

# North Australian Aboriginal Legal Service

**Sexual Offences (Evidence and Procedure) Amendment Bill 2019**



# SUBMISSION

3 February 2020

## **1. Introduction**

The North Australian Aboriginal Family Legal Service (“NAAFLS”) makes this submission in response to the Sexual Offences (Evidence and Procedure) Amendment Bill 2019 (‘The Bill’) currently before the Economic Policy Scrutiny Committee.

NAAFLS generally supports the proposed amendments put forward by The Bill, and have provided comments or recommendations for further amendments to specific provisions in order properly capture the experiences and issues confronting Aboriginal people, especially those living in remote settings and their lawyers trying to navigate systems and processes that do not always accommodate the particular challenges.

## **2. Our Organisation**

NAAFLS is a government funded Aboriginal organisation and National Association of Community Legal Centres (‘NACLC’) accredited community legal service. We provide professional, comprehensive and culturally safe assistance and advice to Aboriginal victims of family violence (including men) in over 40 remote Top End communities in the Northern Territory, including Katherine.

NAAFLS provides the following services:

- a) legal advice and assistance in areas of Family Violence, Care and Protection of Children, Victims of Crime Compensation, Family Law, Housing and Debt Management;
- b) information, support and referral services;
- c) community legal education and family violence prevention initiatives; and
- d) law reform activities.

## **3. Context of Our Submission**

Our submission is informed by our experiences and expertise in providing legal advice and advocacy for Aboriginal peoples in remote communities in the Top End of the Northern Territory which includes representation in bush courts. NAAFLS has found that the legal systems (family law, care and protection of children and involving seeking and enforcing a domestic violence order) are not adequately equipped to address the needs and issues of our clients nor provide adequate protection in domestic and family violence situations.

## **4. Comments and Responses to the Proposed Amendments**

NAAFLS supports the amendment to enable victims of sexual offences the right to speak out about their experience similar to other Australian jurisdictions.

It is noted that Clause 7 prevents the disclosure of the defendant's identity and makes it an offence where the disclosure was intentional and it is *'made before a defendant is committed for trial or sentence on a charge of having committed the sexual offence to which the statement or representation relates.'* It is noted also that this disclosure is further limited by section 9, where the defendant applies to the court restricting disclosure of the complainant's or defendant's identity (under sections 6 & 7) for example because the defendant after being found guilty, *'gives notice of appeal or an application for leave to appeal against the finding of guilt to the court.'*<sup>1</sup>

This means that the Complainants right to disclose/share their experience would be delayed which could amount to many years by the time the trial, sentencing and appeal proceedings are concluded.

NAAFLS has concerns for the criminalisation of a minor complainant where they are unable to provide consent to the disclosure of their identity under these provisions and share their experience for example on social media or in a way to address their trauma and recovery.

#### Clause 4, sections 6 & 7 and domestic violence

The amendment does not address the issue of sexual assault in the context of domestic violence. Would this provision apply in the same way where the Defendant is or was the partner of the victim whether or not there were additional offences committed against the victim at the same time as the sexual violence and within the context of a domestic violence relationship as defined in the Domestic and Family Violence Act (NT)?<sup>2</sup> Clarification is needed in this regard.

#### Clause 5- Section 13 amended (criminal liability of executive officer of body corporate-evidential burden of proof on defence)

- The relevance of this section is unclear and its association with the current Bill. Further clarity/explanation is required.

#### Amendments to the Youth Justice Act 2005 - section 50 amended (Restriction on publication) and proposed new section 50 (2) (c) Consent by youth defendant

- It is noted that a Defendant cannot be identified where they were a minor at the time of the offence. Additionally, whilst it is a requirement that the complainant is at least 18 years of age in order to provide consent (with the exception of an application to the court), for minor defendant's the same threshold does not apply and in what circumstance would a youth defendant be expected to disclose their

---

<sup>1</sup> Proposed Section 9 (5) (a) (i) of the Sexual Offences (Evidence and Procedure) Amendment Act 2019.

<sup>2</sup> Domestic and Family Violence Act 2007 (NT), section 9 (F)

identity and the purpose for the disparity between a Complainant's right to disclose to that of a Defendant such as in the context of participating in some restorative justice as a minor.

- The proposed Bill is also silent on the application of this provision in relation to repeat offenders who were minors at the time the offences were committed. Whilst NAAFLS appreciates that minors who otherwise are considered vulnerable before the law, the need to balance the rights of the parties, including the public's interest consideration should be made about the applicability of this provision where the minor has been involved in multiple sexual violence offenders, not at the same time and was a minor at the time of the multiple offences whether this involved the same victim or not and has been charged for the prior offences regardless if there was a conviction or not.

## **Summary and Recommendations**

NAAFLS supports the amendments providing victims of sexual violence the right to speak out about their experience with the necessary consent. However clarification is required where the minor defendant is a repeat offender and the sexual offence occurred within the context of a domestic violence relationship. Further, NAAFLS has concerns about further traumatising a complainant who is a minor through criminalisation for disclosure of their identity/experience as a victim of a sexual offence.

### **Contact:**

Nicki Petrou  
Principal Lawyer

And

Sophie Hantz  
Solicitor

North Australian Aboriginal Family Legal Service (NAAFLS)

Tel: 8923 8200

Email: [npetrou@naafls.com.au](mailto:npetrou@naafls.com.au) and [shantz@naafls.com.au](mailto:shantz@naafls.com.au)