

Hon Kyam Maher MLC  
Attorney-General  
Kurna Country  
Via [AttorneyGeneral@sa.gov.au](mailto:AttorneyGeneral@sa.gov.au)

Ref: A2860981

05 June 2025

Dear Attorney-General,

Embolden appreciates the opportunity to provide feedback on the *Evidence (Pre-trial Special Hearings) Amendment Bill 2025*. As South Australia's peak body for specialist domestic, family and sexual violence (DFSV) services, Embolden recognises that this is a vital opportunity to improve procedural protections for witnesses at risk of increased emotional distress or traumatisation when giving evidence at trial.

Embolden notes that there are currently two conditions that must be met for pre-trial special hearings (PTSH) to be considered. Firstly, PTSH only apply if the evidence of an eligible witness is necessary for the trial of a charge of serious offence against the person, as defined by the *Evidence Act 1929*, or a charge of contravention or failing to comply with an intervention order (*Intervention Orders (Prevention of Abuse) Act 2009*) or restraining order (*Criminal Procedure Act 1921*). Secondly, to be eligible for PTSH, a witness must be a young child; a person with a disability affecting their capacity to give a coherent account or respond rationally to questions; an alleged victim, child, vulnerable witness, or other witnesses approved by the court in charges of child sexual offences; or an alleged victim of domestic abuse as defined under the *Intervention Orders (Prevention of Abuse) Act 2009*.

Embolden commends the Amendment Bill's broadening of the scope of serious offences to include murder, manslaughter, and choking, suffocation or strangulation in a domestic setting. Embolden also supports the explicit inclusion in eligible witnesses of alleged victims of choking, suffocation or strangulation in a domestic setting, and the qualification that alleged victims of domestic abuse may be eligible for a PTSH, regardless of their age at the time of the trial. As with any legislative change, implementation will need to include appropriate education, including that of legal officers, to ensure that the amendments act as intended and effectively support witnesses.

However, Embolden is concerned that adult victims of sexual violence are excluded from the category of witnesses to whom a PTSH may apply. Giving evidence at trial can be distressing and retraumatising for complainants of sexual violence. This was noted

throughout the Australian Law Reform Commission (ALRC) report on justice responses to sexual violence, tabled in March 2025. In the context of evidence, Recommendation 19 of the ALRC report addressed this concern by recommending that Offices for Public Prosecutions should review and update guidelines on responding to complainants of sexual violence to ensure (h) the option of a pre-recorded evidence hearing and (i) the availability of flexible evidence measures.<sup>1</sup>

With the Pre-trial Special Hearings Amendment Bill, South Australia has the opportunity to support the ALRC's recommendation through legislatively embedding protections for adult victim-survivors of sexual violence by including them in the definition of witnesses to whom PTSH apply.

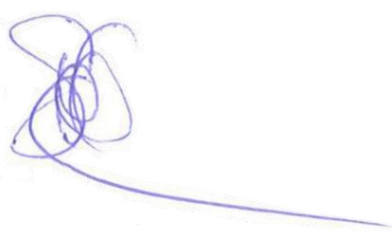
Embolden further notes that, as the criminalisation of coercive control is expected in South Australia, albeit with an anticipated long lead-in time for implementation, it will be important to consider how provisions like PTSH can be used to minimise distress and retraumatisation, as well as reducing opportunities for systems abuse by people using violence. We understand that victim-survivors of coercive control are currently included in the definition of abusive behaviour within the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 8 and are currently eligible for PTSH in the case of serious offences, or breaches of intervention orders. However, it will be important to revisit the offences to which PTSH may apply in the context of the criminalisation of coercive control, to ensure that PTSH provisions appropriately respond to this new context.

Should you have any questions in relation to this submission, please contact Mary Leaker, Embolden's General Manager, via [mary@embolden.org.au](mailto:mary@embolden.org.au)

Kind regards,



Maria Hagias



Susie Smith

Co-Chairs of the Board of Embolden

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<sup>1</sup> Australian Law Reform Commission (2025). *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence*. ALRC Report 143, January 2025, p. 240, <https://www.alrc.gov.au/wp-content/uploads/2025/02/JRSV-Final-Report-Book-for-Web-final-20250211.pdf>