



4th April 2024

Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100 Parliament House
Canberra ACT 2600

Via email: legcon.sen@aph.gov.au

Dear Committee,

Submission to the Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

The Office for the Advocate for Children and Young People (ACYP) welcomes the opportunity to provide feedback on the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024. The Advocate for Children and Young People (ACYP) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, wellbeing and voice of all children and young people in NSW aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged.

Due to conducting a Special Inquiry, ACYP did not have sufficient time to provide a full response to this Inquiry. Accordingly, ACYP spoke to colleagues to understand who might be providing a more detailed response, and as a result ACYP has reviewed the letter from the Commissioner for Children and Young People, Western Australia and supports that submission. This letter articulates that and sets out specific responses where ACYP has done specific work.

Expanding the category of people considered to be a ‘vulnerable person’.

ACYP supports increasing the scope of protections and supports for vulnerable children and young people, including those who are victims of violent crime. The Advocate supports the proposed changes in the Bill to expand the category of people considered to be a ‘vulnerable person’. The Bill aims to do this by expanding the list of offences that define ‘sexual violence’ in order to account for the experiences of all survivors and ensure their legal protection, including children and young people. The work of ACYP is aligned with that of the Bill, embracing a wider definition of violence, and including a focus on children’s rights and intersectionality.

Restricting the admissibility of sexual reputation/experience evidence. Changes to admissibility of evidence in child proceedings.

ACYP agrees with the proposed changes to admissibility of evidence in child proceedings, restricting the admissibility of sexual reputation/experience evidence in Section 15YB. Changes such as this are

a step in the right direction for the justice system. Children and young people need to be given the opportunity to speak up in relation to their experiences of violence without feeling blamed by the systems they seek for support.

New provisions for the pre-recording of evidence.

In relation to the proposed Division 2A into Part IAD of the Crimes Act, ACYP supports the approach of providing children and young people who are survivors of sexual violence with the opportunity to share their evidence and experience in ways that are both safe and trauma informed. The space in which the video is recorded needs to be made as safe as possible for the child or young person to attend. Based on our consultation work with children and young people in out-of-home-care, children and young people should be provided the opportunity of choice in the most comfortable setting for discussions and the presence of a trusted support person in the room. The Bill makes mention of a court-determined support person or mental health professional in section 15YDC. Children and young people who may be required to provide evidence of this nature should be provided a choice in who can be present to provide them with support, in all cases. As per Article 3.3 of the United Nations Convention on the Rights of the Child, individuals supporting children and young people within a legal setting need to adhere to standards set by competent authorities, including ensuring safety, and the suitability of staff. ACYP recommends that support persons are provided with training or guidance into how to perform this role most appropriately during the pre-recording of evidence. Furthermore, we would support an expansion of the term, 'support person' in this section of the Bill, in order to provide some essential criteria for such an important role. Support can look very different for each individual, and therefore it is essential to provide clarity in the Bill without restricting the choices of children and young people. ACYP is a strong proponent of consulting with children and young people about systems and processes that affect them. Children and young people with lived experience would be able to assist in expanding the definition of a 'support person' to be meaningful to child complainants and witnesses in the context of providing evidence.

In addition to providing supports with pre-recording evidence, children and young people also require sufficient support, preparation, and guidance both before and after the pre-recording has occurred. Article 19 of the United Nations Convention of the Rights of the Child states that protections should be provided to children and young people against child maltreatment in all its forms (19.1) and that these protections should include effective referral points to social services and/or programs aimed at prevention, support through legal or judicial processes and the follow-up of instances of child maltreatment (19.2). Children and young people need to be informed of their rights, roles, and responsibilities in terms of providing their evidentiary statement. ACYP recommends inserting a clearer definition of 'informed consent' under this section of the Act and the conditions in place to ensure children and young people have given 'informed consent'.

The ACYP's work with vulnerable children and young people, particularly in out-of-home-care and Youth Justice, shows that children and young people who have experienced care or have had contact

with the youth justice system, need to be provided with tailored resources and information (in writing) to help them understand the process of providing evidence. There are resources that explain Child Rights in ways that are appropriate for children and young people such as the United Nations Convention on the Rights of the Child Text - Child Friendly Version or the ACYP Video, 'Convention on the Rights of the Child: Educational Resource'. The referral to and availability of wrap-around services for children and young people after a pre-recording of evidence has taken place is important. The types of services available and the referral process should be informed by trauma-informed experts in this space as well as the lived experience of children and young people. The age of the child witness or child complainant also needs to be considered in tailoring of approaches to making the pre-recording process as safe as possible.

Support for vulnerable persons

ACYP advocates for the provision of supports to children and young people in order to assist them in navigating complex legal procedures, such as an interpreter service as stated in the proposed section 15YOA under Division 6 of the Crimes Act. We agree with and support the comments of the Commissioner for Children and Young People, WA in their statements that children and young people should be provided with the opportunity of choice, and that interpreters need specific skills to support the communication needs of the child or young person. ACYP also adds that interpreters should be deemed eligible to work with children at a state level, and qualified to work with children, particularly in a trauma-informed setting. ACYP also supports the comments made by the Commissioner for Children and Young People, WA on the inclusion of the appointment and use of witness intermediary schemes at a Commonwealth level to ensure equitable access of supports to all children and young people.

Thank you once again for the opportunity to provide feedback on the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024. We note that we would be happy to share existing data or facilitate feedback from children and young people, in order to inform the development, implementation and monitoring of amendments in the future. Should you wish to discuss these matters further, please do not hesitate to contact my office via: acyp@acyp.nsw.gov.au or ph.: (02) 9248 0970.

Yours sincerely,

Zoë Robinson

Advocate for Children and Young People

Office of the Advocate for Children and Young People

¹ For more information see: ACYP (2021). *The Voices of Children and Young People in Out-of-Home-Care*. Accessed via: <https://www.acyp.nsw.gov.au/out-of-home-care>

² Australian Human Rights Commission. Convention on the Rights of the Child. Accessed at: <https://humanrights.gov.au/our-work/commission-general/convention-rights-child-human-rights-your-fingertips>

³ Australian Human Rights Commission. Convention on the Rights of the Child. Accessed at: <https://humanrights.gov.au/our-work/commission-general/convention-rights-child-human-rights-your-fingertips>

⁴ Australian Human Rights Commission. Convention on the Rights of the Child. Accessed at: <https://humanrights.gov.au/our-work/commission-general/convention-rights-child-human-rights-your-fingertips>

⁵ For more information see: ACYP (2021). *The Voices of Children and Young People in Out-of-Home-Care*. Accessed via: <https://www.acyp.nsw.gov.au/out-of-home-care>

⁶ For more information see: ACYP (2019). *What children and young people in juvenile justice centres have to say*. Accessed via: <https://www.acyp.nsw.gov.au/dod/juvenile-justice>