



**National Women's  
Safety Alliance**

# **Comment on the Crimes Amendment (Strengthening the Criminal Justice Responses to Sexual Violence) Bill 2023**

**June 2023**

**Submitted by**

Katherine Berney

Director

National Women's Safety Alliance

[www.nwsa.org.au](http://www.nwsa.org.au)

## About NWSA

The **National Women's Safety Alliance** brings together a diversity of voices, expertise, and experience to inform and guide national policy on women's safety. The NWSA, established in August 2021, connects the sector, experts, government, and victim-survivors with a shared vision to end violence against women. This will be achieved through consultation, research, and the collaborative development of expert policy advice to government.

More information about NWSA is available on our [website](#).

## Introduction

NWSA welcomes the opportunity to participate in the Australian Government consultation to inform the amendment to the *Crimes Act 1914* for the purposes of strengthening criminal justice responses to sexual violence.

This contribution follows on from previous advice we have provided in the space of sexual violence reform including the harmonisation of Australia's sexual consent laws and the development of a pilot project for specialised and trauma-informed legal services for victims and survivors of sexual assault. We have used these earlier submissions to reinforce what is widely acknowledged among women's frontline services; that while law reform is an important component in addressing violence against women, institutional responses, and progressive cultural reform regarding perceptions of crimes of sexual consent are a significant factor in a survivor's decision to disclose violence.

*Research has shown that conviction rates for sexual offences have significantly decreased over time. In Australia, the average conviction rate for sexual offences reduced from 17 percent between 1970 and 1989, to 12.5 percent between 1990 and 2005. Despite recent advances in police and court practice, these rates have not improved – Australian Institute of Criminology 2020*

We understand that states and territories hold primary responsibility for developing the laws and guidance that criminalise sexual assault as well as trial procedures and directions. However, the Australian Government's leadership role in achieving

the objectives of the *National Plan to End Violence Against Women and Children 2022-2032* as well as the coordinating capacity of the Standing Council of Attorneys General<sup>1</sup> indicates that responding to sexual violence in Australia is a national priority that requires a nationally coordinated response.

The Alliance supports the reforms presented in the Exposure Draft. Overwhelmingly, these amendments will operate to centre the safety and wellbeing of survivors of child sexual abuse, both adults and children, in the justice response. We use this submission to draw attention to provisions that relate to the status and criteria used to declare a witness or complainant a 'special witness' (15YAB). We also raise concerns regarding limitations of sections 15YB (evidence of sexual reputation) and 15YC (evidence of sexual experience).

---

<sup>1</sup> <https://www.ag.gov.au/system/files/2022-08/MAG-work-plan-strengthen-criminal-justice-responses-to-sexual-assault-2022-2027.pdf>

## Overarching considerations

As a distinct form of violence, the community's understanding of the dynamics of sexual violence has undergone significant progress which has eventually come to be reflected in legislative reform. Legal responses to sexual violence are, as with other forms of reform, framed from shifting societal expectations. Recent history bears witness to this: The criminalisation of marital rape and likewise, that men could also be victims of sexual violence were eventually addressed through progressive law reform that responded to a heightened social consciousness on sexual violence.

The case we argue with respect to the proposed Bill is that in developing the framework to strength criminal justice responses to sexual violence, there is a need to reflect both on evolving social standards, the primacy of the victim-centred approach (which is at the core of the *National Plan*) and the appalling attrition rate of complaints and conviction rates. It is our view that to make tangible progress on the aims of the *National Plan* and to improve the journey of all survivors of sexual violence through the justice system, there is a need for the provisions in this Bill to be extended.

### Child Complainants and Child Witnesses

The vulnerability of children in the court setting has, for too long, been a neglected area of law reform. Rather, child witnesses and complainants in the court system were subjected to “*harassment, intimidating and confusing and misleading questioning (...) The abuse many children suffer is compounded by abuse perpetrated by the legal system itself*”.<sup>2</sup> We recognise that the amendments to the vulnerable witness regime constitutes a significant element of the *Crimes Amendment Bill*. The NWSA welcomes the proposed amendments to the *Crimes Act 1914* (C'th) that seek to protect the child complainants of child sexual abuse. Further, we support the amendments arising from the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse that protect those complainants and witnesses, now adults, who were children at the time of the offending.

---

<sup>2</sup> Australian Law Reform Commission (2010) *The child witness in the courtroom*  
<https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/14-childrens-evidence/the-child-witness-in-the-courtroom/>

## Expanding the list of offences for a court to declare a person a special witness or vulnerable adult complainant.

There is an absence of consistency in how special witnesses and complainants are defined in each jurisdiction, with disability, age and the nature of the offence codified at 15YAB in the *Crimes Act 1914* (C'th). Likewise, provisions that guide approaches towards complainants of sexual violence can markedly vary such as in terms of the line of questioning and cross examination by self-represented defendants.<sup>3</sup> With the proposed reforms to safeguard children, we are now at a nexus where remaining and permissible adversarial practices are almost entirely directed towards adult complainants of (non-historical) sexual abuse or sexual violence.

*Where a formal justice outcome is considered a viable option, either because it is in the public interest or a conviction is deemed likely, the role of the survivor has been moved to the margins: Prosecution is in the hands of the state, trial procedure is centred on the rights of the accused and the survivor's role is one of microscopic character assessment and interrogation. The survivor becomes ultimately a passenger in their own quest for justice, a modern feature of criminal procedure which is distant from the historical rights of the victim in Australia's early justice system. Some survivors confronting a labyrinthine and often hostile judicial process will withdraw complaints. In other cases, the police may decide to ultimately drop charges after weighing up key determining factors such as whether the victim knew the perpetrator or the presence of physical injuries. The marginalisation of the survivor by institutional forces, such as police, the state, or counsel and the knowledge that they will be subjected to intense character assessments is reflected in the high attrition rate in the prosecution of sexual offenses – **National Women's Safety Alliance***

Depending on the jurisdiction complainants of sexual violence who pursue formal justice outcomes may confront a court system where their personal life is interrogated, the sexual reputation explored and their propensity to 'lie' in school or as a child given disproportionate significance. In some jurisdictions, they may also be cross-examined by the accused. For survivors of sexual violence and their advocates the humiliating and hostile nature of the system is simply no longer grounded in modernity. Cognitive biases, victim-blaming culture, and rape mythology remain embedded in permissible court room practice but are rejected by the broader social landscape. We urge that consideration be given to expanding the list of offences

and criteria that permit a witness or complainant to be declared vulnerable or

<sup>3</sup> <https://dfvbenchbook.aija.org.au/evidence/vulnerable-or-special-witnesses/>

special, in particular that adult survivors of (non-historical) sexual violence are included.

### Evidence of sexual reputation and of sexual experience

As with the aforementioned amendments towards the protection of child complainants of child sexual abuse, the NWSA welcomes the reforms presented at 15YCA and 15YCB which preclude evidence relating to sexual reputation and sexual experience being presented at proceedings with vulnerable adult complainants. However, the spectre of being questioned on sexual reputation and experience hangs over the decision-making process of adult complainants of (non-historical) sexual violence. Women and other adults who report sexual violence, not only face despairing prospects of conviction<sup>4</sup> but also the prospect of defence approaches that humiliate and pour over their motivations and sexual lives. It is the view of our members, that encountering tactics such as this in the justice system are among one of many reasons that claimants may choose to drop their complaints or why survivors constantly refer to the process as ‘re-traumatising’ or that they themselves are the ones being put on trial<sup>5</sup>. The rights of claimants in sex offence trials must be considered in the broader policy framework relating to the objectives of the *National Plan* and must be considered as part of trial procedure and planning. We ask that the proposed amendments around the permissibility of evidence relating to sexual reputation or sexual experience be expanded to incorporate adult complainants of non-historical sexual violence.

---

<sup>4</sup> [https://www.aic.gov.au/sites/default/files/2020-11/ti611\\_misconceptions\\_of\\_sexual\\_crimes\\_against\\_adult\\_victims.pdf](https://www.aic.gov.au/sites/default/files/2020-11/ti611_misconceptions_of_sexual_crimes_against_adult_victims.pdf)

<sup>5</sup> Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences: Summary of Responses to Online Feedback Form from People with Experience of Sexual Assault* (Report, April 2021).