

Community Support and Services Committee

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

July 2024

# Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

### **Acknowledgement of Country**

The RANZCP Queensland Branch acknowledges the Turrbal People and Yuggera People, the Traditional Owners and Custodians of the land. We honour and respect the Elders past and present, who weave their wisdom into all realms of life.

### **Acknowledgement of Lived Experience**

We acknowledge the significant contribution of all people with lived experience of mental illness, and the people who care and support them, to the development and delivery of safe, high-quality mental health services.

### **About The Royal Australian and New Zealand College of Psychiatrists**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental healthcare. The RANZCP is the peak body representing psychiatrists in Australia and New Zealand and as a bi-national College has strong ties with associations in the Asia-Pacific region.

The RANZCP has over 8400 members, including more than 5900 qualified psychiatrists (Fellows) and over 2400 members who are training to qualify as psychiatrists (trainees). The RANZCP Queensland Branch represents 1098 Fellows and 471 trainees.

This RANZCP Queensland Branch submission has been prepared in consultation with the Queensland Branch Chair and Committee, as well as other members of special interest groups. The RANZCP Queensland Branch would like to thank everyone that contributed to this submission.

## Key Findings

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) Queensland Branch supports the:

- sexual offence expert evidence pilot for the purpose of giving expert evidence on the nature of sexual offences and the factors that might impact the behaviour of victim-survivors
- amendments to the *Evidence Act 1977* around the admissibility of tendency evidence and coincidence evidence in Queensland to ensure that relevant evidence is admitted to criminal trials, and reduce the likelihood of unjust acquittals of perpetrators
- directions hearings that would assist victim-survivors to give their best evidence and minimise retraumatisation by the court process
- amendment to videorecorded evidence to minimise the number of times a victim-survivor has to give evidence, reducing the likelihood of retraumatisation
- amendments to the *Corrective Services Act 2006* that are intended to remove any doubt that participation in a program while on remand in custody cannot be used in evidence in proceedings relating to the offence for which the person has been charged
- extending of the maximum duration of non-contact orders from two to five years for greater consistency with the approach to domestic violence orders and restraining orders for unlawful stalking, intimidation, harassment and abuse
- introduction of a specific offence capturing people exercising positions of authority and control over 16- and 17-year-olds to give victims greater protections.

## Introduction

The RANZCP Queensland Branch welcomes the opportunity to provide comment on the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024* ('the Bill'). Thank you for the extension of time to submit to this consultation.

The RANZCP commends the Government for addressing the critical issue of sexual and other violence. Sexual violence, and other forms of violence like domestic abuse, is not only a justice and equality issue but also a public health crisis. Many of the factors leading to and emerging from sexual violence relate to the mental health of offenders and victim-survivors. The Queensland Branch advocates that addressing this important public health issue is critical to lessening sexual violence and helping victim-survivors.

We understand that the Bill seeks to implement legislative reforms arising from recommendations made by the [Women's Safety and Justice Taskforce](#) (the Taskforce) [1] to examine coercive control and review the need for a specific offence of *commit domestic violence*; and the experiences of women and girls' across the criminal justice system.

We appreciate that the Bill also includes a statutory review of amendments from the Taskforce's reports *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland* [2] and *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system* [3] which focuses on women and girls' experiences in the criminal justice system as victim-survivors of sexual violence, and accused persons or offenders.

The causes of family and domestic violence are complex, interlinked and deeply entrenched in social structures. The [RANZCP Position Statement 102: Family violence and mental health](#) [4] identifies women, children and adolescents, older people, LGBTIQ+ populations, those with a disability and people residing in rural and remote areas are all considered to be vulnerable populations. Pregnant women or women in the postnatal period are also vulnerable as domestic violence can begin or worsen during these times.

Other vulnerabilities include power imbalances, such as the perpetrator being the primary breadwinner, compounded by rising costs-of-living pressures. Another vulnerability is identifying as LGBTIQ+ and perpetrator use of threats to 'out' a partner as LGBTIQ+ to family. A significant global factor is [climate change](#) [5], with evidence that even an increase of 1C in average annual temperature is connected to more than a 6% rise in physical and sexual domestic violence.

Research shows that family and domestic violence predominately plays out as gender-based violence, with girls and women disproportionately impacted. James G Scott et al, in The Australian Child Maltreatment Study, found that mistreating children has negative effects during their childhood, across their life and between generations. In this study, larger proportions of women than of men reported neglect and emotional abuse during childhood, and twice as many women as men reported sexual abuse. The reported prevalence of physical abuse and exposure to domestic violence was similar for women and men. These findings are similar to those of American studies that found rates of emotional and sexual abuse were higher for girls, and that rates of physical abuse were similar for both sexes. A Canadian study, however, found that physical abuse was more frequently reported by men (31.0% v 21.3%). Taken together, our findings indicate substantial differences in prevalence by gender, and special efforts are required to prevent the sexual and emotional abuse of girls. That is why there is a greater need for community support for women and children experiencing violence perpetrated by men [6].

An overwhelming majority of intimate partner and domestic violence is perpetrated by men. Women are significantly more likely than men to be victims of [sex offences](#) [7] and [severe domestic abuse](#) [8]. Furthermore, [evidence](#) [9] suggests that in many relationships that can be classified as mutually violent, women are more likely than men to experience severe and coercive forms of partner violence, such as sexual coercion and coercive control. Women are also injured more often and more severely, and killed more often.

Some women and girls who are accused persons or offenders, can in fact be victims of intimate partner violence or family violence that respond aggressively to abuse. In some extreme cases, they may opt for retributive justice, and resort to killing their abusers.

There is a strong and complex association between family violence and mental health, recognising that people living with and leaving family violence will need psychological as well as physical safety. To begin with, persons living with mental illness or disability are more vulnerable to sexual and family violence [4]. Women with pre-existing depression or major mental health disorders are more vulnerable to experiencing intimate partner violence victimisation and re-victimisation. Around 1 in 7 (14%) of women aged 18 and over with disability have experienced sexual harassment in the last 12 months. This is slightly higher than for women without disability (of whom 12% experienced sexual harassment). Men are much less likely to have experienced sexual harassment than women, an estimated 3.3% of men with disability and 5.1% without disability experienced sexual harassment according to data from the Australian Institute of Health and Welfare [10].

Workforce shortages, especially in rural and remote areas of Queensland, represent a significant barrier to identifying family violence, responding to those who disclose abuse and to those who abuse, assessing needs and risks, providing support and interventions, as well as referring to specialist agencies.

Care for people who are exposed to family violence must be evidence-based, culturally competent and safe, and appropriately targeted to those who are experiencing or perpetrating family violence. The [RANZCP Position Statement 102: Family violence and mental health](#) [4] advocates that it is important to embed culturally informed processes in legal proceedings, where behaviours of particular groups like First Nations communities might be relevant to a trial.

## Admission of Expert Evidence

The Bill makes important amendments to the *Evidence Act 1977* to allow for the admission of expert evidence about the nature of sexual offences and factors that may impact a victim-survivor's behaviour in sexual offence proceedings.

The Taskforce received feedback supporting the view that rape myths sometimes operate within the criminal justice system to the detriment of victim-survivors and that impacts of trauma on victim-survivors are sometimes not well understood.

The Queensland Branch cautions that rape myths and stereotypes about how a genuine victim of sexual violence should behave might be unfairly used to discredit a victim-survivor witness in a criminal trial. For example, a victim-survivor does not immediately report an offence, and this could be later used as a tool to attack their credit or to suggest that the victim-survivor might not be telling the truth because of an assumption that a genuine victim would never behave in that way.

Many victim-survivor behaviours are not well understood by the community. The Taskforce found that the admission of expert evidence is likely to help address this lack of understanding of the impact of sexual offending on victims-survivors.

The Queensland Branch supports the proposal for a sexual offence expert evidence pilot, proposed to be established but not yet commenced under the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*. This pilot would enable experts like consultant psychiatrists to provide evidence to a court of law about victim-survivors' behaviour.

**The RANZCP Queensland Branch supports the proposal to establish a sexual offence expert evidence pilot for the purpose of giving expert evidence on the nature of sexual offences and the factors that might impact the behaviour of victim-survivors.**

## Admissibility of tendency evidence

The Bill amends the *Evidence Act 1977* to codify rules around the admissibility of tendency evidence and coincidence evidence in Queensland.

Tendency evidence and coincidence evidence is evidence about the accused's discreditable character. This includes prior conduct that is presented as circumstantial evidence to prove that the accused acted in a particular way or had a particular state of mind, or had a tendency to act this way.

The Taskforce heard from victim-survivors who described perpetrators committing extensive domestic, family and sexual violence on multiple victims.

The Taskforce noted, at page 325 of *Report Two*, victim-survivors expressed frustration and concern that "in criminal trials the defendant is not allowed to have any of their history produced before the court as it can be considered prejudicial."

In cases of multiple complainants of a single accused person, this has in Queensland led to multiple trials occurring instead of all of the complainants' evidence being heard in a single trial before a single jury. Victim-survivors and those who support them told the Taskforce that the law does not allow the whole truth to be told to jurors. Important information is sometimes excluded because of the application of the rules of evidence.

The RANZCP [Position Statement 51: Child Sexual Abuse](#) [11] emphasises that the severe trauma of child sexual abuse renders children who have been victims of such abuse vulnerable to psychiatric disturbance and impaired development. *The Royal Commission into Institutional Responses to Child Sexual Abuse* found that Queensland has the most restrictive approach to the admission of such evidence of any Australian jurisdiction.

**The RANZCP Queensland Branch supports amendments to the *Evidence Act 1977* around the admissibility of tendency evidence and coincidence evidence in Queensland to ensure that relevant evidence is admitted to criminal trials, and reduce the likelihood of unjust acquittals of perpetrators.**

### Ground rules hearings and directions hearings

The Bill introduces directions hearings for special witnesses in domestic violence offence and sexual offence proceedings.

These hearings are based on ground rules hearings in Victoria and will provide the court an opportunity to consider the communication needs of the witness and give any directions about the giving of evidence by the witness. For example, a court direction could be that questions be kept simple or that there be one topic per question, depending on the needs of the witness.

Taking a victim-centred approach to how the Queensland criminal justice system processes a sexual assault or domestic violence case means treating victim-witnesses with care and respect and recognising the particular difficulties and needs facing victim-witnesses and the social stigma surrounding the crime.

Many aspects of the court process are disempowering for victim-witnesses. For example, where victim-witnesses are positioned in the courtroom can make them feel intimidated and vulnerable when they are giving testimony in a sexual assault or domestic violence trial. Other changes at the trial, such as carefully pacing questioning and taking cues from the victim-witness about their need for breaks, can assist the process.

The Queensland Branch emphasises that directions hearings also need to be culturally informed. For example, if a First Nations witness provides evidence in a directions hearing, the Branch recommends that consideration should be given to appointing an individual of First Nations background to assist at the directions hearing as an intermediary.

- RANZCP [Clinical Guideline on Aboriginal and Torres Strait Islander Mental Health](#) [12]
- RANZCP [Position Statement 114: Sexual safety in mental health services in Australia and New Zealand](#) [13]
- RANZCP [Position Statement 100: Trauma-informed practice](#) [14].

**The RANZCP Queensland Branch supports that directions hearings are an effective trauma-informed approach that would positively assist victim-survivors to give their best evidence and minimise retraumatisation by the court process.**

### Videorecorded evidence

The Bill introduces a requirement that, where appropriate equipment and facilities are available, the evidence of all special witnesses in sexual offence proceedings is videorecorded and stored for use in subsequent trials, such as retrials or appeals. Notwithstanding, witnesses may still be able to be recalled by a court order to give evidence in a subsequent trial.

The Bill clarifies the admissibility of recorded evidence-in-chief in committal proceedings for domestic and family violence offences including, significantly, that the complainant does not need to be present at court for the recorded statement to be tendered.

Speaking about traumatic life events such as sexual assault or intimate partner violence is inherently difficult. Such traumatic experiences are intensely personal and private, and require discussing the private areas of the body, involve disclosures of sexual acts surrounded by social taboos, and are also associated with victim-blaming, rape myths and often shame and stigma.

These inherent difficulties for victim-witnesses testifying in court heighten the need for trauma-informed approaches to criminal justice system processes in Queensland and trauma-informed collecting of evidence to reduce the likelihood of retraumatising victim-witnesses during trial.

**The RANZCP Queensland Branch supports this amendment as videorecorded evidence will minimise the number of times a victim-survivor has to give evidence, reducing the likelihood of retraumatisation.**

### Women in custody

The Taskforce found in *Report Two* that women in custody may be concerned that participation in programs while on remand might be perceived as an admission of guilt or might detrimentally impact their defence.

**The RANZCP Queensland Branch welcomes amendments to the *Corrective Services Act 2006* that are intended to remove any doubt that participation in a program while on remand in custody cannot be used in evidence in proceedings relating to the offence for which the person has been charged.**

### Non-contact orders

The Bill extends the maximum duration of non-contact orders from two to five years and increases the maximum penalty for breach of a non-contact order from one to three years.

**The RANZCP Queensland Branch supports this amendment for greater consistency with the approach to domestic violence orders and restraining orders for unlawful stalking, intimidation, harassment and abuse.**

## Age

The sexual age of consent is 16 in Australia. The new section 10A encompasses the position-of-authority offence, a specific offence targeted at people exercising positions of authority and control over 16- and 17-year-olds. The RANZCP supports a specific offence capturing the post-16 cohort under the care of an adult.

Children, adolescents and youth are a priority group when addressing the mental health harms of sexual violence. Young people are particularly vulnerable to the negative mental health outcomes of witnessing and experiencing sexual violence. The RANZCP Queensland Branch commends the State Government for directly addressing this priority group.

**The RANZCP Queensland Branch supports introducing a specific offence capturing people exercising positions of authority and control over 16- and 17-year-olds to provide young and vulnerable Queenslanders with greater protections.**



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