



# Women's Health Tasmania

## **The Hon Elise Archer MP**

Attorney-General  
Minister for Justice

### **Submission in response to Discussion Paper - Section 194K of the Evidence Act 2001**

#### **About Women's Health Tasmania**

Women's Health Tasmania (WHT) is a universal service available to all women in Tasmania. WHT acknowledges the impact of societal influences such as income, education, gender, sexual orientation, ethnicity, disability and isolation on health outcomes and seeks to reduce the negative effects of these factors on individual women.

WHT's vision is for Tasmanian women to be informed, supported and active decision makers in their own health and wellbeing. As a result, WHT has also been a key advocate on issues such as a woman's right to make informed choices about her health. WHT consistently advocates on behalf of women with both State and Commonwealth governments on a range of legislation and policies impacting on women's health.

WHT welcomes the opportunity to comment on proposed changes to Section 194 of the Evidence Act 2004.

"Almost 1 in 5 women (18%) and 1 in 20 men (4.7%) have experienced sexual violence (sexual assault and/or threats) since the age of 15. Women were most likely to experience sexual violence from a previous cohabiting partner (4.5% of women) or a boyfriend/girlfriend or date (4.3% of women) (2017b). In 2016, on average, police recorded 52 sexual assaults each day against women and about 11 against men (ABS 2017d)."<sup>i</sup>

In the course of our work we see women who have been sexually abused, even if this is not their primary reason for presenting.

We estimate that around 50% of clients have a history of sexual and/or childhood abuse.

"Low prosecution rates, unnecessary and misleading corroboration warnings, misunderstandings of delayed disclosure, and the silencing and revictimisation of complainants within the trial system have all been criticised as examples of the system's failure to deliver justice to sexual assault victim/survivors, especially those abused as children."<sup>ii</sup>

Many women have never reported their experience to any authorities. They internalise the shame and fear societal condemnation if their abuse becomes public. This has obvious repercussions for their continuing mental and physical health.

The “Me Too” movement has meant that for many survivors of sexual abuse, the stigma is lifting. They can see the abuse was not about them, it was not their fault and the stigma and shame rightfully lie with the perpetrator, and a cultural code of silence.

The present Act, which protects the anonymity of an alleged victim of sexual crime or witness (or, in the case of incest, the accused) states that a person cannot publish anything which identifies the victim and is punishable as contempt of court.<sup>iii</sup>

Authorisation to publish is only given if it is considered to be in the public interest.

In a previous submission, written in September 2012, (Protecting the Anonymity of Victims of Sexual Crimes), Women’s Health Tasmania supported legislative reform to allow for the survivor of crime to tell their story.

It is our belief that having a ban on being able to speak about their experiences casts the survivor in the role of permanent victim and perpetuates the trauma of the original abuse. For many survivors, telling their story publicly is part of the healing and recovery process

The present situation, where a court must give authority to allow a victim to speak, lacks transparency and is not focused on the wishes of the injured party.

This was exemplified by the experience of Steven Fisher reported in The Mercury newspaper<sup>iv</sup>. The article highlighted the difficulties faced by a male survivor who legally challenged his right to speak publicly about his experience.

It drew attention to the fact that to do so in the present system is highly cost prohibitive, and the experience was harrowing enough to cause further trauma.

### **Changes to the Act**

It is our view that changes to the Act are long overdue, considering the first recommendations were proposed in 2013. Areas of concern include:

- The present Act is not client focused, nor is it transparent. It has no consideration for the wishes of the survivor. Changes to the Act should begin from a presumption that the person has the right to remain anonymous, however where other victims can’t be identified, and the person is over 18 years of age, there should be opportunity to make their experience public if they so desire. The offender should have no such right. In some cases, knowing that there may be future publication of all proceedings, may act as a deterrent.
- Presently the cost of making the application to have the publication ban lifted may be prohibitive to most people, and consideration needs to be given to making this process more accessible, with the cost being covered by Legal Aid. There needs to be an alternative to Supreme Court Proceedings.

- The court should be funded to provide victim support to provide information about the legal and counselling options, so that if a survivor decides to publicly tell their story they are informed about the repercussions of doing so. Victim support would ensure that any publication is made with the informed consent of the survivor, taking into account age restrictions, a capacity test and access to counselling.
- Other states in Australia have court appointed media who are trained to report sensitively about cases that are in the public interest, so that the court can control redacting identifying information. In places with small populations, this becomes more crucial, as it is often very simple to deduce the identity of the victim from the circumstances reported. This allows the dissemination of information in such cases to be decided by the court, with consideration for the respective rights of all involved and the public interest.

## Recommendations

With reference to the recommendations put forward by the Tasmanian Law Reform Institute<sup>v</sup> and in consultation with Sexual Assault Support Service, Tasmanian Council of Social Services and Women’s Legal Service Tasmania, WHT recommends that any changes should include:

- Recommendation 2 (c)

“orders referred to in (a) and (b) may be made on the application of the victim. Not “a party”

- Recommendation 3

That a statutory right be granted to the victim only, not interested parties, news media and any other person.

- Recommendation 4

A non-publication order should not be unnecessarily withheld

(c) only victims should have leave to apply for automatic exemption.

Women’s Health Tasmania looks forward to an early resolution of proposed changes to Section 194K Evidence Act 2001. The right to self-determination by the survivor of a sexual assault is paramount.

Support from the judicial system to make this choice available in a supported and accessible manner would lead to better health outcomes for the survivor.

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<sup>i</sup> Australian Institute of Health and Welfare 2018, *Family, domestic and sexual violence in Australia, 2018*, <viewed 9/5/19> <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/contents/summary>

<sup>ii</sup> Fergus, L & Kell, M 2005, Adult victim/Survivors of childhood sexual assault, Australian Institute of Family Studies ACSSA Wrap No 1 – November 2005 <viewed 9/5/2019> <https://aifs.gov.au/publications/archived/4189>

<sup>iii</sup> Tasmania Law Reform Institute 2013, Protecting the Anonymity of Victims of Sexual Crimes, Final Report November 2013, TLRI <viewed 9/5/2019> [https://www.utas.edu.au/\\_data/assets/pdf\\_file/0005/461768/S194k\\_Final\\_05\\_A4.pdf](https://www.utas.edu.au/_data/assets/pdf_file/0005/461768/S194k_Final_05_A4.pdf)

<sup>iv</sup> Mercury April 29, 2019 Opinion

<sup>v</sup> TLRI, *ibid*, *pv*.