

COMMUNITY LEGAL CENTRES TASMANIA

10 February 2020

Department of Justice
GPO Box 308
Hobart TAS 7001
attn: Office of the Secretary

via email: haveyoursay@justice.tas.gov.au

To the Office of the Secretary,
Re: Evidence Amendment Bill 2020

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Evidence Amendment Bill 2020* ('the Bill').

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We strongly support the Tasmanian Government's intention to reform section 194K of the *Evidence Act 2001* (Tas) and note the extensive consultation engaged in by both the Tasmania Law Reform Institute¹ and the Department of Justice.²

We strongly believe that section 194K of the *Evidence Act 2001* should be amended to better protect victims of sexual assault from being identified and to provide victims of sexual assault with the opportunity to speak out. In our opinion, the prohibition from speaking out without first obtaining a court order contributes to the disempowerment encountered by many sexual assault victims and plays a role in the substantial under-reporting of sexual offences.

We support the Bill's clarification of the phrases 'likely to lead to the identification' and 'identifying information'. As we have previously noted in our responses to the reviews carried out, the ambiguity contained in the current provision "creates uncertainty in the law and may lead to a failure to adequately protect sexual

¹ Tasmanian Law Reform Institute, *Protecting the Anonymity of Victims of Sexual Crimes*, Final Report No. 19 (November 2013).

² Department of Justice, *Section 194K Evidence Act Discussion Paper 2019*.

assault complainants”.³ The clarification provided by the Bill is particularly important given that sexual offences are most frequently committed by family members, friends or other people known to the victim.

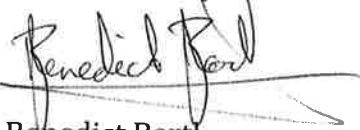
The proposed amendments will ensure that the complainant’s identity is better protected by making clear that the identification applies to both persons with prior knowledge of the complainant or access to other publicly available information, as well as the general public. These amendments will also result in consistency with other Australian jurisdictions.⁴

We also strongly support the Bill’s intention to provide complainant’s with the right to waive their anonymity and consent to publication in circumstances where they are at least eighteen years of age, have consented in writing and their consent was not coerced.

However, in our opinion the requirement that the information be published “only after the proceedings in court... were finally determined or otherwise completed” is unnecessary.⁵ It is unclear why the ability of a sexual offence complainant to speak out against their perpetrator should be treated any differently to complainants of other offences.⁶ We would also note that this restrictive clause is not found in some other jurisdictions.⁷

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

³ See, for example our October 2012 response to the Tasmania Law Reform Institute ‘Consultation into Potential Reforms of section 194K of the Evidence Act 2001’. As found at <http://www.clctas.org.au/what/reform/> (Accessed 10 February 2020).

⁴ See, for example *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’ [1989] VR 78 at 94.

⁵ Clause (3)(b)(v) of Bill.

⁶ We note however that this should be restricted to circumstances where no other victim was identified or likely to be identified, unless they too provided their consent. See Clause (3)(v)(iv) of the Bill.

⁷ See, for example, section 10(2) of the *Criminal Law (Sexual Offences) Act 1978* (QLD).