



FIJI WOMEN'S CRISIS CENTRE SUBMISSION: CRIMINAL RECORDS BILL 2025.

Fiji Women's Crisis Centre

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Acronyms

CSOM	Comprehensive Approach to Sex Offender Management
FWCC	Fiji Women's Crisis Centre
NSW	New South Wales
DBS	Disclosure and Barring Services
VAW	Violence against Women

BRIEF ON FIJI WOMEN'S CRISIS CENTRE

The Fiji Women's Crisis Centre (FWCC) is a human rights organisation, based on the principles of human rights, democracy and the rule of law, which has been in existence for over 40 years.

The goal of FWCC is to eliminate all forms of violence, in all spheres of life, against women and girls in Fiji and the Pacific. FWCC implements this vision through an integrated and comprehensive program designed to prevent and respond to violence, by reducing individual and institutional tolerance of violence against women, and increasing available and appropriate services for survivors.

FWCC addresses the problem of violence against women using a human rights and development framework. This focus on human rights includes a feminist analysis of the problem and permeates all aspects of FWCC's work, recognising that the root causes of violence against women are unequal gender power relations, imbedded in Patriarchy.

INTRODUCTION

This submission is made in response to the Criminal Records Bill 2025 and its potential interaction with existing safeguarding legislation, particularly the Registration of Sex Offenders Act 2021. While criminal records reform is often framed as a mechanism to promote rehabilitation and reintegration, such reform must be carefully designed to ensure it does not unintentionally undermine protections enacted to safeguard women, children and other vulnerable persons from sexual harm.

This submission therefore examines the Criminal Records Bill 2025 through a safeguarding lens, drawing on comparative law and international best practice to demonstrate the necessity of statutory clarity, continued disclosure and the preservation of sex offender registration and monitoring obligations. A survivor-centred approach is consistent with international best practice and Fiji's human rights obligations and must remain the guiding principle in any reform affecting the legal treatment of sexual offences and offences of violence against women and children.

1. GOVERNING PRINCIPLES OF THE BILL:

FWCC is concerned about the principles of forgiveness and respect that is meant to guide the implementation of the Bill. While FWCC takes note of rehabilitation efforts that has been carried out over the years for those convicted of sexual offences and offences of violence against women and children, in FWCC's experience of work for more than 4 decades, it is noted that rehabilitation for offences of such nature is not based on international best practices. Sexual offences and Violence Against Women

(VAW) and children offences are not the same as other offences because it involves unequal gender power dynamics or patriarchy. This root cause must be addressed and guide rehabilitation efforts for these offences. Over the years, the heavy reliance on faith rather than addressing patriarchy and re-education of the patriarchal mindset of perpetrators has been noted. In addition it is also noted that restorative justice programs that are offered also fail to account for the survivors' trauma, wishes and concerns, thereby placing more focus on perpetrators absolution.

Forgiveness and respect for perpetrators of these offences is unfair to survivors. Encouraging forgiveness puts pressure on survivors to accept apologies, which in FWCC's 4 decades of experience are usually insincere and manipulative, for the sake of family unity. It also tends to minimise the seriousness of violence against women and children and sexual offences, and usually, authentically disregards the long-term impact of crimes on the survivors and ignores their autonomy. FWCC submits that the primary goals of intervention and guiding principles regarding sexual offences and violence against women and children should focus on safety, protection of the community and accountability of the perpetrators, not the emotional absolution of perpetrators of such offences.

2. SAFEGUARDING OBLIGATIONS MUST NOT BE UNDERMINED BY CRIMINAL RECORDS REFORM

The Registration of Sex Offenders Act 2021 establishes a deliberate and protective legal framework designed to prevent sexual offenders from gaining access to children and other vulnerable persons. A central safeguard within this framework is the mandatory prohibition on registered sex offenders engaging in child-related employment. This restriction is absolute in nature and reflects Parliament's recognition that certain risks cannot be neutralised by the passage of time alone.

The effectiveness of this safeguard depends on the continued visibility of relevant sexual offence convictions to employers, regulators and safeguarding authorities. If criminal records legislation allows sexual offence convictions to be expunged, sealed or rendered non-disclosable without explicit exclusion, this protection becomes unenforceable in practice. Employers cannot exclude individuals whose offending history has been legally concealed, and safeguarding authorities cannot intervene where risk is concealed.

For this reason, the Criminal Records Bill must clearly preserve the operation of the Registration of Sex Offenders Act. Sexual offence convictions must not be capable of expungement for safeguarding purposes and any spent status must not affect registration, reporting or disclosure obligations under the Act. Registered sex offenders should not be permitted to apply for sealing or non-disclosure except by express court order. Further, the Sex Offenders Act must prevail in the event of any inconsistency as the Criminal Records Bill is silent in respect to sexual offences and offences of violence against women and children. Without such clarity, the Criminal

Records Bill risks unintentionally dismantling protections Parliament deliberately enacted in 2021.

A key best-practice feature of the New South Wales (NSW) Criminal Records Act 1991 is its unambiguous exclusion of sexual offences from the spent convictions regime. Section 7 of the Act expressly provides that convictions for sexual offences are not capable of becoming spent, regardless of the passage of time or subsequent crime-free behaviour. This exclusion is detailed and deliberate, with the Act defining sexual offences broadly to include rape, sexual assault and equivalent offences committed in other jurisdictions.¹

This approach recognises that sexual offending is fundamentally different from other categories of crime. It rejects the assumption that time alone neutralises risk and instead embeds public protection directly into the structure of criminal records law. By removing sexual offences entirely from the spent convictions framework, the NSW legislation eliminates ambiguity and ensures that sexual offending history remains visible for safeguarding purposes.

For Fiji, this provides a clear legislative model. If the Criminal Records Bill 2025 does not expressly exclude sexual offences from spent or expunged treatment, it risks doing precisely what NSW law has consciously avoided being that it would allow sexual harm to be legally diminished over time.

Moving on, convictions on offences against children and offences of violence against women and children should not be added to the interpretation of serious offences. It should follow best practices of countries such as the United Kingdom's list of offences that will never be filtered from a Disclosure and Barring Services (DBS) certificate where domestic violence offences that cause or allow the death of a child or vulnerable adult and other sexual and serious offences cannot be spent.² This will allow for employers and the community to be aware of a preparator's history which is crucial for preventing reoffending and indicate a repeated and calculated pattern of abuse which are not isolated incidents. These offences are rooted in power and control and unequal gender power dynamics, which is why we must all understand patriarchy and its effect of women and girls when considering such reforms. According to a media monitoring initiative being carried out by FWCC from 2016 till date, there has been about 60 women in the last 12 years. For 2025 alone 9 women were murdered at the hands of their intimate partners and these numbers are too high for a small country like ours.

¹ *Criminal Records Act 1991*. (Australia) Retrieved from:

<https://legislation.nsw.gov.au/view/whole/pdf/inforce/2025-12-09/act-1991-008>.

² List of offences that will never be filtered from a DBS certificate, UK GOV. (2018) Retrieved from:

<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check/list-of-offences-that-will-never-be-filtered-from-a-dbs-certificate>.

3. REHABILITATION SHOULD NOT REQUIRE LEGAL ERASURE OF SEXUAL OFFENDING HISTORY

It is recognised that individuals convicted of sexual offences and offences of violence against women and children face significant challenges upon release. International research demonstrates that stigma, housing insecurity, barriers to employment and community rejection can complicate reintegration and increase instability.³ These challenges warrant structured support and careful management, particularly during the transition back into the community.

However, rehabilitation does not require the erasure of sexual offending history. Contemporary best practice in sex offender management emphasises risk-based, individualised interventions, ongoing supervision and effective information sharing between law enforcement, corrections, treatment providers and other agencies.⁴ The goal is to reduce risk to the community while supporting lawful reintegration, not to restore anonymity where ongoing risk exists.

The Registration of Sex Offenders Act reflects this approach. It prioritises monitoring, accountability and informed reintegration rather than concealment. A criminal records regime that allows sexual offence convictions to disappear through administrative processes is fundamentally inconsistent with this model.

Another best-practice feature of the NSW Act is that, even where convictions are capable of becoming spent, disclosure obligations are preserved for safeguarding-critical contexts. Part 3, Division 2 of the Act sets out clear exclusions, ensuring that spent conviction protections do not apply to child-related employment, working-with-children checks, disability services, law enforcement, court proceedings and other positions of trust.⁵

This structure reflects a risk-based hierarchy of interests. While privacy and rehabilitation are respected in ordinary social and employment contexts, they are explicitly subordinated where vulnerable persons may be exposed to harm. The Act therefore prevents the spent convictions regime from operating as a shield in circumstances where disclosure is essential to safety.

The Criminal Records Bill 2025 should adopt this same approach. It must clearly state that even where a conviction is treated as spent, disclosure remains mandatory for child-related work, caregiving roles, licensing, immigration decisions, family law

³ Helene Seaward, Sophie Dieffenbacher, Jens Gaab, Marc Graf, Bernice Elger, Tenzin Wangmo, Stigma management during reintegration of older incarcerated adults with mental health issues: A qualitative analysis, *International Journal of Law and Psychiatry*, Volume 89. (2023) Accessed from: <https://doi.org/10.1016/j.ijlp.2023.101905>.

⁴ Chapter 8: Sex Offender Management Strategies, U.S. Department of Justice. Accessed from: <https://smart.ojp.gov/somapi/chapter-8-sex-offender-management-strategies>.

⁵ Ibid 1.

proceedings and protection-order matters. Without such clarity, safeguarding becomes discretionary rather than guaranteed.

4. RECIDIVISM RISK JUSTIFIES CONTINUED DISCLOSURE AND SUPERVISION

Sex offenders are not a uniform group and risk varies significantly depending on the nature of the offence, the characteristics of survivors, behavioural patterns and prior criminal history. International research consistently identifies sexual deviancy and criminal lifestyle instability as key predictors of sexual recidivism. For this reason, best practice does not support uniform, time-based relief from legal consequences. Instead, it supports graduated, differentiated and risk-responsive management frameworks that prioritise public safety and survivor protection over administrative finality.⁶

We reiterate that sexual offences and violence against women and children offences are not the same as other offences because it involves unequal gender power dynamics or patriarchy. This root cause must be addressed and guide rehabilitation efforts for these offences. What we have seen over the years is the heavy reliance on faith rather than addressing patriarchy and re-education of the patriarchal mindset of perpetrators.

Legal systems that allow sexual offences and offences of violence against women and children to be treated as spent without explicit safeguarding mechanisms, risk re-traumatising survivors, undermining confidence in the justice system and prioritising offender privacy over survivor safety.

For these reasons, the Criminal Records Bill 2025 must explicitly reflect and preserve the operation of the Registration of Sex Offenders Act 2021. Consistent with international best practice, the Bill should include a clear non-derogation clause ensuring that criminal records reform cannot be used to weaken registration, monitoring or disclosure obligations. It should further provide that sexual offence convictions remain visible and not closable for safeguarding purposes regardless of spent or sealed status and that registered sex offenders cannot access expungement or non-disclosure regimes.

Without this explicit alignment, the Criminal Records Bill risks creating ambiguity, enforcement gaps and conflicting statutory obligations. Legislative clarity is therefore not optional as it is a core component of effective, lawful and humane sex offender management.

5. THE NEED FOR STATUTORY CLARITY TO AVOID ENFORCEMENT FAILURE

⁶ Chapter 6: Sex Offender Risk Assessment, K. Baldwin. Accessed from:

[https://smart.ojp.gov/somapi/chapter-6-sex-offender-risk-assessment#:~:text=Karl%20Hanson%20and%20his%20colleagues,Morton%2DBourgon%2C%202009\).](https://smart.ojp.gov/somapi/chapter-6-sex-offender-risk-assessment#:~:text=Karl%20Hanson%20and%20his%20colleagues,Morton%2DBourgon%2C%202009).)

From an enforcement perspective, legislations should be stringent and not ambiguous or unclear. If the Criminal Records Bill does not explicitly address its relationship with the Registration of Sex Offenders Act, uncertainty will arise regarding whether spent convictions must still be disclosed during vetting, whether employers may lawfully exclude individuals whose records have been sealed and whether registration obligations survive expungement.

Such uncertainty invites inconsistent interpretation, administrative error, litigation and ultimately safeguarding failure. It places frontline decision-makers in an unsure or weak position and shifts the burden of risk onto survivors and communities rather than the legal system. Clear alignment provisions are therefore essential. They ensure consistent application across agencies, preserve Parliament's protective intent and provide certainty that the safety of women, children and vulnerable persons remains paramount.

The overarching lesson from the NSW model is that clarity is itself a safeguarding mechanism. By expressly excluding sexual offences and offences of violence against women and children from spent conviction schemes, preserving disclosure for high-risk contexts, tightly regulating expungement, and protecting the primacy of other protective legislation, the NSW Act ensures that rehabilitation does not come at the cost of safety. Ambiguity creates gaps and gaps create risk. The NSW Criminal Records Act demonstrates how Parliament can promote rehabilitation while drawing firm, principled boundaries around sexual harm.⁷

In light of this best-practice comparator, the Criminal Records Bill 2025 should be amended to explicitly exclude sexual offences and offences of violence against women and children from spent and expunged treatment, preserve disclosure for safeguarding purposes and affirm the supremacy of the Registration of Sex Offenders Act in cases of inconsistency. These measures are not punitive; they are preventative. They reflect a mature, evidence-based understanding of sexual offending and a legislative commitment to protecting those most at risk.

6. RECOMMENDATIONS

Thus, FWCC recommends that:

- 1) The Criminal Records Bill 2025 should expressly exclude sexual offences and offences of violence against women and children from eligibility for spent, sealed or expunged treatment. This exclusion should apply regardless of the passage of time, sentence completion or subsequent offending-free periods.
- 2) There should be an amendment to the interpretation of "serious convictions" by removing subsection (b) on sexual offences.

⁷ Ibid 1.

- 3) A new clause, preferably under division 1, to expressly cover offences that can not be spent and this clause to state that convictions on offences on violence against women and children and sexual offences can not be spent.
- 4) The Criminal Records Bill 2025 should contain an explicit non-derogation clause stating that nothing in the Act limits, overrides or affects the operation of the Registration of Sex Offenders Act 2021. This must include all registration, reporting, monitoring and information-sharing obligations.
- 5) The Bill should require ongoing and effective information sharing between the criminal records system and the Sex Offenders Register. Sexual offence convictions must remain visible to authorised agencies. Effective safeguarding depends on accurate, current and accessible information across institutions.
- 6) The Criminal Records Bill should expressly acknowledge that survivor safety, dignity and protection are paramount considerations in any criminal records regime affecting sexual offences and offences of violence against women and children. Reform should not prioritise offender privacy where doing so would re-traumatise survivors, undermine public confidence or weaken long-term accountability for sexual harm.
- 7) Remove sections 13 and 14 on the principles of forgiveness and respect.

CONCLUSION

The Criminal Records Bill 2025 presents an opportunity to promote rehabilitation while reaffirming Fiji's commitment to safeguarding, survivor protection and public safety. However, in its current state, the Bill risks creating ambiguity, enforcement failure and unintended erosion of critical protections deliberately enacted by Parliament.

International best practice, including the New South Wales Criminal Records Act and the approach used by the United Kingdom, demonstrates that rehabilitation does not require the legal erasure of sexual offending history. Rather, effective and humane reintegration is achieved through structured supervision, risk-based management, information sharing and ongoing accountability. Allowing sexual offence and violence against women and children offences' convictions to disappear through spent, sealed or expunged regimes undermines these principles and weakens the institutional capacity to prevent harm.

A survivor-centred approach demands that the safety, dignity and rights of survivors remain paramount. Legal systems that prioritise offender privacy and complete absolution over safeguarding risk re-traumatise survivors, eroding public confidence, undermining protection of the community and diminishing accountability for sexual violence and violence against women and children. Fiji's human rights obligations

require that criminal justice reform strengthens, rather than dilutes protections for those most at risk.

For these reasons, the Criminal Records Bill 2025 must explicitly exclude sexual offences and offences of violence against women and children from spent and expunged treatment, preserve mandatory disclosure for safeguarding purposes, ensure effective information sharing. These measures are not punitive; they are preventative. They reflect a mature, evidence-based and survivor-centred approach to criminal records reform that balances rehabilitation with the fundamental obligation to protect women, children, vulnerable persons and the community at large from violence and sexual harm.

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