

EXPOSURE DRAFT

2019-2020-2021-2022

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE [TBC]

EXPOSURE DRAFT

Crimes and Other Legislation Amendment (Strengthening the Criminal Justice Response to Sexual Violence and Other Measures) Bill 2022

No. , 2022

(Attorney-General)

**A Bill for an Act to amend legislation relating to the
criminal law, and for related purposes**

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1 **A Bill for an Act to amend legislation relating to the**
2 **criminal law, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Crimes and Other Legislation Amendment*
6 *(Strengthening the Criminal Justice Response to Sexual Violence*
7 *and Other Measures) Act 2022.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

10 3 Schedules

11 Legislation that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.

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Enhancing protections for vulnerable persons **Schedule 1**

Schedule 1—Enhancing protections for vulnerable persons

Crimes Act 1914

1 After paragraph 15Y(1)(b)

Insert:

- (ba) an offence against Division 268 of the *Criminal Code* that is a crime against humanity (within the meaning of that Code) or a war crime (within the meaning of that Code);

2 After paragraph 15Y(1)(cad)

Insert:

- (cae) an offence against Division 309 of the *Criminal Code* (drug offences involving children);

3 After paragraph 15Y(1)(cba)

Insert:

- (cbb) an offence against Part IIIA of this Act as in force at any time before the commencement of Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010*;

4 At the end of subsection 15Y(1)

Add:

Note: Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* commenced on 15 April 2010.

5 Before paragraph 15Y(2)(a)

Insert:

- (aa) an offence against section 71.8 of the *Criminal Code* (sexual assault of United Nations and associated personnel);
(ab) an offence against Division 268 of the *Criminal Code* that is a crime against humanity (within the meaning of that Code) or a war crime (within the meaning of that Code);

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Schedule 1 Enhancing protections for vulnerable persons

6 After paragraph 15Y(2)(b)

Insert:

- (ba) an offence against Division 272 of the *Criminal Code* (child sex offences outside Australia);
- (bb) an offence against Division 273 of the *Criminal Code* (offences involving child abuse material outside Australia);
- (bc) an offence against Division 273B of the *Criminal Code* (protection of children);
- (bd) an offence against Division 309 of the *Criminal Code* (drug offences involving children);
- (be) an offence against Subdivision B or C of Division 471 of the *Criminal Code* (offences relating to use of postal or similar service involving sexual activity with person under 16);
- (bf) an offence against Subdivision D or F of Division 474 of the *Criminal Code* (offences relating to use of carriage service involving sexual activity with, or harm to, person under 16);
- (bg) an offence against Part IIIA of this Act as in force at any time before the commencement of Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010*;
- (bh) an aggravated offence against Subdivision C of Division 12 of Part 2 of the *Migration Act 1958*;
- (bi) a sexual offence specified in the regulations;

7 Paragraph 15Y(2)(c)

Omit “paragraph (a) or (b)”, substitute “one of the preceding paragraphs of this subsection”.

8 Paragraph 15Y(2)(d)

Omit “paragraph (a), (b) or (c)”, substitute “one of the preceding paragraphs of this subsection”.

9 At the end of subsection 15Y(2)

Add:

Note: Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* commenced on 15 April 2010.

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Enhancing protections for vulnerable persons **Schedule 1**

10 Section 15YA

Insert:

family has the same meaning as in Part IB.

ground rules hearing has the meaning given by subsection 15YDB(1).

pre-trial hearing means a hearing ordered under section 15YDE(1).

witness intermediary means a person who is appointed under a law of the Commonwealth, a State or a Territory as a witness intermediary (however described) to assist a person giving evidence in a proceeding.

11 Subsection 15YAB(3)

Omit “sections”, substitute “provisions”.

12 Before paragraph 15YAB(3)(a)

Insert:

(aa) Division 2A (ground rules hearings and pre-trial recording of evidence);

13 After paragraph 15YAB(3)(e)

Insert:

(ea) section 15YNAA (video recording of evidence);

(eb) section 15YNB (about original evidence admissible in new proceedings);

14 At the end of subsection 15YAB(3)

Add:

; (h) subparagraph 15YR(1)(c)(iii) (about an offence of publishing identifying matter).

15 Section 15YB (at the end of the heading)

Add “—child proceedings”.

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Schedule 1 Enhancing protections for vulnerable persons

16 Section 15YC (at the end of the heading)

Add “—child proceedings”.

17 After section 15YC

Insert:

15YCA Evidence of sexual reputation—vulnerable adult proceedings

- (1) Evidence of a vulnerable adult complainant’s reputation with respect to sexual activities is inadmissible in a vulnerable adult proceeding, unless the court gives leave.
- (2) The court must not give leave unless satisfied that the evidence is substantially relevant to facts in issue in the proceeding.
- (3) The evidence is not to be treated as substantially relevant to facts in issue merely because of inferences it may raise as to the vulnerable adult complainant’s general disposition.
- (4) If the evidence is admitted, it must not be treated as relevant to the vulnerable adult complainant’s credibility.

15YCB Evidence of sexual experience—vulnerable adult proceedings

- (1) Evidence of a vulnerable adult complainant’s experience with respect to sexual activities is inadmissible in a vulnerable adult proceeding, unless:
 - (a) the court gives leave; or
 - (b) the evidence is of sexual activities with a defendant in the proceeding.
- (2) The court must not give leave unless the court is satisfied that:
 - (a) the evidence is substantially relevant to facts in issue in the proceeding; and
 - (b) if the evidence relates to the credibility of the vulnerable adult complainant and is to be adduced in cross-examination

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Enhancing protections for vulnerable persons **Schedule 1**

- 1 of the complainant—the evidence has substantial probative
2 value.
- 3 (3) The evidence is not to be treated as being substantially relevant to
4 facts in issue merely because of inferences it may raise as to the
5 vulnerable adult complainant’s general disposition.
- 6 (4) Without limiting the matters to which the court may have regard in
7 deciding whether the evidence has substantial probative value, it is
8 to have regard to:
- 9 (a) whether the evidence tends to prove that the vulnerable adult
10 complainant knowingly or recklessly made a false
11 representation when the complainant was under an obligation
12 to tell the truth; and
- 13 (b) the period that has elapsed since the acts or events to which
14 the evidence relates were done or occurred.

18 After Division 2 of Part IAD

16 Insert:

17 **Division 2A—Ground rules hearings and pre-trial** 18 **recording of evidence**

19 **15YDA Application**

20 This Division applies to the following persons (the *vulnerable*
21 *person*):

- 22 (a) for a child proceeding—a child witness;
23 (b) for a vulnerable adult proceeding—a vulnerable adult
24 complainant;
25 (c) for a special witness proceeding—a special witness for whom
26 an order under subsection 15YAB(3) is in force for this
27 Division.

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Schedule 1 Enhancing protections for vulnerable persons

15YDB Ground rules hearings

Court may order ground rules hearing

- (1) The court may order a hearing (the ***ground rules hearing***) to determine how a vulnerable person is to give evidence.
- (2) The order may be made on the court's own initiative or on application by or on behalf of a party to the proceeding.

When court must order ground rules hearing

- (3) If a witness intermediary is appointed for the vulnerable person, the court must order a ground rules hearing.

Additional rules

- (4) A ground rules hearing must be held:
 - (a) in the court in which the proceeding is to be held; and
 - (b) before the vulnerable person gives evidence.
- (5) Despite paragraph (4)(b), if the court considers it is in the interests of justice, a ground rules hearing may be held after the vulnerable person has begun to give evidence.

15YDC Attendance at ground rules hearings

- (1) At a ground rules hearing, the following must attend:
 - (a) the prosecutor in the proceeding;
 - (b) if a defendant in the proceeding has a legal representative—the defendant's legal representative;
 - (c) if a defendant in the proceeding does not have a legal representative—the defendant;
 - (d) if a witness intermediary is appointed for the vulnerable person—the witness intermediary.
- (2) The vulnerable person is not required to attend the ground rules hearing.
- (3) The court may make an order that the vulnerable person must not attend the ground rules hearing.

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Enhancing protections for vulnerable persons **Schedule 1**

15YDD Directions at ground rules hearings

- (1) At a ground rules hearing, the court may make or vary any direction for the fair conduct of the proceeding.
- (2) Without limiting subsection (1), the court may give one or more of the following directions:
 - (a) a direction about the manner of questioning the vulnerable person;
 - (b) a direction about the duration of the questioning of the vulnerable person;
 - (c) a direction about questions that may or may not be put to the vulnerable person;
 - (d) if there is more than one defendant—a direction about the allocation among the defendants of the matters about which the vulnerable person may be questioned;
 - (e) a direction about the use of models, plans, body maps or similar aids to help communicate a question or an answer;
 - (f) a direction that a party is not obliged to put in its entirety to the vulnerable person in cross-examination any evidence the party intends to lead that:
 - (i) contradicts or challenges the vulnerable person's evidence; or
 - (ii) otherwise discredits the vulnerable person.

15YDE Pre-trial hearings to take evidence

- (1) The court may order a hearing (the *pre-trial hearing*) for the vulnerable person to give evidence at a time before the proceeding commences if:
 - (a) a ground rules hearing has been held for the vulnerable person; and
 - (b) the court is satisfied that it is in the interests of justice to hold the pre-trial hearing.
- (2) The order may relate to some or all of the following:
 - (a) evidence in chief;
 - (b) cross-examination;

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Schedule 1 Enhancing protections for vulnerable persons

1 (c) re-examination.

2 Note: For rules about cross-examination, see Division 3.

3 (3) The order may be made on the court's own initiative or on
4 application by or on behalf of a party to the proceeding.

5 *Pre-trial hearing must be recorded*

6 (4) A video recording must be made of the evidence given at a pre-trial
7 hearing.

8 (5) The recording, or parts of it, may be admitted as some or all of the
9 vulnerable person's evidence in the proceeding.

10 **15YDF Conduct of pre-trial hearings**

11 Division 4 applies in relation to a pre-trial hearing for a vulnerable
12 person as if a reference in that Division to a proceeding were a
13 reference to the pre-trial hearing.

14 Note: For a special witness, Division 4 applies in relation to a pre-trial
15 hearing only if the witness is a person for whom an order under
16 subsection 15YAB(3) is in force for this Division.

17 **19 Paragraph 15YJ(1)(c)**

18 Omit "another person", substitute "a witness intermediary (if any) and
19 other persons, as necessary,".

20 **20 Section 15YK**

21 Before "If the vulnerable", insert "(1)".

22 **21 At the end of section 15YK**

23 Add:

24 (2) The following must be allowed to see the vulnerable person, and
25 any person present with the vulnerable person, on one or more
26 television monitors while the evidence is given:

27 (a) a defendant and the defendant's legal representative (if any);

28 (b) if there is a jury in the proceeding—the members of the jury.

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Enhancing protections for vulnerable persons **Schedule 1**

22 At the end of Division 5 of Part IAD

Add:

15YNAA Video recording of evidence

- (1) Evidence given in a proceeding by a person to whom subsection (4) applies must be video recorded unless the court gives leave for the evidence not to be video recorded.

Note: For the video recording of evidence given by a person at a pre-trial hearing, see subsections 15YDE(4) and (5).

- (2) An application for leave under this section must be in writing.

- (3) The court must not give leave unless the court is satisfied that it is in the interests of justice to do so.

- (4) This subsection applies to the following persons:

- (a) for a child proceeding—a child witness;
- (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
- (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

23 Subsection 15YNB(1) (at the end of the note)

Add “, which could include evidence recorded by video at a pre-trial hearing or in an interview.”.

24 At the end of subsection 15YNB(4)

Add:

- ; (c) if the original proceeding was a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

25 Subsection 15YO(1)

After “proceeding”, insert “or at a pre-trial hearing”.

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Schedule 1 Enhancing protections for vulnerable persons

26 Paragraph 15YO(1A)(c)

Omit “for this section;”, substitute “for this section.”.

27 Section 15YR (heading)

Repeal the heading, substitute:

15YR Publication identifying another person as a child witness, child complainant, vulnerable adult complainant or special witness

28 Paragraph 15YR(1)(c)

Repeal the paragraph, substitute:

(c) the matter identifies, or is likely to lead to the identification,
of another person (the *vulnerable person*) as:

(i) a child witness or child complainant in a child
proceeding; or

(ii) a vulnerable adult complainant in a vulnerable adult
proceeding; or

(iii) in the case of a special witness in a special witness
proceeding for whom an order under
subsection 15YAB(3) is in force for this
subparagraph—a special witness in a special witness
proceeding; and

29 At the end of subsection 15YR(1) (before the penalty)

Add:

Note: This section does not make it an offence for a person to publish a
matter that identifies, or is likely to lead to the identification of,
themselves as such a child witness, child complainant, vulnerable
adult complainant or special witness.

30 Subsection 15YR(1A)

Repeal the subsection.

31 Subsection 15YR(2)

Repeal the subsection, substitute:

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Enhancing protections for vulnerable persons **Schedule 1**

1 (2) This section does not apply if:

- 2 (a) the publication is in an official publication in the course of,
3 and for the purpose of, the proceeding; or
4 (b) the publication is in a document prepared for use in particular
5 legal proceedings (whether or not the legal proceedings are a
6 proceeding within the meaning of this Part); or
7 (c) the vulnerable person:
8 (i) has given written consent to the publication; and
9 (ii) was at least 18 years of age when the consent was
10 given; and
11 (iii) gave the consent freely and voluntarily.

12 **32 At the end of subsection 15YR(4)**

13 Add:

- 14 ; and (d) any trauma or damage to the reputation of another vulnerable
15 person (other than the defendant) in relation to the
16 proceeding; and
17 (e) if the vulnerable person is deceased—any trauma to the
18 family of the vulnerable person that the publication could
19 cause; and
20 (f) if the vulnerable person is deceased and the application for
21 leave is made by a family member of the vulnerable person—
22 any known wishes of the vulnerable person; and
23 (g) any other matter that the courts thinks is relevant.

24 **33 Subsection 15YR(5)**

25 Repeal the subsection, substitute:

- 26 (5) For the purpose of giving leave after the proceeding has been
27 completed, the court need not be constituted by the same judicial
28 officers who constituted the court in the proceeding.

29 **34 Paragraph 15YR(7)(c)**

30 Repeal the paragraph, substitute:

- 31 (c) each vulnerable person in relation to the proceeding.

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Schedule 2 Penalty units

1 **Schedule 2—Penalty units**
2

3 ***Crimes Act 1914***

4 **1 Subsection 4AA(1) (definition of *penalty unit*)**

5 Omit “\$210”, substitute “\$222”.

6 **2 Subsection 4AA(3)**

7 Omit “1 July 2020”, substitute “1 July 2023”.