



Department of Justice

Office of the Secretary

Via email: [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

## **Laurel House Submission: Evidence Amendment Bill 2020**

Thank you for the opportunity to provide feedback on the drafting of the *Evidence Amendment Bill 2020: Section 194K 'Publication of certain identifying particulars prohibited'*.

We are heartened by the actions the Justice Department have taken thus far in response to initial submissions on changes to section 194k of the Evidence Act 2001(the Act) and are pleased to continue to participate in the consultation process.

Laurel House provides counselling, education, 24/7 crisis support and advocacy for those impacted by sexual assault across Northern Tasmania. Laurel House does not retain legal counsel, either internal or external, and for this reason we are mindful not to comment on the intricacies of law-making but rather to focus on impacts and outcomes for our clients. We do however acknowledge the legal nature of the review and address this through endorsement of the submission prepared by EROC Australia and Marque Lawyers. This is consistent with the approach we have previously taken throughout this process.

Our submission is presented by exploring a range of questions and points of clarification which seek to focus on preventing and avoiding loopholes which may result in unintended consequences, both negative and positive for victim-survivors and alleged perpetrators. When seeking to identify those unintended consequences, we apply a practical lens to the legislation and try to understand how it might be applied or upheld in a modern, digitalised world.

P1. We are concerned that counselling and support methodologies currently used by our service may technically constitute a breach of the law given the definition provided for 'publish' means *to make available to the public or a section of the public* through **9(a) publication in a newspaper, journal, periodical, book, written document.**

It is common practice in therapeutic settings to encourage clients to journal, write letters that are never sent and express their emotions may constitute making that information available to a section of the public. Furthermore, our clients retain ownership of those documents but the stringent record keeping processes cannot be upheld once the documents leave the premises and these could be shared with other parties outside of the service. In the absence of a definition for the term '*public*' or '*section of the public*' we wonder if a breach could be argued here?



P2: Further to point 1, case notes made by social workers and counsellors, while confidential are sometimes shared, with permission of the client, with other support services and networks. This may also meet the definition of 'a section of the public'?

**Question:** What if a person genuinely unintentionally '*causes identifying information to be published*'

P3: Issue: Publication definition **9(e)** *such other prescribed means of making information available to the public.*

Given the variety of technology available and an increasing preference toward electronic messaging, what provisions are in place for victim - survivors who use instant messaging to talk about their trauma / experience with trusted support networks – are they are 'section of the public'? And furthermore;

P4: What are the ramifications for the victim – survivor if someone breaches that trust and shares or publishes the information?

P5: What are the ramifications associated with human error or the potential of cyber hacking associated with information being obtained or 'published'?

**Question:** What regard has been made for the dissemination or 'publication' of information prior to the commencement of court proceedings?

P6: S.4 (9) Timing and **Identifying information:** It would not be uncommon for younger victim-survivors to speak about their trauma and in so doing, identify perpetrators through a variety of electronic methods. At the time of doing this, it would not be a crime. However, should the victim-survivor later determine to report the crime, there is no way of determining how widely previous 'publications' may have been distributed via the internet and therefor near impossible to delete or remove. What consideration has been made to this likely scenario and its potential positive or negative outcomes for both the accused perpetrator and the victim-survivor?

I thank you for your time spent reading our submission and invite you to contact me should you require further clarification or additional information.

Yours sincerely

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