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Evidence Amendment Bill 2020

Section 194K 'Publication of certain identifying particulars prohibited'

[1] The authors of this submission are **Dr Rachael Burgin**, BA (Hons), PhD (Monash), Lecturer of Law at Swinburne University of Technology and **Ms Saxon Mullins**, Survivor-Advocate. Dr Burgin and Ms Mullins are, along with Professor Jonathan Crowe, the co-directors of the **Rape and Sexual Assault Research and Advocacy Initiative**. This submission is also submitted on behalf of the initiative.

[2] We are appreciative of the opportunity to respond to the proposed amendments to section 194K of the *Evidence Act 2001* (Tas). We are supportive of the government's intention to reform this section of the act, given that it has historically functioned as a mechanism of silencing victim-survivors of sexual offences. Some of these experiences were highlighted by the #LetHerSpeak campaign.

[3] While we support the reform efforts, we retain serious concerns with the drafted amendments and their likely impact on victim-survivors of sexual offences. We highlight our key concerns below. We also refer to the submission put forward as part of this consultation, by **End Rape on Campus Australia** (EROC) and **Marque Lawyers**, and mirror the concerns they raised.

[4] In brief, section 194K(1) maintains that it is an offence, punishable by fines and/or imprisonment for a person to publish or cause to be published the identifying information of, among others, victim-survivors of sexual offences.

[5] Section 194K(3) provides for defences to the offences outlined in subsection (1). One of these defences includes situations where the victim-survivor has consented, in line with the requirements of subsection (4), to the publication of identifying details. We argue that this should be configured as a situation in which subsection (1) does not apply, and not as a defence. We argue, in line with the submission of End Rape on Campus Australia and Marque Lawyers, that is is inappropriate for any party to face the risk of prosecution where consent has been given. Amending this so that subsection (1) does not apply where consent is given is a more appropriate approach.

[6] In addition, we argue that subsection (1) should not apply in instances where court proceedings are ongoing. As End Rape on Campus Australia and Marque Lawyers rightly highlight, there is no justification for this ban on publishing the identity of victim-survivors in ongoing cases, except those that are in the interests of perpetrators. This ban would continue to undermine survivors' agency. (see subsection (3)(v)). Defendants should continue to have the right to apply for a suppression order if there is a case to argue that identifying the victim-survivor would result in prejudice against the defendant. End Rape on Campus

Australia and Marque Lawyers identify that presenting victim-survivors with an ultimatim of choosing between reporting to the police and maintaining control over thier experience could have implications beyond those intended by the reforms.

[7] We advocate for the removal of all prohibitions on the publication of a defendant's identity (see section 194K(1)(a)(ii), section 194K(1)(b)(ii) and section 194K(1)(c)(ii)). Such a provision is extremely concerning and contrary to the basic principle of open justice that is central to the criminal justice system.

[8] Prohibitions on publications of a defendant's identity reinforce rape myths about the supposed risk of false accusations. There is no evidence that false allegations of sexual offences are common. Such assumptions are deeply sexist and should not play a role in the creation of law.

Regards,

Dr Rachael Burgin and Ms Saxon Mullins.