
Discussion Paper: Section 194K of the *Evidence Act 2001*

Sexual Assault Support Service Inc. (SASS) Submission

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Sexual
Assault
Support
Service

For further information please contact:

**Jill Maxwell, CEO – Sexual Assault Support Service Inc.
(SASS)**

Phone: (03) 6231 0044

Email: jill.maxwell@sass.org.au

Postal: 31-33 Tower Road, New Town, Tasmania, 7008

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Introduction

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers, and deliver a Redress Scheme Support Service to survivors of institutional child sexual abuse.

The range of support options available at SASS includes counselling, crisis support, case management and advocacy. We also provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

SASS welcomes the opportunity to respond to the Tasmanian Government's Discussion Paper on Section 194K of the *Evidence Act 2001*.

Comments

Whilst SASS appreciates the original intent of section 194K of the *Evidence Act 2001* to protect the anonymity of complainants in sexual offence proceedings, we do hold significant concerns that the provision denies survivors of sexual violence the choice to identify themselves should they wish to do so. SASS therefore recommends that the law be reformed so that:

1. A survivor of sexual violence can waive their right to anonymity if:
 - a. They are aged 18 or over;
 - b. They have the mental capacity to make this decision; and
 - c. Publicising their name and/or details wouldn't identify or be likely to identify any other victims in the same or separate sexual offence proceedings (where those victims have not consented to publication, do not have the capacity to consent, or are under 18)
2. A survivor does not require a court order to authorise publication of their name, but instead can apply to waive their right to anonymity through a free, user-friendly, transparent and timely process.
3. In applying to waive their right to anonymity, a survivor does not have to provide any justification for why they want to do this.
4. Survivors are notified of the option to waive their anonymity throughout the criminal justice process by Victims Support Services, Victims of Crime Service and the DPP. Information on this option, and how to apply for it, is available on the relevant websites of these agencies, and in print form.

We suggest this approach for several reasons. Firstly, whilst SASS does and always will support choice for a survivor of sexual violence, we do not believe this can outweigh the right of another survivor to remain anonymous, where publication of the name or details of the first survivor would threaten this.

For this reason, we would not support a move to enable survivors to reveal their details without any form of check being done. Some form of application process is necessary so that checks can be made to ensure that the conditions detailed above (ie the survivor is over 18, has the capacity to consent, and publication will not reveal or be likely to reveal the identity of another person who is the complainant or alleged victim in the same or separate sexual offence proceedings, unless that other person has also given their consent in accordance with these conditions). We suggest that this application process be facilitated through the Department of Justice, as they are best placed to ascertain the survivor's capacity to consent (ie whether there are guardianship orders in place) and whether there are other connected victims.

Whilst these suggestions largely correlate with the Tasmanian Law Reform's (TLRI) recommendations on this issue, we do state our strong exception to several points in those recommendations, namely that:

- Regarding the TLRI's Recommendation 2, we do not feel that a defendant should be allowed to apply for an order to publicise or withhold publication of any identifying details. This decision should solely rest with the complainant.
- Similarly regarding the TLRI's Recommendation 3, we do not feel that the defendant, news media organisations and any other person considered by the court to have a sufficient interest in the making of the order should be entitled to apply for an order to publicise or withhold publication of any identifying details.
- Regarding the TLRI's Recommendation 4, we do not think it sufficient that a Court should merely have to consider the views of a victim in deciding whether to allow publication. The views of the victim should be respected unless any of the three conditions described above are not met.

We hope that the Tasmanian Government will take our views on this matter into account. Please contact us for any further details on this submission.