



Submission to the Tasmanian Government
Consultation into

Section 194K *Evidence Act 2001*

Presented by NUS Women's Officer Sarah Tynan

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1. Introduction

To the Tasmanian Department of Justice,

My name is Sarah Tynan and I am the 2019 Women's Officer for the National Union of Students. I am writing to you as the peak representative of undergraduate women at universities in Australia.

The National Union of Students (NUS) represents students in tertiary education around Australia. The role of the Women's Department is to represent women students in their studies and their lives at university. The work done by the women's Department over the last few years specifically has been surrounding sexual violence on and around campus, including working on projects such as the National Survey into sexual violence at universities and subsequent campaigns including the *We Will Not Be Silent* campaign, and the *Respect. Now. Taskforce.* campaign.

NUS thanks you for the opportunity to voice our views on the Tasmanian Government's Discussion Paper on Section 194K of the *Evidence Act 2001*.

2. Summary

NUS Women's Department expresses support for amending Section 194K of the *Evidence Act 2001* (the Act), which prohibits the publication of certain identifying particulars in sexual offence proceedings without the order of a court.¹

NUS understands the current limitations within the Evidence Act 2001 exist to protect the safety and anonymity of complainants in sexual offence proceedings, we also wish to raise attention to the concern that the limitations deny survivors of sexual violence the right of

¹ Evidence Act 2001 (Tas) *The Act*, Section 194K

autonomy in identifying themselves should they wish to do so, for whatever reason they wish to.

The unintended consequences of Section 194k of the Evidence Act 2001 are that survivors of sexual violence have their agency removed and are effectively silenced from speaking on their experiences without procuring a Court Order, a process which can be difficult at times, and retraumatising at worst.

3. Legislation in other States and Territories

NUS notes that Tasmania is the only State in Australia that requires a court order for survivors of sexual abuse claims.

NUS is concerned that requiring a court order for survivors of sexual violence assumes that the Tasmanian Government is better placed to decide what is best for the survivor than the individual themselves.

NUS notes that while the ACT and Victorian legislation do not legislate a minimum age to waive the right to anonymity, there is concern that situations may arise where survivors of sexual violence are too young to provide legal consent or be appropriately informed of the consequences of their identification.

4. Recommendations

NUS understands that the Act as it currently stands, is in place to protect survivors of sexual violence and their anonymity. However, NUS believes first and foremost that survivors of sexual violence should have the agency and choice to heal in whichever way is best for them, whether that be in anonymity or through disclosure.

NUS endorses the submission made by the Sexual Assault Support Service Inc. (SASS), specifically the following suggestions:

1. A survivor of sexual violence can waive their right to anonymity if:
 - a. They are over 18;
 - b. They have the mental capacity to make this decision; and
 - c. Publicizing their name and/or details wouldn't identify or be likely to identify any other victims in the same or separate sexual offence proceedings (where those victims have not consented to publication, do not have the capacity to consent, or are under 18)

2. A survivor does not require a court order to authorise publication of their name, but instead can apply to waive their right to anonymity through a free, user-friendly, transparent and timely process.

3. In applying to waive their right to anonymity, a survivor does not have to provide any justification for why they want to do this.

NUS expresses strong support and endorsement for the End Rape On Campus (EROC) and Marque Lawyers' submission in its entirety.

NUS also endorses the Let Her Speak campaign run by EROC and survivors of sexual violence, including Jane Doe and Leia.

NUS appreciates the opportunity to contribute to this discussion. We hope that the Tasmanian Government will take our views into account. Please do not hesitate to contact NUS Women's Department for further details on this submission.