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16 August 2023

Committee Secretary
Senate Legal and Constitutional Affairs Committee
By email: legcon.sen@aph.gov.au

Dear Committee Members,

Inquiry into Current and Proposed Sexual Consent Laws in Australia

Response to Questions on Notice

1. At the hearing before the Senate Legal and Constitutional Affairs Committee on 26 July 2023, we took questions on notice from Senator Scarr in relation to two topics:

   (1) The directions on consent that are given in Victoria; and

   (2) The submission of Professor Quilter and Dr McNamara, and examples of cross-examination.

2. These issues will be considered in turn. Where possible this document provides hyperlinks to relevant statutory provisions and other material.

Directions in Victoria

3. Pursuant to s 38 of the *Crimes Act 1958* (Vic) (***Crimes Act***), the elements of rape that the prosecution must prove, beyond reasonable doubt, are:

    (a) A intentionally sexually penetrates another person (B); and

    (b) B does not consent to the penetration; and

    (c) A does not reasonably believe that B consents to the penetration.

4. In Victoria the following directions, amongst others, are given in trials for sexual offences:[1]

    (1) **The meaning of "beyond reasonable doubt"**

    - See *Jury Directions Act 2015* (Vic) (***JDA***), s 63.

    - This kind of direction was recommended by the Victorian Law Reform Commission (**VLRC**) inquiry into Improving the Response of the Justice System to Sexual Offences (recommendation 82), because of purported confusion by some jurors as to the meaning of beyond reasonable doubt.

    - This direction is now given at the outset of all criminal trials before evidence is adduced (unless there are good reasons for not doing so), not just those involving sexual offences.

    - While the content of the direction is discretionary, the standard direction has been criticised by Liberty Victoria for diminishing the criminal standard of proof (in particular, the direction pursuant to s 64(1)(e) of the *JDA* that a reasonable doubt is not an "unrealistic possibility", which begs the question of what is "unrealistic").

[1] It should be noted that, on 16 August 2023, the Victorian Government introduced the Justice Legislation Amendment Bill 2023 (Vic) which proposes to, amongst other things, make it clear that these directions apply to all alleged sexual offences whether or not consent is an element, and address issues with the transitional provisions. The transitional provisions are demonstrative of the complexity that inheres in these matters.

- This direction is now required notwithstanding that, in *R v Dookheea*,[2] the High Court said that "…it is generally speaking unwise for a trial judge to attempt an explication of the concept of reasonable doubt beyond observing that the expression means what it says and it is for the jury to decide whether they are left with a reasonable doubt".[3]

(2) **Consent**

- See *Crimes Act*, s 36A.
- Consent means "free and voluntary agreement".
- A person does not consent to an act just because they do not resist the act verbally or physically.
- A person does not consent to an act just because they consented to—
  - (a) a different act with the same person; or
  - (b) the same act with the same person at a different time or place; or
  - (c) the same act with a different person; or
  - (d) a different act with a different person.
- See *JDA*, s 46.
- The prosecution or defence may request that the trial judge –
  - (a) inform the jury that a person can consent to an act only if the person is capable of consenting and free to choose whether or not to engage in or allow the act; or
  - (b) inform the jury that where a person has given consent to an act, the person may withdraw that consent either before the act takes place or at any time while the act is taking place.
- Further, the prosecution or defence may request that the trial judge:

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2 [2017] HCA 36; (2017) 262 CLR 402.

3 Ibid, 426 [41] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Edelman JJ).

(a) inform the jury of the relevant circumstances in which the law provides that a person does not consent to an act; or

(b) direct the jury that if the jury is satisfied beyond reasonable doubt that a circumstance referred to in s 36AA [see below] of the *Crimes Act* existed in relation to a person, the jury must find that the person did not consent to the act.

- In relation to all the above directions, a direction must be given unless there are good reasons for not doing so: *JDA*, s 14.

- Regardless of whether it is requested by a party, the trial judge must give the direction if there are substantial and compelling reasons for doing so: *JDA*, s 16.

(3) **Reasonable belief in consent**

- See *Crimes Act*, s 36A.

- Whether or not a person (A) reasonably believes that another person (B) is consenting to an act depends on the circumstances.

- A's belief that B consents to an act is not reasonable if, within a reasonable time before or at the time the act takes place, A does not say or do anything to find out whether B consents to the act (**the affirmative consent deeming provision**).[4]

- The affirmative consent deeming provision replaced the previous provision that mandated the fact-finder to consider any steps that the person has taken to find out whether the other person consents (or would consent).

- The affirmative consent deeming provision does not apply if the accused person establishes, on the balance of probabilities, that they have a cognitive impairment or mental illness which is a

[4] Introduced by the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic).

substantial cause of A not saying or doing anything to find out whether B consents.

- In cases of self-induced intoxication, pursuant to s 36B of the *Crimes Act*, when assessing a reasonable belief (including whether an accused person had a reasonable belief in consent), the standard is that of a reasonable person who is not intoxicated.

- See *JDA*, s 47.

- The prosecution or defence may request that the trial judge –

    (a) direct the jury that if the jury concludes that the accused knew or believed that a circumstance referred to in section 36AA of the *Crimes Act 1958* existed in relation to a person, that knowledge or belief is enough to show that the accused did not reasonably believe that the person was consenting to the act; or

    (b) direct the jury that in determining whether the accused who was intoxicated had a reasonable belief at any time—

        (i) if the intoxication was self-induced, regard must be had to the standard of a reasonable person who is not intoxicated and who is otherwise in the same circumstances as the accused at the relevant time; and

        (ii) if the intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the accused and who is in the same circumstances as the accused at the relevant time; or

    (c) direct the jury that in determining whether the accused had a reasonable belief in consent, the jury must consider what the community would reasonably expect of the accused in the circumstances in forming a reasonable belief in consent; or

    (d) direct the jury that in determining whether the accused had a reasonable belief in consent, the jury may take into account any personal attribute, characteristic or circumstance of the accused.

- A good reason for not giving that last direction is that the personal attribute, characteristic or circumstance—

    (a) did not affect, or is not likely to have affected, the accused's perception or understanding of the objective circumstances; or

    (b) was something that the accused was able to control; or

(c) was a subjective value, wish or bias held by the accused, whether or not that value, wish or bias was informed by any particular culture, religion or other influence.

- In relation to all the above directions, a direction must be given unless there are good reasons for not doing so: *JDA*, s 14.

- Regardless of whether it is requested by a party, the trial judge must give the direction if there are substantial and compelling reasons for doing so *JDA*: s 16.

(4) **Circumstances in which a person does not consent**

- See *Crimes Act*, s 36AA.

- Circumstances in which a person do not consent include (but are not limited to):

(a) the person does not say or do anything to indicate consent to the act;

(b) the person submits to the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal, regardless of—

(i) when the force, harm or conduct giving rise to the fear occurs; and

(ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern;

- Examples are given including:

  - economic or financial harm, reputational harm, harm to family, cultural or community relationships, or harm to the person's employment;
  - family violence including psychological abuse and harm to mental health;
  - sexual harassment;
  - coercion or intimidation (regardless of when or how often it occurs), or unlawful detention, or abuse of a relationship of trust or authority;
  - if the person is asleep or unconscious, or so affected by alcohol as to be incapable of giving or withdrawing consent;

- if the person is mistaken about the sexual nature of the act, the identity of the other person, or that the act is for medial or hygienic purposes, or in the context of commercial sexual services that they will be paid;
- if a condom is agreed to be used – it is intentionally removed or not used; and
- the person withdraws consent.

(5) **Other directions addressing rape myths**

- See *JDA*, s 47C.
- The trial judge must give the following directions if there are good reasons (whether on request of the prosecution or defence, or the trial judge's own motion).
- The direction must be given at the earliest time that it is deemed appropriate: *JDA*, s 47C(3).
- The directions can be given at any time (and may be repeated) during the trial, including before any evidence is adduced, and when the judge is summing up to the jury: *JDA*, s 47C(4), (6).
- The directions include:

(a) a direction on the absence of physical injury, violence or a threat (described in s 47D):

- Experience shows that there are many different circumstances in which people do and do not consent to a sexual act; and
- People who do not consent to a sexual act may not be physically injured or subjected to violence, or threated with physical injury of violence.

(b) a direction on responses to a non-consensual sexual act (described in s 47E);

- Experience shows that people may react differently to a sexual act to which they did not consent, and there is no typical, proper or normal response; and

- people who do not consent to a sexual act may not protest or physically resist the act.

(c) a direction on other sexual activity (described in s 47F);

- experience shows that people who do not consent to a sexual act with a particular person on one occasion may have, on one or more other occasions, engaged in or been involved in consensual sexual activity—

  (a) with that person or another person; or

  (b) of the same kind or a different kind.

(d) a direction on personal appearance and irrelevant conduct (described in s 47G);

- it should not be assumed that a person consented to a sexual act just because the person—

  (a) wore particular clothing; or

  (b) had a particular appearance; or

  (c) drank alcohol or took any other drug; or

  (d) was present in a particular location; or

  (e) acted flirtatiously.

(e) a direction on non-consensual sexual acts between all sorts of people (described in s 47H);

- experience shows that—

  (a) there are many different circumstances in which people do and do not consent to a sexual act; and

  (b) sexual acts can occur without consent between all sorts of people, including—

    (i) people who know each other;

    (ii) people who are married to each other;

    (iii) people who are in a relationship with each other;

    (iv) people who provide commercial sexual services and people for whose arousal

or gratification such services are provided;

(v) people of the same or different sexual orientations;

(vi) people of any gender identity, including people whose gender identity does not correspond to their designated sex at birth.

(f) a direction on general assumptions not informing a reasonable belief in consent (described in s 47I);

- a direction on general assumptions not informing a reasonable belief in consent is a direction that informs the jury that—

(a) a belief in consent based solely on a general assumption about the circumstances in which people consent to a sexual act (whether or not that assumption is informed by any particular culture, religion or other influence) is not a reasonable belief; and

(b) if a belief in consent is based on a combination of matters including a general assumption of that kind, then, to the extent that it is based on that general assumption, it is not a reasonable belief.

Examples

Each of the following is an example of a general assumption of the kind referred to in this section—

(a) a general assumption that a person who gets drunk and flirts with another person consents to a sexual act with that other person;

(b) a general assumption that a person who dresses in a way that is considered sexually provocative, and who visits another person's home, consents to a sexual act with that other person.

(6) **Delay in complaint**

- See *JDA*, s 52.

- If the issue arises the trial judge must direct the jury that experience shows:

  (a) people may react differently to sexual offences and there is no typical, proper or normal response to a sexual offence; and

  (b) some people may complain immediately to the first person they see, while others may not complain for some time and others may never make a complaint; and

  (c) delay in making a complaint in respect of a sexual offence is a common occurrence; and

  (d) there may be good reasons why a person may not complain, or may delay in complaining, about a sexual offence.

- This direction must be given before the relevant evidence is adduced, and may be given before any evidence is adduced in the trial: s 52(1)(a), (b).

(7) **Differences in a complainant's account**

- See *JDA*, s 54D.

- If the issue arises the trial judge must direct the jury:

  (a) it is up to the jury to decide whether the offence charged, or any alternative offence, was committed; and

  (b) differences in a complainant's account may be relevant to the jury's assessment of the complainant's credibility and reliability; and

  (c) experience shows that—

    (i) people may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time; and

    (ii) trauma may affect different people differently, including by affecting how they recall events; and

    (iii) it is common for there to be differences in accounts of a sexual offence; and

Example

People may describe a sexual offence differently at different times, to different people or in different contexts.

(iv) both truthful and untruthful accounts of a sexual offence may contain differences; and

(d) it is up to the jury to decide—

(i) whether or not any differences in the complainant's account are important in assessing the complainant's credibility and reliability; and

(ii) whether the jury believes all, some or none of the complainant's evidence.

- "Difference" in an account is defined as including: (a) a gap in that account; and (b) an inconsistency in that account; and (c) a difference between that account and another account: *JDA*, s 54C.

- This direction can be given and repeated at any time in the trial: s 54D(2A), (3).

(8) **Continuation of relationship**

- See *JDA*, s 54H.

- Under the direction, if the issue arises the trial judge must direct the jury that experience shows:

(a) people may react differently to a sexual act to which they did not consent, and there is no typical, proper or normal response; and

(b) some people who are subjected to a sexual act without their consent will never again contact the person who subjected them to the act, while others—

(i) may continue a relationship with that person; or

(ii) may otherwise continue to communicate with them; and

(c) there may be good reasons why a person who is subjected to a sexual act without their consent—

(i) may continue a relationship with the person who subjected them to the act; or

(ii) may otherwise continue to communicate with that person

- This direction must be given before the relevant evidence is adduced, and may be given before any evidence is adduced in the trial: s 54H(1)(b).

(9) **Distress of complainant when giving evidence**

- See *JDA*, s 54K.

- If the complainant is to give evidence, the judge must direct the jury before the complainant gives evidence (unless there are good reasons for not doing so), that experience shows that:

(a) because trauma affects people differently, some people may show obvious signs of emotion or distress when giving evidence about a sexual offence, while others may not; and

(b) both truthful and untruthful accounts of a sexual offence may be given with or without obvious signs of emotion or distress.

The Affirmative Consent Deeming Provision

5. From the above it can be seen that, in Victoria, the directions on consent are comprehensive, based on the affirmative model of consent, and seek to address rape myths. Some directions must be given before issues arise in evidence during the trial, and directions that relate to a complainant's evidence are often given to the jury before the complainant commences their evidence.

6. Pursuant to s 16 of the *JDA*, judges have an independent duty to give directions even if the prosecution and defence counsel do not request a particular direction and, at times, irrespective of the parties' views.

7. This is not to deny, as observed in the submission by Professor Quilter and Dr McNamara, that there will be examples of where directions should have been given but were not, or should have been given at an earlier stage. Nor is it to suggest that improved directions are a panacea.

8. As noted in our written submission, Liberty Victoria has supported the introduction of many of the above directions, together with other reforms. However, like the Victorian Criminal Bar Association and the executive of the New South Wales Bar, we have real concerns about the affirmative consent deeming provision and the potential for injustice.

9. It is not the case that we regard it as "unfair" to have people, including young people, take active steps to seek consent. As made clear in our submission and in evidence, we support improved education on consent based on the affirmative model. Although, concerningly, there has been very little public education in relation to the most recent Victorian reforms.

10. Our concern is squarely with the operation of the affirmative consent deeming provision in practice. Further, one should not overstate the efficacy of the criminal law in being a driver of social change, even more so with young people given the well-known limitations of general deterrence.[5] It was already the case in Victoria, before the most recent reforms, that the jury had to consider what if any steps were taken by the accused person to ascertain consent, which provided an important basis for education.

11. As noted above, the new affirmative consent deeming provision, s 36A(2) of the *Crimes Act*, now provides that "A's belief that B consents to an act is not reasonable if, within a reasonable time before or at the time the act takes place, A does not say or do anything to find out whether B consents to the act".

12. At a contested trial, in many cases the only person who can give that evidence is the accused person.

13. In a practical sense, this does affect the right to silence and the presumption of innocence, because in many cases it will oblige an accused person to give evidence. It is not to the point that there is no provision expressly mandating an accused person to give evidence; in many cases a failure to give evidence (or to have given a record of

[5] See, eg, Donald Richie, 'Does Imprisonment Deter?', Sentencing Advisory Council, 18 April 2011.

interview) will result in the third element of the offence being established because of the operation of the deeming provision.

14. It is fundamental that an accused person not be compelled to give evidence in their own defence. It is the prosecution, on behalf of the State, that brings the charge, and it is the prosecution that must establish the elements of the offence beyond reasonable doubt.

15. The deeming provision will have a disproportionate impact on male children and young people who, as the Committee observed, are the most commonly charged with this kind of offending.[6]

16. It is no answer to suggest that there is "no evidence" this reform will increase the rate of substantial miscarriages of justice. This is new law and its impact remains to be seen, both in terms of its efficacy in achieving the stated aims of improving experiences for victim-survivors, as well as the effect it may have on vulnerable people and young people. The precautionary principle applies and it falls upon those advocating for the reforms to justify why this will not result in injustice. The clear view of many who have regular experience practising in the field (for both prosecution and defence) is that it will. That should, at the very least, ring alarm bells.

17. Further, in effectively compelling an accused person to give evidence in some cases, this will have a different impact based on the socio-economic and cultural background of the alleged offender.

18. As we have seen with the diminution of the criminal standard of proof in Victoria, what begins with reform to sexual offences, for the purpose of increasing conviction rates, may well become normalised with regard to other kinds of offences. What commences with the best of intentions may result in the erosion of fundamental protections afforded to accused people in the criminal justice system.

19. The offence of rape is almost unique in being a serious offence with no subjective *mens rea* required to be proven by the prosecution. This means that an accused person can have an honest but unreasonable belief in consent and be found guilty. This is despite,

6 See further Law Council of Australia submission. [61].

in Victoria, the offence having a maximum penalty of 25 years' imprisonment and a standard sentence of 10 years' imprisonment.

20. For adult offenders (many of whom will still be teenagers), mandatory sentencing provisions apply.[7] We know the criminogenic effects of imprisonment.[8]

21. Further, it is not the case that rape has in effect been decriminalised in Australia. Such a suggestion is not only wrong, it could very well have the unintended effect of creating a false impression and have a chilling effect on complainants. In Victoria, for example, the Sentencing Advisory Council's SACStat site demonstrates that in the five years to 30 June 2021 there were 365 charges of rape sentenced, with 93.7% of cases resulting in imprisonment, and a median sentence of 7 years' imprisonment.

22. Of course there are serious issues that need addressing in the criminal justice system, including the lack of support for complainants and the attrition rate before trial. It should be acknowledged that, as demonstrated by the Law Council of Australia (**LCA**) submission (fn 7), the 2016 ABS study found that the reasons for complainants not contacting police included feeling like they could deal with it themselves (34% or 189,400) and not regarding the incident as a serious offence (34% or 187,400).[9]

23. However, with regard to matters that make it to Court, most end with a person being convicted (either by the accused person pleading guilty or by being found guilty).[10] Of contested matters that do proceed to trial in the Higher Courts, the conviction rate is about 50% (a rate lower than most other offences).[11] However, that statistic must also be seen in light of prosecuting authorities regularly taking matters to trial that have very limited prospects for conviction.

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7 Michael D Stanton, 'Instruments of Injustice: The Emergence of Mandatory Sentencing in Victoria' (2022) 48(2) Monash University Law Review 1.

8 Ibid. See, eg, *Buckley v The Queen* [2022] VSCA 138, [5]–[6], [44], [50] (Maxwell P and T Forrest JA); *Azzopardi v The Queen* [2011] VSCA 372; (2011) 35 VR 43, 53–4 [34]–[36] (Redlich JA, Coghlan AJA agreeing at 70 [92], Macaulay AJA agreeing at 70 [93]).

9 Commonwealth of Australia, Australian Bureau of Statistics, Personal Safety, Australia, Relationship to perpetrator in more recent incident of sexual assault by a male, (8 November 2017).

10 Victorian Law Reform Commission, Improving the Justice System Response to Sexual Offences, (September 2021) xxii.

11 Ibid.

Research conducted by Professor Quilter and Dr McNamara

24. The research conducted by Professor Quilter and Dr McNamara is clearly important.

25. However it is important to understand that it is qualitative, not quantitative, research. It has involved, for example, a study of 33 trials in Victoria (from 2013-2020 which includes matters not affected by the very significant 2014 reforms) and a study of 75 trials in New South Wales (NSW) (from 2014-2020).

26. As the authors properly acknowledge at p 8 of the NSW report, "[a]s we relied on a small non-representative sample, we have limited basis for assuming that the cases in our data set are illustrative of how sexual offence trials have been or are conducted in cases outside our data set".

27. Since their submission to this inquiry, Professor Quilter and Dr McNamara have published their research on the 75 NSW trials.[12] Importantly, they note that they subjectively chose those trials based on particular criteria for their research.[13] It is important, therefore, to recognise that the research findings do not purport to be representative of all sex offence trials.

28. That is not to downplay the significance of the findings, or to deny that work needs to be done to address how rape myths are used at trial.

29. The research findings do raise a question that may be considered by the Committee as to whether defence counsel should somehow be prohibited from asking questions or making submissions in relation to matters for which there are directions.

30. For example, in relation to inconsistencies in a complainant's account, the trial judge will direct that experience shows that inconsistencies are common. However, that does not mean that, in a given case, particular inconsistencies are not significant. A defence lawyer may need to explore certain inconsistencies in evidence, and doing so is not necessarily unfair. The person best placed to determine whether such questioning is

12 Julia Quilter and Luke McNamara, Experience of Complainants of Adult Sexual Offences in the District Court of NSW: A Trial Transcript Analysis, August 2023.

13 Ibid, p 6.

unfair – in light of the particular issues in the case – is the trial judge, assisted by the parties.

31. Similarly, issues of drug use and/or mental illness may be of real significance in a given case given the impact on the reliability of evidence.

32. It is also important to understand that defence counsel run trials on the basis of their client's instructions, although they have a duty to act independently and are specifically prohibited by the bar conduct rules of acting as a mere mouthpiece for their clients.[14]

33. If a client instructs that they had a reasonable belief that the complainant was consenting and outlines the basis to their counsel of that reasonable belief, then those matters have to be put to the complainant in cross-examination. These matters have to be put both in order to represent the client and out of fairness to the complainant, in compliance with the rule in *Browne v Dunn*.[15] Similarly, if a client instructs that the events complained of did not happen, then those matters have to be addressed in cross-examination and put to the complainant in compliance with the rule.

34. It is important not to limit cross-examination on issues that, in a given case, may be of vital importance in preventing a substantial miscarriage of justice. The *JDA* directions are intended to address issues that commonly arise in these kinds of trials in order to equip juries with a greater understanding when considering their relevance, not prohibit them from arising in the first place.

35. That is not to say that unfair or irrelevant cross-examination should occur. In fact, pursuant to the *Evidence Act 2008* (Vic) (***Evidence Act***) (which as part of the Uniform Evidence Acts also applies in the Commonwealth, NSW, Northern Territory, Tasmania and the ACT) questions in cross-examination have to be relevant,[16] improper questions (for example misleading or confusing questions, questions put on the basis of stereotype, humiliating or belittling questions) can be objected to by the prosecution

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14 Barrister Conduct Rules, r 42.

15 (1893) 6 R 67 (***Browne v Dunn***). It may be that, in light of ground rules hearings now being made standard in all matters involving an alleged sexual offence in Victoria, trial judges will direct that counsel in a given case does not have to comply with the rule.

16 *Evidence Act*, s 55.

and must to be disallowed by the Court.[17] The Court has control over the questioning of witnesses.[18] In jurisdictions such as WA, SA and Queensland, similar common law rules of evidence apply.

36. There are therefore strict rules that already apply to cross-examination, both in evidence law and pursuant to a barrister's ethical obligations. If these are not abided by, the Court has the power to disallow questions and the barrister can be disciplined for a breach of ethical duties.

Conclusion

37. It is understandable that this Inquiry has centred on the experiences of victim-survivors in the criminal justice system. There are many ways in which those experiences can be improved.

38. However, it is unfortunate that the Inquiry had not heard from prosecuting authorities and the Courts, so that a proper assessment can be made of how changes to the law of consent have impacted on the running of criminal trials in jurisdictions such as Victoria. Tranches of reforms have had a real impact and great care must be taken before assuming that recent reforms have not been effective.

39. The research on criminal trials presented to the Inquiry has not claimed to be a representative sample of what occurs in the day to day running of trials in Victoria and New South Wales.

40. It must also be acknowledged that those appearing in criminal trials, for both prosecution and defence, have ethical duties. That includes treating the complainant with respect and putting to the complainant the accused person's account as to what did or did not occur in order to comply with the rule in *Browne v Dunn*. It may be thought that any suggestion to a complainant that an offence did not occur, or that there was consent, is deeply offensive to those people who give evidence of having been offended against.

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17 *Evidence Act*, s 41.
18 *Evidence Act*, s 26.

41. However, Counsel appearing for an accused person must comply with their ethical duties and must defend the accused person to the best of their abilities. The challenge is how that can occur, fairly, in circumstances where the experience for so many victim-survivors is harrowing. It must also be remembered that many people appearing in these trials are relatively junior and poorly funded (which led to recommendations 71 and 72 by the VLRC for increased training requirements and funding). Many practitioners that appear in these cases have a deep commitment to the rule of law and the presumption of innocence. The consequences of having accused people appear unrepresented are terrible.

42. What must not occur in these matters is to presume guilt and reason backwards.

43. Because of the issues considered above and raised in our submission, Liberty Victoria agrees with the VLRC that a restorative justice scheme should be established for suitable cases (recommendation 28).

44. Liberty Victoria supports the eight principles referred to in the LCA submission.

45. If you have any queries regarding this response, please do not hesitate to contact Michael Stanton, President of Liberty Victoria, Julia Kretzenbacher, Immediate Past President of Liberty Victoria, or Isabelle Skaburskis, Chair of our Criminal Justice Workgroup, through the Liberty Victoria office at info@libertyvictoria.org.au.

Liberty Victoria

16 August 2023