



CRIME VICTIMS ADVISORY COMMITTEE

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Chairperson: Elisabeth Armitage, Judge

8 October 2019

Ms Julia Knight
Secretary, Social Policy Scrutiny Committee
Legislative Assembly of the NT

Via email: julia.knight@nt.gov.au

RE: EVIDENCE AND OTHER LEGISLATION AMENDMENT BILL 2019

Thank you for the opportunity to provide a submission to the Social Policy Scrutiny Committee in relation to the Evidence and Other Legislation Amendment Bill 2019 (the amendment Bill).

Please find below the submission of the Crime Victims Advisory Committee (CVAC). The CVAC is an active statutory committee established under section 10(1) of the *Victims of Crime Rights and Services Act* (the VOCRAS Act). The Committee has the following functions:

- (a) to advise the Attorney-General and Minister for Justice on matters affecting the interests or rights of victims;
- (b) to investigate, report and make recommendations to the Minister about matters referred to it by the Minister;
- (c) to disseminate information relating to matters affecting the interests or rights of victims;
- (d) to assist in the coordination of organisations involved in and initiatives for, the provision of services to victims, including services provided by the Territory; and
- (e) any other functions conferred on it by the Minister or under this or any other Act

The committee consists of twelve members appointed or nominated in a number of different ways and representing a wide range of stakeholders drawn from the government and community sectors as well as from the general community. The CVAC is historically chaired by a Judge of the Local Court. As well as myself as Chair, the CVAC membership includes the Chief Executive Officer nominations from NT Police Fire and Emergency Services, Territory Families, Correctional Services and from the Solicitor for the Northern Territory. Non-Government representation is currently from the Central Australian Women's Legal Service, CatholicCare NT, Victims of Crime NT, Top End Womens Legal Service and Central Australia Aboriginal Congress. The Director, Crime Victims Services



Unit is an ex officio member and is responsible for providing secretariat support to the committee. .

The CVAC is required to under the VOCRAS Act to meet formally at least every six months, however it often meets more regularly and conducts business outside of the formal meeting process. The CVAC provides a direct conduit to the Minister and Government on matters affecting victims. It provides an inclusive, measured and balanced approach and provides an opportunity for service providers to work together and better coordinate services to victims across the NT.

CVAC submission

CVAC notes that the main focus of the Amendment Bill is to “expand the use of video conferencing in court and enhance the protections for vulnerable witnesses in sexual and domestic violence proceedings¹”. CVAC strongly supports reforms that provide additional protections to vulnerable people within the justice system.

Use of recorded statements

As part of its role, on behalf of the committee, I wrote to the Hon Natasha Fyles MLA, the Attorney-General and Minister for Justice on 1 July 2019 recommending amendments to allow for police body worn video to be used as evidence-in-chief in domestic violence proceedings, in the same way it can currently be used in relation to domestic violence offence proceedings under Part 3A of the *Evidence Act 1939*.

The CVAC notes that an amendment has been included in the Amendment Bill to address this request, by way of a new Division 4A to be inserted into Chapter 4, Part 4.1 of the *Domestic and Family Violence Act 2007* to provide that Part 3A of the *Evidence Act 1939* applies to domestic violence orders.

The CVAC supports this amendment and recommends that this provision should be passed.

However, the CVAC also notes that the proposed new section 113B is narrow in the sense that it does not allow use of the recorded statement in relation to an application for a DVO where a child of the defendant or the person making the statement is the protected person. The CVAC recommends that consideration be given to an amendment to extend the provision to cover DVOs where a child of either the defendant or the person making the statement is the protected person.

New model of cross-examination of certain witnesses by an unrepresented defendant

CVAC supports reforms to implement a new model and to introduce a general prohibition on the cross-examination of vulnerable witnesses by unrepresented defendants, unless the Court orders otherwise.

CVAC also supports the ability of the Court to appoint a legal practitioner to cross examine the vulnerable witness for the defendant if it is in the interests of justice, even if the defendant refuses to appoint one.

However, the CVAC has a number of concerns about the details and practicalities of how this aspect of the new model will operate.

¹ Explanatory Statement - Evidence and Other Legislation Amendment Bill 2019

Firstly, it is not clear how a legal practitioner will be identified and appointed. It is also not clear how this will be paid for. There is no indication in either the Explanatory Statement or the Second Reading Speech for the Amendment Bill as to how these matters will be addressed. The CVAC notes that the Commonwealth Family Law Amendments preventing a Domestic and Family violence (DFV) party from directly examining a party who is the victim of DFV was accompanied by additional funding to the Legal Aid Commission to establish and fund a panel of practitioners for this purpose. The CVAC suggests that similar funding and arrangements should be made available in regards to this proposed NT reform.

A further concern is about the ability to source an “independent lawyer” in smaller centres. Even in Alice Springs, this can be problematic.

Second, the CVAC notes that currently, the presiding judge is able to simply put questions to the witness from an unrepresented defendant. It is not clear if this will still be an approach that is open to the court, particularly in the Local Court which may not have inherent jurisdiction to require a practitioner to appear amicus. This should continue to be an option where appropriate.

Third, the proposed reform to allow the court to appoint a legal practitioner to cross-examine a vulnerable witness raises issues of potential delay that CVAC would suggest should be addressed and clarified for court users. The concern is that the proposed process could lead to further adjournments ie an adjournment for the defendant to determine if they are getting their own lawyer and, if not, a second adjournment for the court to appoint a new one. These steps are likely to delay the completion of the matter which is not in the interests of the victim.

Accordingly, CVAC suggests that an amendment could be considered to allow for the imposition of a time limit on the length of an adjournment for a defendant to consider obtaining a lawyer and/or also for a court to appoint one. CVAC also suggests an amendment to provide an exception for Local Court proceedings which allows the Judge to continue to put questions on behalf of the defendant, if appropriate in the interests of justice and the witness.

Fourth, the CVAC has concerns about how these reforms will operate in more remote settings, particularly those that do not yet have video conferencing facilities available to the court. In these cases, it is not clear how the Court would appoint a legal practitioner and how they would be made available, including payment for travel.

Delays are likely to also be exacerbated in remote communities due to the limited sitting days in these areas.

Therefore, the CVAC suggests a provision that clarifies that, in determining whether an appointment of a legal practitioner is in the interests of justice, the court must also consider the impact of any delays in proceedings that may result from the decision to appoint a practitioner. Furthermore, in making their decision, the court must also consider the availability/access to videoconferencing facilities.

Overall, the CVAC supports this Bill and recommends that the Bill should be passed, subject to the comments above.

Yours sincerely



**ELISABETH ARMITAGE
CHAIRPERSON**