



SUPPLEMENTARY SUBMISSION TO NORTHERN TERRITORY SEXUAL VIOLENCE PREVENTION AND RESPONSE FRAMEWORK

28 AUGUST 2019

Australia's Right to Know coalition of media companies appreciates the opportunity to make this supplementary submission to the *Northern Territory Sexual Violence Prevention and Response Framework Discussion Paper* (the Discussion Paper).

This submission – which should be read in addition to our original submission – details how section 7 of the *Sexual Offences (Evidence and Procedure) Act 1983 (NT) (the Act)* automatically restricts publication pertaining to the identity of the accused in sexual offence cases until they are committed for trial.

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

Specifically, we recommend the repeal of section 7, section 9(2) and all other references to section 7 in the Act.

Further, we urge the Northern Territory Government to action this matter – and the amendment recommended in our original submission – in a timely fashion. There are no justifications for delaying the progress of these change occurring. We urge the Government to take action to pass such an amendment in calendar 2019.

We make these recommendations on the basis of the following:

Supporting material in the Discussion Paper

In particular we refer to the Discussion Paper to support this recommendation.

The Discussion Paper highlights that:

- sexual assault is a whole of community issue and a community responsibility to address (page 5);
- preventing sexual violence can be approached in the same way other social and health concerns within the community are prevented, especially where they require social and/or behavioural change and where there may be social stigma about the issue like bullying or domestic violence (page 10);
- providing the community with information about sexual violence can enhance efforts to change behaviour that leads to sexual violence, reduce the stigma for people experiencing and potentially affect the conduct of those committing sexual violence (page 10); and

- a range of groups, including the media, have an important role to play in preventing sexual violence (page 11).

Section 7 automatically gags reporting about sex offences

Section 7 prohibits reports concerning an examination of witnesses which reveal the name, address, school, place of employment or any other particular likely to lead to the identification of a defendant unless the court makes an order to the contrary. ARTK is not aware of any permissive orders ever having been made.

The prohibition lapses upon the accused being committed to stand trial: section 9(2) of the Act.

Such protection is not afforded to any other accused in Northern Territory. Rather, all other individuals charged with an offence are subject to the usual process which is reporting which includes he or her name and identifying features is permitted unless an application for a suppression order or non-publication order is granted.

The law is anachronistic and out-of-date

This section of the Act is undeniably anachronistic and Northern Territorians should rightly be puzzled as to why an automatic restriction on publishing the identity of alleged sex offenders applies in 2019.

The Act was assented to in November 1983 as part of suite of bills making consequential amendments which gave effect to the new Criminal Code. Unfortunately, there is nothing in the second reading speech for the *Sexual Offences (Evidence and Procedure) Bill 1983 (the Bill)* which indicates why parliament deemed it necessary to protect the accused from being identified until committal¹ (at Attachment A). To the contrary, everything said by the then Attorney General about the Bill is focused on minimising the complainant's embarrassment and encouraging sexual assault victims to complain.

What is undeniable, however, is that the Bill had its genesis when the attitudes of Australian society were quite different to today and when the public's access to news was limited to newspapers, radio and the nightly television news.

NT is out of step with other Australian jurisdictions

Section 7 of the Act is out of step with New South Wales, Victoria, Western Australia, Tasmania and the ACT regarding this law.

We note that the only other states that have a similar restriction are South Australia and Queensland. We highlight that this issue is actively under review by the Attorney-General of South Australia and will likely be amended.

There have been no ill-effects of the ability to publish the names of those charged with sex offences in those jurisdictions. To the contrary, as Australian society has taken a more open and honest approach to talking about and tackling sexual and domestic violence, it is widely reported in research and by survivors that fulsome publication and broadcast of details about sexual offence prosecutions are powerful tools in educating and tackling these society-wide issues.

We also note that while we recommend the repeal of section 7 it would remain open to a sex offence defendant to apply for a suppression order pursuant to section 57 of the *Evidence Act 1939* (NT) in relation to his (or her) name. The court can then exercise the usual process of deciding whether or not to grant a suppression order and in what terms.

¹ http://www.territorystories.nt.gov.au/jspui/bitstream/10070/221002/1/D_1983_08_25.pdf

We also note that the risk of identifying the victim/s in such circumstances is very low, even in small communities which is often the case in relation to reporting in the Northern Territory. Avoiding identification of the complainant is something managed in the usual course of news reporting and, as we have expressed above, has not been an issue in other jurisdictions that have had this process for some time. Nor is ARTK aware of it ever being problematic to the reporting of Northern Territory cases after committal.

Unjustifiable protection for sex offence defendants

The combination of the above would justifiably prompt Northern Territorians to wonder what type of society they live in when sex offence defendants enjoy a protection from being identified which is not extended to any other person or class of person charged with a criminal offence.

This should not continue and we urge the Northern Territory Government to make this important change to deliver a consistent approach and process for the issuing of suppression orders.

Conclusion

As is clear from this supplementary submission, there are strong societal and policy reasons to remove the automatic suppressions on publication in sex offence cases. As is the case in other jurisdictions, this can be achieved without adverse consequences and victims will continue to be protected by existing law.

RECOMMENDATION

We recommend that

- section 7 of the *Sexual Offences (Evidence and Procedure) Act 1983* (NT) be repealed; and
- all references to section 7 be deleted from section 9 (including the repeal of subsection 9(2)) and other sections of the *Sexual Offences (Evidence and Procedure) Act 1983* (NT).

ATTACHMENT A

Mr Speaker, perhaps the most important of the consequential amendments to the code is the Sexual Offences (Evidence and Procedure) Bill. I am sure that the honourable member for Nightcliff will be delighted. The former Attorney General and I have indicated on a number of occasions the intention of this government to afford evidentiary protection to victims of sexual assault. Members may note that the proposed bill follows closely the provisions relating to these matters that were contained in a much earlier draft of the Criminal Code, serial 167, which was debated in this Assembly.

Clause 3 of the *Sexual Offences (Evidence and Procedure) Bill* sets out the definitions relevant to the proposed bill. Given the definition of 'sexual offence', the benefit of this bill is extended to offences of indecent assault and sexual assault and is dealt with under proposed sections 189R and 192 of the proposed Criminal Code.

Clause 4 sets out the rules of evidence in relation to sexual offences. Evidence relating to the complainant's general reputation as to chastity or sexual activity with a person other than the defendant shall not be elicited or led without leave of the court. That leave shall not be granted unless the court is satisfied that the evidence sought ought to be elicited or led because it has substantial relevance to the facts at issue. The fact that the complainant was accustomed to having sexual activities with persons other than the defendant shall not be regarded as having substantial relevance to the facts in issue by reason only that it may raise an inference as to general disposition nor shall it be regarded as being a proper matter for cross-examination as to credit.

Clause 5 of the Sexual Offences (Evidence and Procedure) Bill provides that, when a complainant is giving evidence, the persons entitled to be present shall be restricted to those listed in clause 5. Obviously, this provision is designed to cause the least embarrassment possible to the complainant. As a further measure, clause 6 prevents the publication of the complainant's name, address, school or place of employment, as that may be likely to lead to identification of the complainant, unless the court otherwise directs. Similarly, the defendant's name, address, school or place of employment shall not be published unless the court makes an order to the contrary. Where a court authorises publication, it may impose conditions as to the particulars that may be revealed.

Clause 9 exempts certain reports from the operation of clauses 6 and 7 which prevent publication. These relate to reports made to the committal trial, recognised law reports or reports made to the Department of Law, police or the Department of Community Development. Reports that reveal a particular of a defendant who, as a result of committal proceedings, is committed for trial, may be made after the committal order is made and provided that the report does not reveal particulars of a defendant who is not committed.

Mr Speaker, the protections afforded by this bill do not derogate from any other law directed towards the protection from identification of a witness or other person. Clause 10 so provides. Clause 11 sets out the offences relating to publication of reports. Clause 12 exempts certain authorised reports from the operation of the offences provisions. Clause 13 provides that, where a body corporate commits an offence against this bill, a person who was at the time the director or member of the governing body of the body corporate, or officer concerned in management of the business, shall be deemed to have committed the offence.

Mr Speaker, it is anticipated that this bill will allow for some reduction in the considerable embarrassment caused to victims of sexual assault in relation to the giving of evidence and will afford them some protection from scurrilous attack. I might also say that it will also, of course, have the effect that people who are the subjects of sexual assault will be more willing to come forward and thus assist to bring to justice people who might otherwise not be brought to justice. This bill is one of the more important consequences of the Criminal Code and certainly is most warranted in my view.