



11 June 2021

Women's Safety and Justice Taskforce
GPO Box 149
BRISBANE QLD 4001

Dear Women's Safety and Justice Taskforce,

Australia's Right to Know (**ARTK**) coalition of media organisations welcomes the establishment of the Women's Safety and Justice Taskforce (**the Taskforce**) by the Queensland Government.

We write to you to outline a number of areas of law reform that would provide for better reporting of sexual offence and domestic and family violence matters. While these changes are useful for the media, we believe these changes are important elements of a toolkit to better serve the people and communities of Queensland in grappling with these societal issues. These changes are also aligned with a number of the guiding principles and considerations the Taskforce is considering in undertaking its work. Lastly, compared to other Australian jurisdictions, Queensland is an outlier regarding a number of these specific provisions which highlights the importance of the Taskforce's consideration of these matters.

It is useful to note that we wrote to Attorney-General and Minister for Justice, Women and Prevention of Family and Domestic Violence Shannon Fentiman in similar terms. At a subsequent meeting, the Minister recommended we make a submission to the Taskforce. This document is that submission and we welcome further engagement with the Taskforce as appropriate.

OVERVIEW

The laws that require reform are:

1. Amendments for better reporting of sexual offence matters:
 - a. Identification of survivors/victims of sexual offences with their consent;
 - b. Removal of automatic identification restriction of defendants in sexual offence cases;
 - c. Access to evidence of complainants in sexual offence matters;
2. Amendment for better reporting of domestic and family violence matters:
 - a. Allow evidence in domestic violence order application proceedings to be published/broadcast; and
 - b. Amendment to allow one party to proceedings to consent to be identified rather than requiring authorisation from all parties; and
3. Amendment to Permit Reporting of Children's Court Proceedings.

Below we outline these important matters and recommendations to address the issues identified.

1. AMENDMENTS TO ALLOW BETTER REPORTING OF SEXUAL OFFENCE MATTERS

– Identification of survivors/victims of sexual offences

You will be aware of Grace Tame being named Australian of the Year 2021. You will also be aware of the #LetHerSpeak campaign, with which Grace is associated, that aims to ensure there are no unnecessary impediments to adult survivors/victims of sexual assault choosing to be identified. Grace and that campaign were integral to changing Tasmania's archaic law that forced survivors to obtain a court order before they could be identified. Unfortunately, Queensland maintains this archaic law in relation to reports about court proceedings. ARTK urges the Queensland Government to change this as soon as possible.

Specifically, [section 6 of the Criminal Law Sexual Offences Act 1978 \(Qld\)](#) (the CLSO Act) provides "any report made or published concerning an examination of witnesses or a trial, other than a report specified in section 8(1), shall not reveal the name, address, school or place of employment of a complainant therein or any other particular likely to lead to the identification of a complainant therein unless the court, for good and sufficient reason shown, orders to the contrary". Nothing in [section 8 of the CLSO Act](#) makes it lawful to publish a report which would otherwise fall foul of section 6 if the complainant consents to be identified but [section 10 of the CLSO Act](#) allows for reports to be made with such consent provided they do not concern an examination of witnesses or a trial.

ARTK submits the better position is that applied by the ACT¹, NSW², SA³, WA⁴ and VIC each of which simply allow adult complainants in sexual offence cases who want to be identified to consent to doing so. ARTK accepts it is appropriate that such consent should be limited to adults with capacity and should be given in writing so both the complainant and the publisher or broadcaster can be assured of the consent that is being given.

Recommendation

ARTK recommends that Queensland allows adult survivors/victims of sexual offences to be identified should they choose to.

– Removal of automatic identification restriction of defendants in sexual offence cases

Queenslanders have a right to know what is happening in their communities. Defendants charged with sex offences in Queensland should not enjoy special treatment and enjoy automatic anonymity any longer.

[Section 7 of the CLSO Act](#) provides that the identity of a person charged with a "prescribed sexual offence (ie, rape, attempt to commit rape, assault with intent to commit rape or indecent assault under s. 352 of the Criminal Code) cannot be disclosed unless the person is committed to stand trial for the relevant prescribed sexual offence.

The NT is the only other Australian jurisdiction to maintain such an antiquated provision which is based on the premise that complainants in sexual offence cases lie.⁵ No other serious offence

¹ [s. 74\(2\), Evidence \(Miscellaneous Provisions\) Act 1991 \(ACT\)](#)

² [s. 578A, Crimes Act 1900 \(NSW\)](#)

³ [s. 71A\(4\), Evidence Act 1929 \(SA\)](#)

⁴ [s. 36\(6\), Evidence Act 1909 \(WA\)](#)

⁵ SA recently amended [s. 71A of the Evidence Act 1929](#) to restrain identification of the accused only up to the time of his or her first court appearance.

attracts such an identification restraint anywhere is Australia. Murderers, child killers, terrorists and the like are all able to be identified at any time provided no other statutory restraint on publication applies to their cases.

Recommendation

ARTK strongly recommends the automatic gag on identification of defendants of sexual offences be repealed.

– **Access to evidence of complainants in sexual offence matters**

As the #MeToo movement and the #LetHerSpeak/#LetThemSpeak campaign have shown, the importance of reporting accounts of sexual violence cannot be underestimated. It is vital that other survivors know their experience is a shared one and that other assailants can see the consequences for their sexual abuse.

At present, [section 5 of the CLSO Act](#) excludes members of the public – including journalists – from the courtroom while the complainant in a sexual offence matter is giving evidence and makes no alternative means of accessing that evidence available to the media to ensure the proceedings can be fully reported.

A complainant in sexual offence cases is also a “special witness” for the purpose of [section 21A of the Evidence Act 1977 \(Qld\)](#). That section grants the court a range of powers to make directions as to how the evidence of special witnesses is to be adduced, including the power to direct “that, while the *special witness* is giving evidence, all persons other than those specified by the *court* be excluded from the room in which it is sitting”.

There is no uniform approach amongst the other Australian jurisdictions. New South Wales, the NT and Queensland automatically close the court when a sexual offence complainant is giving evidence (although NSW has prescribed alternative means via which the media can access that evidence for the purpose of reporting the proceedings⁶); the ACT, Tasmania and Victoria prescribe a discretion to close; and, SA and WA prescribe other ways to assist a vulnerable witness to give evidence other than closing the court.

Recommendation

ARTK recommends that accredited media should not be automatically excluded from the courtroom when sexual offence complainants give evidence, leaving the discretionary power of the Evidence Act to do its work on a case-by-case basis.

2. AMENDMENTS TO ALLOW BETTER REPORTING OF DOMESTIC & FAMILY VIOLENCE ORDER MATTERS

– **Amendment to allow reporting of evidence in domestic and family violence order applications**

Queensland is an outlier in this area of law being the only jurisdiction with a complete ban on publishing the evidence in domestic and family violence order applications.

Specifically, applications under the *Domestic and Family Violence Protection Act 2012* (QLD) must be heard in closed court unless the court orders otherwise⁷ and evidence given in relation to an

⁶ [Criminal Procedure Act 1986 \(NSW\) s 291C](#)

⁷ [s. 158, Domestic and Family Violence Protection Act 2012](#)

order application cannot be published unless one of the few exceptions relevant to media publications applies.⁸

ARTK submits that it is vital that both sexual violence and family violence case are fully reported because they are both forms of abuse that commonly occur behind closed doors. Like sexual violence survivors, family violence survivors need to know that they are not alone and that something can be done to stop whatever form of domestic abuse they are experiencing before it escalates. We do not press for the automatic statutory restraint on identifying parties to the proceedings to be lifted which would continue to protect survivor's privacy.

Recommendation

ARTK recommends Queensland ceases the complete ban on publishing the evidence in DVO applications.

– **Amendment to allow one party to proceedings to consent to be identified rather than requiring authorisation from all parties**

Family violence survivors are also being silenced by the consent exception as it currently stands in 159(2)(b) of the Act which, to the best of ARTK's knowledge, has never been relied upon by any of its members.

Section 159(1)(b) of the Domestic and Family Violence Protection Act makes it an offence to identify a party to a proceeding under the Act, a witness to a proceeding under the Act (other than a police officer) or a child concerned in a proceeding under this Act. However, that publication/broadcasting restraint does not apply "if each person to whom the information relates consents to the information being published". It is a relatively simple matter to avoid identifying witnesses or children concerned in the proceeding simply by not naming the former (and omitting any description of how they are associated with to the parties) and not referring to the latter at all. However, in domestic cases naming the person seeking protection will always identify the person the subject of the order – and vice versa – by virtue of the closeness of their relationship.

Even if a person protected by a DVO consents to be identified a media entity could not rely on subsection 159(2)(b) as a defence against subsection 159(1)(b) without also obtaining consent from the person the subject of the order. Perhaps unsurprisingly, ARTK is not aware of a person the subject of a DVO ever voluntarily surrendering their anonymity and consenting to an identifying report. As a consequence, survivors are being deprived of the ability to tell their story.

Recommendation

ARTK recommends that the consent be sufficient to allow any one person to authorise identification of themselves.

3. AMENDMENT TO PERMIT REPORTING OF CHILDREN'S COURT PROCEEDINGS

[Section 20 of the Childrens Court Act 1992 \(Qld\)](#) provides that a mass media representative is not ordinarily permitted to be present in the room where the Childrens Court is sitting but, in criminal cases only, can apply to be present. That application can only be granted if, in the court's opinion, the journalist's presence "would not be prejudicial to the interests of the child". It is ARTK's experience that such applications are rarely granted.

⁸ [s. 159, Domestic and Family Violence Protection Act 2012](#)

Comparatively little is written or broadcast about most Children's Court proceedings in Queensland since ARTK's journalists will generally only make such an application in circumstances where the case has significant public interest. The majority of matters go unreported and any benefit that can be obtained from publicising the consequences by youth crimes is lost.

Recommendation

ARTK recommends that journalists be permitted to attend Childrens Court proceedings.

We look forward to continuing our engagement and participation in the Taskforce's important work.

Yours sincerely,

Georgia-Kate Schubert

On behalf of Australia's Right to Know coalition of media organisations