

Submission on General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025

Introduction

Rape Crisis Ireland (RCI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCI's role includes the development and coordination of national projects such as using our expertise to influence national policy and social change and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

The RCI welcomes the opportunity to make a submission on the General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025. We have limited our submission to responses to the following:

- Part 2: Head 5 and 6 – Remote Hearings;
- Part 5: Head 19 – Amendment to Section 19A of the Criminal Evidence Act 1992;
- Part 12: Head 39 – Amendment of Criminal Justice (Sexual Offences) Act 2017; and
- Part 14: Head 49 – Amendment to the Bail Act 1997

USE OF ELECTRONIC TECHNOLOGY IN COURT PROCEEDINGS

PART 2: HEADS 5 and 6

The RCI welcomes an approach which embraces the use of technology in the court process. While the protection of victims is not the primary focus of this proposed piece of legislation, the impact on victims, should remote hearings be used more frequently, could have a positive impact on them. Attending court and giving evidence is difficult for most but particularly for those who are vulnerable witnesses of sexual crimes. These experiences act as a deterrent which are further exacerbated by prolonged delays which cause further distress. The development of technological measures which can reduce the re-traumatisation of victims engaging in the trial process has the benefit not only of the improved quality of their evidence but also their protection from further harm.

We are conscious of the challenges in implementing such a system but do not believe these are insurmountable if there is a comprehensive and fit for purpose implementation plan in

place. Any such plan must ensure training and guidelines for staff and users to ensure adequate support for those engaging in the process. For most people their daily lives are in some way reliant on or integrated into some form of technology. The criminal justice system is no different and should keep pace with the rest of society.

CRIMINAL EVIDENCE

PART 5: HEADS 17 – 19

Head 19 – SECTION 19A AMENDMENTS – DELETION OF subsection 17

While we at RCI welcome the removal of the waiver as contained in subsection 17 of Section 19A we would like to qualify this by making it clear that our attitude to the disclosure of counselling notes in particular is that there should be an **overall privileging and presumption of non-disclosure** of this information, especially as regards child survivors and we will continue to advocate for this approach in the future.

We do also see this amendment as an interim measure in the need for wider reform. We would have preferred and advocate now that the correct approach should have been a wholesale assessment as to the appropriateness of using this information at all rather than another legislative fix.

We have previously expressed our serious concerns about the general approach to the disclosure of all personal, private and sensitive information. Already there is a lack of clarity and consistency in procedure when it comes to the accessing of personal information in the context of sexual offences which results in uncertainty and distress to survivors. Furthermore, because of the ease with which personal information can now be accessed, there is the risk that advancements in technology are far outpacing any specified legal protections for specific disclosure modes. Protective law based on overarching principles rather than specifics will establish much higher standards, which must be met in order to access information in whatever format it emerges now and into the future.

We do, however, recognise the protective value of the existing Section 19A legislation. Its implementation though does not mirror this intended protection.

The State and the Courts have a duty to uphold the rights of the victim to privacy and dignity. The idea that such personal private information should be subject to disclosure at all is contrary to the very foundations of the right to privacy, therefore any encroachment into this right should be approached with circumspection. Only an approach which sets the highest possible standards for relevance should be accepted. The Supreme Court in DPP v AM 2025[1] states that the 'Oireachtas intended to establish a higher threshold for the disclosure of counselling records (at least where in the hands of third parties) than was applicable prior to its enactment'. The court went on to state that 'it may go too far to suggest that the Oireachtas intended that such disclosure would be ordered only where there would be a real risk of an unfair trial in the absence of such disclosure…', we are of the view, however, that the standard of 'in the interests of justice' does not go far enough to protect the rights of the victim. We submit that the standards placed in Section 19A should be strengthened further so that only the standard of a **'real risk of an unfair trial'** should be applied when deciding on all issues relating to disclosure of a victim's personal, private and sensitive information.

It has been suggested that the provision for legal advice prior to the signing of a waiver would be enough to mitigate against the coercive pressure currently experienced by victims. While we support the provision of legal advice for victims (in all circumstances) the unfortunate reality is that the implementation of such measures again rarely mirrors the intention. As we have already seen with the implementation of Section 19A, what is contained on paper is not necessarily what happens on the day. The experience of many victims in accessing legal advice is already often characterised by innumerable challenges. Challenges such as undue pressure to act within limited time constraints, lack of financial resources and complex procedures for accessing legal aid.

Recommendation: *The amendment of S19A(11)(a) and (b) to reflect the single standard of disclosure only when there is a real risk of an unfair trial.*

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[1] DPP v AM [2025] IESC 16

AMENDMENT OF CRIMINAL JUSTICE (SEXUAL OFFENCES) ACT 2017

PART 12: HEAD 39 - OFFER OF ACCOMODATION IN EXCHANGE FOR SEXUAL ACTIVITY

This is a serious form of sexual exploitation and abuse of some of the most vulnerable people, especially women and girls, in our society. The opportunities for this form of abuse are multiplying as the shortage of affordable housing for rent becomes ever more acute and the underlying issue of the shortage of affordable housing also needs to be addressed if this problem is to be resolved effectively. This legislation, however, will send a strong message that it is unacceptable to exploit a person's acute need for a roof over their head by making "offers" to supply accommodation in return for sexual services.

We do offer, however, the following recommendations:

Recommendations:

- *Section 45A(1) does not refer to a situation where an offer is made for a reduction of rent or protection (by any person) from the loss of a tenancy or licence in return for sexual activity.*

- *Section 45(A)(2) should distinguish clearly between forms of the offence which can be committed by a natural person and those which can be committed either by a natural person or by a legal person. There is no clarity on what happens when a company has caused the advertisement to be published and there is no individual person accountable.*

- *The definitions of 'advertises' and 'causes the advertisement of' are not provided for. The only definition in this regard is a description of what an advertisement looks like, not what is means to cause an advertisement to be published or distributed.*

- *Section 45A(3) does not provide for a test for the allegation of 'no reason to suspect' and does not go far enough to ensure that those advertising, publishing or distributing are held to some standard of reasonable care for what they permit to be advertised. While we agree that an innocent publication should not be punished, it is not acceptable to allow only a vague assertion that they 'didn't know' to be the standard of accountability.*

MISCELLANEOUS

PART 14: Head 49 BAIL ACT

The RCI welcomes the inclusion of the offences of forced marriage and coercive control to the Schedule of the Bail Act.

We submit these reflections on the general scheme and hope they will be of support to you.

We are available for any further engagement.

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