

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Evidence Amendment Bill 2020

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Madam Speaker, I move that the Bill now be read a second time.

This Bill delivers on the Government's commitment to reform section 194K of the *Evidence Act 2001* to allow victims of sexual crimes to consent to the publication of their identity in the media or otherwise if they choose to.

The Tasmanian Government takes the rights of victims of crime and the protection of victims very seriously. The purpose of this Bill is to modernise section 194K of the *Evidence Act 2001* to bring Tasmania into line with approaches in some other state jurisdictions and enable victims of sexual offences to be able to share their story.

Importantly, underpinning the reforms to section 194K is a victim's right to self-identify as a victim of a sexual crime or offence where they wish to do so, whilst also ensuring that those victims who do not wish to consent to the removal of their anonymity or are unable to provide consent can maintain their privacy and are protected from publicity.

Madam Speaker, this Bill repeals and replaces the existing section 194K of the *Evidence Act 2001* (the Act) which prohibits the publication of information that identifies or is likely to lead to the identification of a victim, or a defendant, or a witness or intended witness, in a sexual offence proceeding.

The new section 194K(1) provides that it is a summary offence for a person to breach the publication prohibition.

A person commits an offence if they publish identifying information, or cause identifying information to be published, that identifies, or is likely to lead to the identification of a victim, defendant, witness or intended witness, in relation to any proceedings in any court in respect of the crimes listed in sections 194K(1)(a) and (b) and the offence in section 194K(1)(c).

I will be referring to the term 'identifying information' a number of times during this second reading. This term has been defined by this Bill to include, in relation to a person the name, address, school, place of employment and any other reference or allusion that identifies, or is likely to lead to the identification of, the person, and a picture or image of the person.

The Bill provides that the prohibition on publishing 'identifying information' about a victim, defendant, witness or intended witness referred to in section 194K(1) continues whether or not criminal proceedings for the relevant crime or offence are, or have been finally determined or disposed of. However, the prohibition on publication can be overcome in circumstances where a victim has consented to self-identify in accordance with sections 194K(3) and (4) or a court order has been issued under section 194K(5).

As has been done in other jurisdictions, this Bill makes it a defence to a prosecution for publishing identifying information about a victim of a sexual crime or offence if the victim consented to the publication.

The Bill specifies at section 194K(3) that it is a defence to a prosecution for breaching the prohibition on publishing identifying information, or causing identifying information to be published, provided that the defendant to a charge establishes that:

- The publication is in accordance with a court order made under section 194K; or
- The published identifying information relates to a person who is a victim of a crime or offence and that person has consented as required under section 194K to the publication and the identifying information is published in line with that consent; and
- The publication does not identify, or is not likely to lead to the identification of another person who is a victim in respect of the relevant crime or offence unless that other victim has also given consent in line with the requirements of section 194K(4); and
- The publication of the information occurs after the criminal proceedings for the alleged crime or offence are finalised or otherwise disposed of.

For this defence, the Bill requires the person or organisation that publishes the identity of a victim of a sexual crime or offence will need to show evidence that written consent was obtained prior to publication.

In cases where there are multiple victims of a sexual crime or offence the Bill provides for the protection of other non-consenting victims as it will be an offence under the new section 194K to publish any identifying information about a victim if that victim has not consented to the publication of their identity.

The Bill also applies to situations where a victim publishes their own story without the involvement of a journalist.

If a victim of a sexual crime or offence consents to the publication of identifying information either publicly identify themselves or through a media outlet, they will need to:

- Be 18 years of age at the time they gave consent and when the identifying information was published; and
- Consent in writing before the information was published; and
- Understand when they consent to publishing the identifying information that they may be identified or identifiable; and
- Not be coerced into consenting to the publication of the identifying information.

The requirements necessary to satisfy that a victim's consent to publish their identifying information was given freely and voluntarily provide important safeguards to ensure that victims are not subject to undue pressure and are not incapable of consenting because of a mental impairment.

The Bill maintains the option for any person or media organisation to apply to the court for an order authorising the publication of identifying information for a person referred to in section 194K(1).

The Bill improves the previous court order process by clarifying what the court is to be satisfied of when an application relates to living victims or deceased victims of sexual crimes or offences. When the court determines whether to make an order it is to be satisfied that the victim has been consulted, their views sought and that they understand that they may be identified if an order is made and information is published.

The Bill provides that in circumstances where a victim of a sexual crime or offence is deceased, that for the court to make an order, it is to be satisfied that if a deceased victim is likely to be identified, or identifiable from information being published, that the deceased's next of kin or legal representative has been consulted in relation to the order and that person has been given the chance to tell the court the wishes of the deceased victim, if known, in relation to being identified.

In addition, for all applications, the court is to consider if making an order is in the public interest.

New section 194K(7) provides that a victim of a crime or offence under the section does not have to pay the application fee in respect of the application.

The Bill retains the charge of contempt. New section 194K(8) provides that a person who publishes identifying information in breach of section 194K may be charged with contempt if they have not been prosecuted in accordance with section 194K(1).

Lastly, the Bill defines the term 'publish' and references new modern forms of publication, in particular electronic methods of publishing.

Public consultation was undertaken on a draft version of this Bill noting that no submissions opposing the Bill were received, and I thank those who made comments and suggestions in response to the draft legislation to address the serious issue of victims and survivors of sexual violence being able to choose to identify themselves, be it by their own hand or through the media, in the newspaper or online, should they wish to do so.

The Evidence Act is a complex area of law and any reform must strike the right balance which is why the Government has consulted extensively with the broader legal sector, community organisations, media organisations, the education sector, and the public. The Government believes what is now being proposed in this bill is the most balanced approach to reform and more consistent with exemption provisions in most state jurisdictions.

Madam Speaker, I commend the Bill to the House.