⁱ. Past assumptions that young people would develop an improved understanding of consent and sexual violence have not been realised, and today in Australia young people continue to hold misinformed views on sexual violenceⁱⁱ. Young people are experiencing a stage in life where exposure to violence against women and attitudes that support it can have a significant impact. Respectful relationships education needs to be improved across Australia to better address issues identified in understandings and attitudes towards sexual violence.

Findings from the 2021 National Community Attitudes Towards Violence Against Women Survey (NCAS) were compared to previous NCAS findings, and there was no significant improvement in understandings regarding consent among young peopleⁱⁱⁱ. R4Respect youth ambassadors have

commented that there is no discussion with young people about consent and that support, education, and resources need to be improved. Evidence shows that for efforts to address sexual assault to be effective, they must include prevention education that is co-designed, action-based, peer delivered and given in various environments like school, recreation settings (e.g., sports or community clubs), through media and in a family setting.

Current responses to sexual violence

Individual and system responses to sexual violence are impacted by commonly held misunderstandings and believed myths about sexual violence (called 'rape myths'). Rape myths obscure the reality of sexual violence as well as facilitate hostility and bias towards victim-survivors. These myths are employed to separate the experiences of victim-survivors from the 'real rape' stereotype that works to undermine the credibility of victim-survivors, especially in the criminal justice system's response to sexual violence^{iv}.

Recent legislative reforms globally have attempted to address rape myths, but these myths persist at societal, institutional, and individual levels. The criminal justice system, including police, prosecution, defence and decision-makers like judges and juries, are not immune to the influence of rape myths, and research shows that when rape myths are relied upon within court proceedings, the prosecution rarely challenges them, nor do judges counter them^v. The prosecution often reinforces rape myths by relying on them when an offence fits the 'real rape' stereotype, and the defence relies on rape myths in cross-examination. Judges also rely on rape myths as a mental shortcut when practising intervention decisions, linguistic choices and, most concerningly when providing jury direction proposed to counter these myths^{vi}.

Legislative reform

Victim-survivors find the process of the criminal justice system distressing, humiliating and traumatising^{vii}. Young people who experience sexual violence and/or abuse are especially at risk of detrimental impacts resulting from their engagement in criminal proceedings. Often, given delays and attrition, many victim-survivors feel powerless and frustrated by the system's processes. Reform contained within the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 will provide much-needed changes to address some barriers and risks of re-traumatisation often experienced by victim-survivors at the hands of the criminal justice system^{viii}. By addressing barriers, it is hoped that reporting, investigation and conviction rates for sexual violence offences improve.

Vulnerable persons

Young people and those who experienced sexual violence as a young person are especially vulnerable to re-traumatisation during criminal proceedings^{ix}, where they are often subjected to intimidation, intentionally misleading questioning and even harassment. Expanding the current legislation to include child witnesses and complainants in a broader range of proceedings and to include victim-survivors who were children at the time of the offending but are now adults will provide additional protection for vulnerable persons in Commonwealth criminal proceedings. Given the detrimental impacts of common cognitive bias, employment of rape myths and a culture of victim-blaming that persist in criminal justice responses^x, categories of vulnerability could be further amended to include all young people that are victim-survivors of non-historic sexual violence offences.

Inadmissible evidence

Victim-survivors regularly have their credibility aggressively undermined through cross-examination and jury direction. This is a traumatising experience, and one that research shows is a key driver of low reporting rates for sexual violence offences. While jurisdictions in Australia have reformed legislation on the admission of evidence concerning a victim-survivor's sexual reputation, the Federal Government has outstanding action to take. State and territory reforms in recent years have not completely removed the ability for evidence on sexual reputation being raised during proceedings, typically in cross-examination, and there is room for improvement^{xi}. Proposed reform to admissible evidence on sexual experience and reputation could be extended to ensure that no victim-survivors of sexual violence offences are subjected to trial themselves by enduring humiliating and re-traumatising approaches to cross-examination.

Evidence recording

Allowing pre-recorded evidence for vulnerable people aims to reduce the risks of re-traumatisation, especially via face-to-face contact with an alleged offender^{xii}. Studies show that children and young people can experience a great deal of anxiety providing testimony in a court trial, and much of this anxiety is related to facing the defendant. It also helps to capture evidence provided by young people without multiple interviews, which minimises the chance of memory lapse and reduces the stress placed on a young person^{xiii}. Long-term studies demonstrate that young people providing evidence in court in person is associated with negative mental health outcomes and negative impacts on the young person's perspective of the criminal justice system^{xiv}.

For reform on pre-recorded evidence to be effective, organisations and agencies will require adequate resources to protect against unnecessary delay in proceedings, which can significantly impact victim-survivors and vulnerable witnesses.

Publication of self-identifying information

Changes to allow for the publication of self-identifying information would allow victim-survivors to tell their story if they choose to. This can be an important step in recovery after experiencing sexual violence especially. Providing for self-identifying information to be published can also support perceived barriers to accessing justice in the broader community and improve understandings of sexual violence. Outside of legislative reform, it is important that victim-survivors be supported to make an informed decision on whether to speak out, as it may risk re-traumatisation.

YACSA acknowledges that reforms contained within the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 will undoubtedly impact the work of Commonwealth courts in the short term. However, the Royal Commission recommendations contained in this legislation balance reform to address impacts endured by victim-survivors in criminal proceedings with the need to protect the right to a fair trial. While this Bill seeks to improve the criminal justice response to sexual violence offences at a Commonwealth level, without proper evaluation the results of reform will be unknown. It is vital that the Federal Government recognises the need to ensure appropriate evaluation is undertaken.

Beyond legislative reform

Legislative reform alone is not sufficient to adequately address sexual violence-related offences and the criminal justice system response to these offences. Nationally, significant legislative reform relating to court proceedings on sexual violence-related offences has had little effect on rates of

offending, rates of reporting and attrition rates within criminal justice systems across Australian jurisdictions^{xv}.

The government must consider matters like prevention, community education, reporting processes and police discretion for any reform seeking to improve reporting, attrition and conviction rates for sexual violence-related offences to be effective. Without an investment in prevention education for young people, commonly held rape myths in the community will continue to detrimentally affect the prevalence of sexual violence and the criminal justice system's response to sexual violence-related offences.

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