

TASMANIAN ASSOCIATION OF COMMUNITY LEGAL CENTRES

Animal Welfare Community Legal Centre • Environmental Defenders Office • Hobart
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19 October 2012

Protecting the Anonymity of Victims of Sexual Crimes Issues Paper
Tasmanian Law Reform Institute
Private Bag 89
HOBART TAS 7001

Dear Ms Cockburn,

Re: Consultation into Potential Reforms of section 194K of the *Evidence Act 2001*

The Tasmanian Association of Community Legal Centres (TACLC) appreciates the opportunity to respond to potential reform of section 194K of the *Evidence Act 2001* (Tas).

TACLC is an incorporated network representing the eight community legal centres in Tasmania. Our member centres provide accessible advice, representation and legal education services to the community, and advocate for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

TACLC is firmly of the view that section 194K of the *Evidence Act 2001* does not provide adequate protections and should be amended to better protect sexual assault complainants. This is because a large number of studies consistently demonstrate that only a small proportion of sexual assaults are reported to the police and even fewer result in a charge, prosecution or conviction when compared with other criminal offences.¹

It is of great concern to TACLC that substantial under-reporting of sexual offences remains and that many complainants continue to feel uncomfortable about giving evidence in sexual offence trials. It is important that sexual assault reforms are

¹ See for example Australian Institute of Criminology, *Guilty Outcomes in Reported Sexual Assault and Related Offence Incidents* (2007); Australian Bureau of Statistics, *Personal Safety Survey*, Australia Catalogue 4906.0 (2006); Criminal Justice Sexual Offences Taskforce, *Responding to Sexual Assault: The Way Forward* (2005); Australian Bureau of Statistics, *Sexual Assault in Australia: A Statistical Overview* (2004); Victorian Law Reform Commission, *Sexual Offences: Final Report* (2004).

implemented that encourage more complainants to report sexual assault and which ensure that complainants are appropriately protected in giving evidence. It is likely that deficiencies and uncertainties in the existing law may lead to less reporting of sexual assault and discourage complainants from giving evidence at trial.

With specific regard to this Issues Paper TACLC firmly believes that the recent case in which a twelve-year-old girl was prostituted by her mother and her mother's male friend highlights the deficiencies in the law prohibiting the publication of information which identifies a complainant in a sexual offence case. The fact that a number of different interpretations of section 194K of the *Evidence Act 2001* (Tas) remain open² creates uncertainty in the law and may lead to a failure to adequately protect sexual assault complainants.

TACLC endorses the recommendation outlined in the Women's Legal Service submission that section 194K of the *Evidence Act 2001* (Tas) should be repealed and a new provision inserted prohibiting the publication of all details in sexual offence cases unless a court order authorizing publication is obtained. It is submitted that placing publication control in the judiciary rather than with the media will provide better protection of the complainant and may encourage more complainants to report sexual assault and to have the matter proceed to prosecution.

In the alternative, if the Tasmanian Law Reform Institute were inclined to amend section 194K of the *Evidence Act 2001* (Tas) we would encourage clarification of the phrase 'likely to lead to identification'. This is because the phrase is capable of being interpreted narrowly as referring to the publication itself or more widely to the circumstance in which persons with some prior knowledge of the complainant are made aware.

TACLC recommends that 'likely to lead to identification' be defined broadly to include identification by both persons with prior knowledge of the complainant or access to other publicly available information, as well as the general public. This view has been judicially adopted in Victoria following the Supreme Court decision of *Bailey v Hinch* where Gobbo J observed that '[t]he victim is not merely entitled to protection from the least astute members of the community'.³ If the Tasmanian Law Reform Institute were inclined to adopt the narrower interpretation we would recommend the adoption of the Women Legal Service's test that 'likely' should mean 'an appreciable risk, more than a fanciful risk'.

As well as judicial support for a broader interpretation of 'likely to lead to interpretation' there are also policy considerations in support of this reform

² See for example the difference in interpretation between Mr Tim Ellis SC, the Director of Public Prosecutions and Mr Craig Mackie, the court appointed children's representative: Tasmanian Law Reform Institute, *Protecting the Anonymity of Victims of Sexual Crimes*, Issues Paper No 18 (August 2012) at 35.

³ [1989] VR 78 at 94.

including most importantly that sexual offences are most frequently committed by family members, friends or other people known to the victim.⁴ The sexual abuse perpetrated by a trusted family member, friend or acquaintance may be exacerbated for the complainant if extended family members, friends or acquaintances were able to piece together publicly available information about the sexual assault with information already known to them. Appropriate protections of the complainant's identity are particularly important in Tasmania, as the Issues Paper notes, 'where there may be a greater likelihood that significant sections of the community have some knowledge of the parties'.⁵

With regard to whether publication should be permissible when a complainant consents we endorse the recommendation of the Women's Legal Service that complainants should not be able to give consent to publication if they are under the age of eighteen and that the consent of the complainant as well as a court order obtained by the media outlet be required for those complainants aged over eighteen years of age.

Finally, with regard to the terminology component of the Issues Paper we recommend that section 194K be amended so that all types of electronic publication including the internet and other types of social media are included in the terms 'publish' and 'picture'. A broader definition of these terms would ensure that the publication of the complainant's identity was not made possible through a legislative loophole.

We thank you for your time in considering this submission.

Please do not hesitate to contact us if you have any queries or would like to discuss our submission further.

Yours Faithfully,

Benedict Bartl
Policy Officer
Tasmanian Association of Community Legal Centres

⁴ See, for example, Table 2 of the Victorian Law Reform Commission's Interim Report which highlights police statistics for 1994-2002 demonstrating that only 12.1 per cent of reported rapes and other penetrative offences were alleged to be perpetrated by strangers: Victorian Law Reform Commissioner Interim Report (2003) at paragraphs 2.25-31.

⁵ Tasmanian Law Reform Institute, *Protecting the Anonymity of Victims of Sexual Crimes*, Issues Paper No 18 (August 2012) at 42.