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Subject: A submission to the Tasmanian Department of Justice regarding the Evidence Amendment Bill 2020: Section 194K 'Publication of certain identifying particulars prohibited'

This submission contains the opinions of the author as a legal academic and does not represent the official view of the University of Tasmania.

I am generally supportive of the proposed amendment to the *Evidence Act 2001*. However, the Bill does not address an important question that was examined in the Tasmania Law Reform Institute (TLRI) reference on reform of s 194K. The question was posed in Issues Paper No 18, *Protecting the Anonymity of Victims of Sexual Crimes* (2012), 'Who has to be able to make the identification of the complainant (for example, is the provision contravened when people who already knew the complainant could identify him or her)?' (at p. 2). The Issues Paper went on to note that if the identification is to be made on the basis of the published material alone, 'a general reader with general knowledge is unlikely to determine the identity of the complainant unless very specific information is published. This creates a high threshold test in that a substantial amount of information could be published (that would identify the complainant to a reader or viewer with prior knowledge) before a reader or viewer with general knowledge could make the identification' (at p. 20). Clarification of this fundamental issue is essential to ensure a consistent interpretation of the term, 'identifying information' (Evidence Amendment Bill 2020, cl 9).

As the author of the Final Report (TLRI, *Protecting the Anonymity of Victims of Sexual Crimes* (Final Report No 19, 2013)) I set out the recommendations of the Institute on this point. They were that, where used in the provisions, the word 'likely' should be defined as 'an appreciable risk, more than a fanciful risk' and in making determinations about whether a publication is likely to lead to identification, 'the court shall have regard to potential identification by a reader, viewer or listener, equipped with knowledge in the public domain, in all the circumstances of the case' (at p. 33).

Best Regards,

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