

SECTION 194K OF EVIDENCE ACT 2001

A Submission by End Rape On Campus Australia & Marque Lawyers

May 2019



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Document

End Rape On Campus
Australia & Marque Lawyers
Submission: Section 194K of
Evidence Act 2001

Date

5 May 2019

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Department of Justice
Strategic Legislation and Policy
GPO Box 825 Hobart TAS 7001

Dear Minister Archer

Re: Discussion paper: Section 194K of the *Evidence Act 2001*.

End Rape on Campus (EROC) Australia and Marque Lawyers welcome the opportunity to provide a submission in response to the public discussion paper on section 194K of the *Evidence Act*.

In 2018, EROC Australia and Marque Lawyers collaborated on a campaign titled #LetHerSpeak, calling for amendments to section 194K of the *Evidence Act*, so that sexual assault survivors can waive their right to anonymity without requiring a court order. Fewer than five victim-survivors have ever been granted such a court order in Tasmania, and those who have, have found the process costly, stressful, time consuming, disempowering and - at times - re-traumatising.

In Tasmania there are no other crimes where victims are expected to gain a court order before they can speak about their experiences. We believe that sexual assault survivors who are over the age of 18, and who have capacity, should be entitled to give their consent to be named in writing, without seeking a court order.

The following submission is written on behalf of victim-survivors who we have worked with, who have a direct experience with this issue.

It has been formally endorsed by Tasmanian sexual assault service, Laurel House, as well as the national peak body, Rape and Domestic Violence Services Australia. Our submission has also been endorsed by the following academics:

- Professor Andrea Durbach: Faculty of Law, UNSW
- Professor Jonathan Crowe: Faculty of Law, Bond University
- Professor Catharine Lumby: Faculty of Media and Cultural Studies, Macquarie University
- Associate Professor Michael Flood: Faculty of Law, School of Justice, QUT
- Associate Professor Michael Salter: School of Social Sciences, UNSW

- Associate Professor Lisa Featherstone: Australian History, University of Queensland
- Dr Bianca Fileborn: Lecturer in Criminology, University of Melbourne
- Dr Bridget Harris: School of Justice, Faculty of Law, QUT

If you would like further clarification on any of the issues we raise in our submission, please contact me via nina@endrapeoncampusau.org

Kind Regards,

Nina Funnell
Director - End Rape on Campus Australia

1. BACKGROUND: #LET HER SPEAK

End Rape on Campus (EROC) Australia is a volunteer organisation that works to end sexual violence at universities and other educational institutions through prevention efforts, direct support for survivors and their communities, and policy reform at the campus, state and federal levels. Our work includes, but is not limited to, establishing support networks, mentoring university student activists, and advocating for the realisation of the rights of students under applicable university policies, and state and federal legislation.

Since establishing in 2015, EROC Australia has worked closely with multiple sexual assault survivors around Australia who have told their stories through media and we have provided direct advice, resourcing and assistance to survivors, their supporters and student representatives when doing media.

In 2017, EROC Australia was contacted by a 22-year-old woman, Jane Doe* from Hobart. In 2010, Jane was groomed and repeatedly sexually assaulted by her then 58-year-old maths teacher, Nicolaas Bester. On arrest, Bester was also found to be in possession of child pornography.

After serving 22 months in prison for the sexual assaults against Jane Doe, and the child pornography offences, Bester was granted an early release in 2013. Bester - then aged 60 - enrolled in a PhD program at the University of Tasmania (UTAS) and was permitted to live at John Fisher college.

Jane Doe's education, by contrast, was severely impacted as a result of Bester's actions. She initially dropped out of high school due to the impacts of trauma and the victim-blaming she encountered in the school yard and beyond. Jane Doe later returned to a different school and achieved an ATAR of 98.3 but is yet to achieve a university degree.

In 2015, while still a student at UTAS, Bester reoffended by creating and sharing child exploitation material for which he was sentenced to an additional four months in prison. UTAS Women's Collective were highly vocal in later highlighting this issue and campaigning for the safety of students on campus.

In 2017, Jane Doe decided that she wished to speak out about her story in order to:

- educate the public on the warning signs of grooming;
- challenge unhelpful stereotypes about sexual assault victim-survivors;
- strengthen the public's knowledge of trauma impacts;
- advocate for the rights of other survivors;
- critique unhelpful media discourses which fuel victim-blaming mentalities.

In 2017, Jane Doe contacted EROC director, Nina Funnell, who also works as a freelance journalist, specialising in sexual assault reporting.

Funnell agreed to work with Jane Doe to publish her story. However, under Tasmanian law, media is unable to name Jane Doe irrespective of her consent due to section 194K of the *Evidence Act* which effectively prohibits all media from naming sexual assault survivors, without a court order.

Journalists and media outlets which publish the name of a sexual assault survivor in Tasmania risk prosecution and significant fines. In December 2012, Davies Brothers Pty Limited was convicted of contempt of court and fined \$20,000, after the publication named a Tasmanian rape survivor and published a photo of her. At the time of publication, the survivor was over the age of 18, fully consenting to the publication, and the portrayal of her was deemed sympathetic and supportive. Despite this, Davies Brothers Pty Limited were prosecuted and ordered to pay the fine along with the state's taxed costs.

(See: *R v Haley* [2012] TASSC 86 <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASSC/2012/86.html?context=1>)

Research conducted by EROC Australia suggests that as of March 2019, only two such court orders had ever been granted to survivors allowing them to speak using their real names. Mr Steven Fisher was the first ever recipient of such a court order.

Between the ages of 12 and 15 Steven Fisher was abused by Garth Stephen Hawkins, a former Anglican Rector in the parish of East Devonport in Tasmania. The abuse against Mr Fisher continued between 1979 and 1983. In 2003 Hawkins was convicted and sentenced to seven and a half years' jail for multiple sexual offences against seven boys between 1974 and 1984.

Following the conviction, Mr Fisher wished to tell his story to the media using his real name but he soon discovered that he could not do so without a court order. As Mr Fisher later told news.com.au:

“The thought that I wouldn’t be able to speak out after his trial was over [because of s194K] horrified me and I’m just very lucky that the media were willing to pay for the court costs for me [in applying for the court order], because I certainly didn’t have the money or the resources to put into the application. The process was really stressful. I had to write out a whole statement about why I wanted to speak. It was a really, really complicated process, and at the same stage [having just been through a trial] it’s another thing you don’t want to go through. I was really fearful that I would not get the exemption and I would not be able to keep talking about all the issues surrounding survivors. I don’t like the thought of anyone going through that process. I was the first person in Tasmania to be granted that court order on the basis that it was in the public interest that I could speak. Abuse victims know when they are ready to talk publicly. It’s condescending of the courts to tell them otherwise.”

Since obtaining the court order, Steven Fisher has used his public position to continue to advocate for the rights of survivors and he currently runs survivor advocacy group Beyond Abuse.

In 2017 Jane Doe began the process of seeking a court order, with the assistance of news.com.au’s senior lawyer Gina McWilliams and EROC Australia. At the time of writing, this process has cost News Corp \$9,137.30 in in-house legal fees and application fees.

While Jane Doe is extremely appreciative of the assistance of Gina McWilliams and News Corp more generally, EROC Australia has observed that the process of applying for the court order has contributed to the stress and anxiety experienced by her. In particular, the protracted and complex nature of the process has exacerbated pre-existing feelings of powerlessness and injustice. As Jane Doe told Funnell in 2018, “Journalists, commentators, and even my perpetrator have all been able to publicly discuss my case. I’m the only one who is not allowed to. It’s not just illogical, it’s cruel.”

For Jane Doe, the process of applying for the court order was made additionally complicated by the fact that at the time of applying, she was residing overseas. This meant that several additional steps were involved, including a visit to the consulate to have an affidavit witnessed. This was time consuming for Jane Doe and it placed additional financial strain on her. (It is not uncommon that survivors who have been assaulted in one jurisdiction - such as Tasmania - may relocate precisely because of the abuse, and yet there had been no consideration for how relocation may further impede a survivor’s capacity to obtain a court order and the barriers they face in doing so).

At this point in time, fewer than five victim-survivors have ever successfully undertaken this process and been granted a court order so they can be publicly identified. Those who have, have found it costly, stressful, time consuming, disempowering and, at times, re-traumatising. To that end, both Steven Fisher and Jane Doe maintain that the law should be reformed to bring it into alignment with other jurisdictions so that survivors are not financially penalized or emotionally burdened in order to be able to tell their stories.

In consultation with both Jane Doe and Mr Fisher, in 2018 EROC director Nina Funnell designed a campaign for law reform called #LetHerSpeak. The campaign took three months to design and featured over a dozen sexual assault survivors from other jurisdictions in Australia where survivors are permitted to waive their right to anonymity in the media.

The campaign was launched November 8 as a collaboration between EROC Australia, Marque Lawyers and News Corp. It was endorsed by both Jane Doe and Steven Fisher/ Beyond Abuse, as well as Rape and Domestic Violence Services Australia. The campaign was featured on news.com.au, several front page editions of the Mercury, in a 60 Minutes episode, and later on The Project.

A #LetHerSpeak petition also launched by EROC Australia in November 2018 attracted over 5000 signatures within the first fortnight, and a photo campaign designed by Funnell/ EROC featuring survivors, their supporters, and lay individuals holding signs displaying the words #LetHerSpeak received international coverage. Several celebrities also joined the photo campaign including Tara Moss, Alyssa Milano, Sarah Monahan, John Cleese, Camilla Cleese, Gracie Gillam, Spencer Breslin and Annie E. Clark.

On November 19, 2018 Funnell delivered the petition to Tasmania Premier Will Hodgman and Minister Elise Archer along with a cover letter which included a selection of reasons given by members of the public for signing. Some of those reasons include:

I am a survivor of sexual abuse. My abuser took my dignity and self-worth. Don't let my voice be taken from me as well.

As a survivor myself, and someone whose case was heard at the Supreme Court at the same time, it is time we unite and fight for what is right.

I am a victim and now an adult survivor of child sexual abuse and I too think #Letherspeak.

This law gives all power to the perpetrator at the expense of the victim. It is completely backwards and robs the victim of their own story.

I signed to help Jane Doe to have her voice, let's give Jane Doe the healing she needs and others to not have to endure the extreme pain and frustration that this law initiates. Let's give Jane Doe her right to roar not whisper.

Breaking the silence around sexual violence is the first step to changing the culture that allows it [to occur]. Survivors need to be able to go through their healing process and the law should not stand in the way of that.

It should be the survivor's choice. Not allowing choice reinforces that this person is a victim and is shamed. Allowing choice reinforces that this person is a survivor and the perpetrator is the one who should be ashamed.

As a survivor who has done the Royal Commission into Institutional Responses to Child Sexual Abuse and a Tasmanian, it does not surprise me that we still have this archaic law gagging us. We need to all stand together and demand that this law is changed and let us speak, YELL, SCREAM or be silent!!!!!! It's OUR choice.

This appalled me, this needs to be changed NOW.

Because survivors should be allowed to tell their stories in their own words if they wish.

She deserves to have a voice. Tasmania needs to get with the times.

It is very important that as many people speak out about this as possible. This is a very painful subject for most victims. Very intimate and shameful situations are not easy to expose but if anyone is prepared to be so brave, they should be encouraged because we have to end sexual abuse and this will not happen if we silence the victims.

Women should have the right to decide to tell their stories, not politicians. These laws are outdated and draconian. Stop the discrimination.

We need more women to speak up. Now, more than ever.

Everyone deserves to tell their story.

Every rape victim deserves the right to speak about what happened to her. If more females did speak up maybe just maybe reoffending could be cut down and save another girl feeling the pain.

These draconian outdated laws must be amended, it's outrageous that they were not changed years ago.

The victim has every right to be heard. To silence them and to threaten them is intimidation at its highest level. The perpetrators should not be protected by the victim's silence. Where is the justice in that?

Giving total control to a survivor to share or not share their story is what is important to me. They didn't get to choose their abuse...but they should be able to choose if they want to stay silent or not...give them back control over that situation.

Muzzling the screaming child. No different to the muzzling during the crime.

If that repugnant paedophile can be interviewed saying how awesome it was to rape a 15-year-old then the 15-year-old should be able to voice her opinion on the matter.

We need to let these women be heard.

A subsequent poll of 1300 Mercury readers revealed an approval rating of over 92 per cent for law reform.

On March 13, 2019, EROC Australia wrote again to Minister Archer again urging law reform, and supplying a summary of the relevant laws in other jurisdictions.

On April 2 2019, Tasmania's Attorney General Elise Archer released a discussion paper on section 194K, and called for public submissions regarding potential changes to the law.



(Alyssa Milano joins EROC and Marque Lawyers #LetHerSpeak campaign)

2. SECTION 194K: ISSUES AND CONCERNS

Tasmania and the Northern Territory are the only jurisdictions in Australia which have laws prohibiting all victims of alleged sexual offences from publicly identifying themselves, unless a court makes an order allowing them to do so.

CURRENT LAWS SUMMARISED

Australian Capital Territory	Evidence (Miscellaneous Provisions) Act 1991, s74(2) http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/epa1991361/s74.html	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is if the victim/ complainant consents to publication.
New South Wales	Crimes Act 1900, s578A(4) http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s578a.html	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is if the complainant is over 14 at the time of publication and consents.
Northern Territory	Sexual Offences (Evidence and Procurement) Act, s6 http://classic.austlii.edu.au/au/legis/nt/consol_act/soapa333/	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is by court order where the court makes an order to the contrary.
Queensland	Criminal Law (Sexual Offences) Act 1978, s10(2) http://classic.austlii.edu.au/au/legis/qld/consol_act/clso1978/s10_2.html	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is if the victim/ complainant is over the age of 18,

	sol act/cloa1978266/s10.html	has the capacity to consent, and authorises that consent in writing.
South Australia	Evidence Act 1929, s71A(4) http://classic.austlii.edu.au/au/legis/sa/consol_act/ea192980/s71a.html	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is if the victim/ complainant is not a child and consents. (A child is defined as someone under 18).
Tasmania	Evidence Act 2001, s194K(1) http://www5.austlii.edu.au/au/legis/tas/consol_act/ea200180/s194k.html	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is by court order. A court is not to make such an order unless satisfied that it is in the public interest to do so.
Victoria	Judicial Proceedings Reports Act 1958, s4(1B) http://classic.austlii.edu.au/au/legis/vic/consol_act/jpra1958290/s4.html	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is if the victim/ complainant consents.
Western Australia	Evidence Act 1906, s36(1) http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_act/ea190680/s36c.html	Publications are prohibited from publishing the identity or material likely to identify a victim/ complainant. The only exception is if the victim/ complainant is over 18, not incapable by mental impairment, and authorised consent in writing.

The underlying principle justifying the creation of a legislative regime for restraining the free disclosure of information relating to the identity of victims is the protection of the privacy, safety and welfare of the victim. This is why each State and Territory legislature has made such laws. We support this principle.

However, there is a second principle which we say is of equal importance. That is the agency of the victim-survivor; their right to control the telling of their own story. This includes whether, and in what circumstances, their identity is made publicly known. Apart from the social, moral and ethical bases for this, there is a solid legal argument behind it: the fundamental common law principle

that each human being has control over their own body, together with the principle that we are entitled to privacy.

Apart from Tasmania and the Northern Territory, each Australian jurisdiction's relevant law gives agency to the victim to decide if and when they choose to allow their identity to be publicly revealed. Absent their consent, any disclosure remains an offence.

Tasmania and the Northern Territory's current laws proceed on a different basis, with the underpinning rationale being that it is the court, rather than the victim, which is best placed to protect the relevant interests. These interests include the personal interests of the victim, but also a wider conception of the "public interest". It is implicitly assumed that a victim may not know what is best for them. Apart from this, the public interest includes the social consequences of disclosure, such as the assumption that victims and witnesses may be less likely to come forward.

This rationale is, in our submission, misconceived and based on unsupportable assumptions including:

1. That the courts are better placed than survivors to protect the best interest of survivors.

The nature of sexual violence is that it strips a person of power and control. Processes which further strip sexual assault survivors of their agency and control are likely to increase existing trauma by exacerbating feelings of powerlessness and helplessness. By contrast, trauma informed, survivor-centric approaches seek to recognise and restore the agency of victim-survivors. This includes recognising that survivors are the 'expert' in their own lives and that they are best placed to understand their own needs and act accordingly. Processes which centre survivors as being the key actors in their own lives not only recognise the capacity of survivors, but are also potentially healing and restorative. By contrast, processes which outsource decision making to external parties have the potential to re-traumatise survivors by divesting them of agency.

2. That other victim-survivors may be less likely to report to police if they observe survivors being named in public.

In other jurisdictions where survivors are able to be publicly named, the process of naming a survivor only increases the likelihood that others will report to police or counselling services. Karen Willis, the Executive Officer of Rape and Domestic Violence Services Australia notes: “Every time a survivor speaks out - like Saxon Mullins on 4 Corners did - we get a huge spike in calls for support. Some of those people who call us are disclosing for the very first time. Seeing survivors in the community gives them strength to put their hand up, which is a very good thing.” Our service, EROC Australia, has also noted an increase in disclosure and support seeking behaviour following stories where survivors are named in the media and, in many cases, survivors will specifically mention the news story which has prompted them to engage in support seeking behaviour. It is therefore in the public interest for survivors to be named, providing they fully consent. We further note that, based on national data, Tasmanian women are currently far less likely to report sexual assault to authorities compared to their mainland counterparts, despite experiencing sexual assault at a rate commensurate with their mainland counterparts. Australian Bureau of Statistics data shows that in 2016, 2100 women were sexually assaulted in Tasmania but only 113 sexual assaults were reported to police in that period. Further data shows that 37 Tasmanians per 100,000 reported sexual assaults to police in 2017, versus the weighted national average of 99.9. This was despite ABS figures showing that women experienced the crime at a rate on par with other jurisdictions. Tasmanian sexual assault survivors are statistically the most reluctant to report to police of any group in the country. There may be several reasons for this and any initiative which may lead to increased reporting should be considered.

3. When survivors can be named journalists are likely to coerce them and exploit their stories.

EROC Australia shares this concern. However, we note that the ‘solution’ of ‘gagging’ all survivors en masse (unless they obtain a court order) is a blunt and unsophisticated reaction to a sensitive issue which requires a nuanced response.

There is no real basis for arguing that the victim of a sexual crime should not have the free exercise of choice over whether or not they will be publicly identified. The key question is that of control, which the victim can exercise by way of the granting or withholding of consent. The present law assumes that

that control is better placed in the hands of a Supreme Court judge, which reflects an outdated, paternalistic view which should no longer be allowed to guide public policy.

The hypothetical conduct of journalists and editors should be dealt with separately through enhanced training and support of undergraduate journalism students, workplace training, and guidelines which govern best practice reporting. We address this issue further in our recommendations.

RECOGNISING THE IMPACT OF S194K ON VICTIM-SURVIVORS

While many sexual assault survivors may not wish to waive their right to anonymity - and this should always remain their choice - for those who do, the process of applying for a court order has been highly problematic. EROC Australia has now worked with three sexual assault survivors who have attempted or completed this process including Steven Fisher, Jane Doe and a gang rape survivor from Burnie, known in media as Leia* (see case studies).

Having worked closely with these three survivors, it has been noted that the process of applying for a court order so that a survivor can be named:

- can exacerbate underlying trauma by further stripping the survivor of agency and control over their own story and voice;
- subjects the victim-survivor to an additional legal process which can increase stress unnecessarily;
- is time consuming and costly. Even in cases where media outlets are willing to cover the application fee and legal costs, there are often additional out of pocket expenses for each survivor;
- can put survivors who can't afford their own court costs and legal costs at the mercy of the media outlets which are willing to cover those costs.

That is, while the law supposedly exists to shield survivors from media exploitation, the nature of the law means that in practice, survivors who are reliant on media outlets to cover their court costs to obtain a court order may then feel beholden to that media outlet to either a) provide their story as an exclusive or b) provide their story after an order is granted, regardless of whether they have changed their mind or it is no longer in their best interests to do so.

Survivors who are not able to cover their own court costs and who are reliant on media outlets to do so, may also then be limited to speaking to those outlets which are willing and/ or able to cover the costs. In practice, this means that

rather than making independent choices in accordance with their own desires or best interests, survivors' choices are informed and influenced by external factors, such as media budgetary constraints and editorial appetite to support a particular story.

Survivors whose stories are less sensational may find that outlets are not willing to cover their costs. Survivors may also find that only large, commercial networks have the necessary budgets to cover costs. Not only does this influence and limit an individual survivor's choices, but in practice it also means that only highly sensational stories which will rate well are likely to attract media backing. In turn this can distort the range of survivor voices heard in the public domain, the types of stories about sexual assault the public is exposed to, and the types of outlets they are likely to hear those stories through. Put simply, sensational 'stranger danger' rape cases, or cases involving victims who fit a particular mold which deems them 'attractive talent' are more likely to be financially supported by media compared to those stories which may diverge from existing media stereotypes. Unfortunately, this may further entrench publicly held clichés about sexual assault, and further erase from view the experiences of survivors from minority groups (for example, LGBTQI people, Indigenous people, people with a disability or older people).

Paradoxically then, rather than protecting survivors from media exploitation, the way s194K operates in practice, is that it places the survivor at the mercy of media. This in turn only exacerbates the power imbalance between the media outlet and the survivor.

3. DISCUSSION OF ALTERNATE APPROACHES

The jurisdictions vary in their management of this issue, in relation to both the age at which consent can be given and whether or not it is required to be in writing.

The question of consequential disclosure – that is, where disclosure by one victim of their own identity may lead to the identification of one or more other victims of the same offences, where those other victims have not consented – also must be addressed.

None of the current laws contemplates self-publication (as opposed to disclosure to the media) as a distinct possibility, and we address this as well.

AGE

Victoria and the Australian Capital Territory are the only jurisdictions which place no minimum age on the victim's consent. This is problematic, as it will inevitably raise the question of whether a victim is legally capable of giving that consent.

People under 18 are incapable by law of entering into contracts, including contracts of consent or waiver. It's difficult to see why this principle should not extend to a consent of this gravity.

Some of the laws specify that the victim must have legal capacity, which should be assumed anyway. For example, a person who is under a guardianship order because of incapacity cannot give effective consent.

Any age limit will be arbitrary, however, many laws do draw such lines and it is necessary in our view to stipulate one in this context. The appropriate minimum

should be an age at which it can be reasonably assumed that a person is able to make an independent, informed and rational decision, having regard to their own best interests.

We consider the minimum age of 14 in the NSW law to be too young. There are good arguments for a minimum age of 16, however we recognise that an age of 18 also has a rational basis. Our submission is that, on balance, it would be appropriate for an amended Tasmanian law to stipulate a minimum age for consent of 18 years.

The law should also specify that the person must not be incapable by reason of mental or physical impairment of giving informed consent, regardless of their age.

FORM OF CONSENT

It is easy to envisage circumstances where a victim may feel pressured and unsure about consenting to the disclosure of their identity. Their attitude to consent may change with circumstances and their emotional state, and the law should be sensitive to this.

In our submission, this should mean that consent must be given in writing (allowing for it to be given by email, text message or other electronic means, provided that the onus of proving that written consent was received should be on the person or entity relying on the exception).

SELF-PUBLICATION

This is an obvious modern reality; victims may choose to identify themselves via social media or other media, rather than through a third party publisher such as a media organisation. The law should provide that a victim can do so at any time, as a separate exception.

CONSEQUENTIAL IDENTIFICATION

In many sexual offence cases, there are more than one victim. If one victim elects to self-identify or consent to the public disclosure of their identity, in

some of these cases this will inevitably, and in other cases will likely, lead to the identities of other victims being disclosed as well.

The principle, in our submission, must be that the agency of each individual victim to prevent the public disclosure of their identity will in all cases be considered paramount. That means that it will take priority over the agency of victims to choose positively to disclose or allow the disclosure of their own identities.

In simple terms, in the hypothetical situation of two siblings who have been victims of sexual offences by a family member, if one of the siblings wishes to consent to being identified but the other does not, then the first sibling will be prevented by law from disclosing their own identity and their consent will be ineffective, if that would lead or be likely to lead to the disclosure of the second sibling's identity as well.

4. MODEL LAW

We propose the following model as the basis for amendment of section 194K. Set out below are the elements of the model law we propose.

1. It is an offence for a person to publish^[1] any matter which identifies the complainant in sexual offence proceedings^[2] or which is likely to lead directly or indirectly to the identification of the complainant.[3]
2. The offence provision does not apply to a publication made with the consent of the complainant, where:
 - (a) at the time of giving consent, the complainant is over the age of 18 years and is not incapable, by reason of mental or physical impairment, of giving informed consent; and
 - (b) the consent is given in writing^[4]; and
 - (c) the identification of the complainant would not, and would not be likely to, lead directly or indirectly to the identification of another person who is the complainant or alleged victim in the same or separate sexual offence proceedings, unless that other person has also given their consent in accordance with this section; and
3. The offence provision does not apply to a publication made by the complainant:
 - (a) without the intervention or technical assistance of any other person; and
 - (b) where the publication would not, and would not be likely to, lead directly or indirectly to the identification of another person who is the complainant or alleged victim in the same or separate sexual offence proceedings, unless that other person has also given their consent in accordance with this section.

[1] “publish” includes broadcasting or disseminating by electronic means such as the internet.

[2] “sexual offence proceedings” should be defined by reference to the specific offence provisions in Tasmania’s criminal law statute and should include all sexual offences.

[3] This is intended to also prevent a victim from publishing their own identity if doing so would be likely to lead to the identification of another victim who has not consented.

[4] Including by email, text or other electronic means, provided that the onus of proving that consent was obtained is on the party relying on the exception.

5. FURTHER RECOMMENDATIONS

To support the introduction of law reform, EROC Australia notes that journalists and others will likely require additional resourcing and training to facilitate a smooth transition. We recommend the following:

1. An online hub for survivors which includes freely available resources aimed at survivors who are contemplating doing media.

Survivors who are considering doing media of any form - regardless of whether they intend to be named - may require support and assistance in navigating media. Information which demystifies the media process and which empowers survivors to know their rights when working with media would be of tremendous assistance.

In addition to information which explains a survivor's rights and options, survivors also require information on topics such as:

- what are the pros and cons of being anonymous vs named
- what are the pros and cons of different media forms (print, TV, radio etc)
- what to expect during an interview
- what happens after a media interview (fact checking/ right of reply etc)
- how to prepare before a story comes out (ensuring safety, putting supports in place, preparing others including family/ friends, safeguarding social media, understanding why stories get held over etc)
- what to expect after a story comes out (coping with the emotional 'rollercoaster', maintaining healthy boundaries with others, accessing support, triaging disclosures etc).

Resources aimed at survivors must be developed in consultation with experts who have direct experience working with survivors and who also have direct knowledge and experience of journalistic processes and working in media. EROC Australia recommends that the Attorney General's office provide funding for an organisation with demonstrated expertise (such as Our Watch, Beyond Abuse or EROC Australia) to develop these resources.

2. Newsroom training for journalists and editors on how to report ethically, safely and responsibly on sexual assault

As previously noted, EROC Australia recognises the potential harm which can be caused to the survivor community by irresponsible reporting. This may occur regardless of whether a survivor is named. To assist journalists and editors to report ethically, safely and responsibly on sexual assault, EROC Australia recommends funding be provided to an organisation with demonstrated expertise (such as Our Watch, Beyond Abuse or EROC Australia) to develop and deliver training modules in newsrooms. This training should cover topics including but not limited to: drivers of sexual assault and myths around sexual assault; interview techniques when working with sexual assault survivors; best practice reporting (including image selection; language selection; headlines etc); vicarious trauma for journalists; how effective reporting can support and shape community attitudes and drive positive social change.

We note the media was identified in the *National Plan to Reduce Violence Against Women and their Children 2010-2022* and its successive action plans as a key site for primary prevention due to its potential influence on public understandings of violence against women. News media in particular has been identified as a priority area for primary prevention, as it shapes public discourse by reporting on current events and providing a framework for their interpretation. News reporting can also foster better public understanding of the issue of violence against women as well as challenge its acceptance within society.

3. Training for undergraduate journalism students

To further support young journalists to report ethically and appropriately on sexual assault, we recommend that undergraduate (and potentially postgraduate) journalism degrees incorporate specific information on how to interview sexual assault survivors and report on sexual assault and abuse in ethical, safe and respectful ways, if they do not already do so. We note that in partnership with Associate Professor Margaret Simons, the DART Centre and the Domestic Violence Resource Centre, Our Watch have recently developed a suite of curriculum materials aimed at students studying journalism. The university curriculum provides trainee journalists with best-practice reporting of violence against women. The curriculum material has been designed for use in the wide

variety of ways in which journalism skills are taught in Australian tertiary institutions.

4. 'Explainer' fact sheets for other stakeholders

To further support law reform, we recommend that the Attorney General's office develop a fact-sheet to explain the law reform to all relevant stakeholders.

6. SURVIVOR VOICES: IN THEIR WORDS

In any process which impacts on sexual assault survivors, survivors should be consulted and their voices and concerns listened to. Here we present the views and voices of sexual assault survivors in Tasmania. We also include the voices and perspectives of other Australian sexual assault survivors who have spoken to media under their real names, to reflect their experiences.

STEVEN FISHER, TASMANIA



“When I was told by the DPP that when my abuser was sentenced I would not be able to be identified as one of his victims I was horrified. I had spent three long years lobbying the police to arrest this man and had spoken out in the media countless times to try to bring more victims forward. I was asked by police to find more victims as the investigating detective did not believe the four victims that had come forward at the time were enough so was told to “go out publicly and use your profile to bring more people forward, as I need 12”. As you can imagine I was stunned that four was not enough however due to some brilliant reporting by the media and me identifying myself as a victim of sex

abuse by this priest called Garth Stephen Hawkins (aka Robin Goodfellow) I again did more stories with the media and eventually nine men came forward. The fact that police were utilising myself to bring other people forward was quite disturbing however due to the fantastic, responsible media coverage it worked. I was proud it worked and looking forward to my day in court. I was

especially looking forward to sitting down with an incredible Journalist from the ABC and telling my story in detail, in an educational way to help other people understand how paedophiles operate.

Then I received the call from the DPP informing me that once Hawkins was sentenced I would not be allowed to speak out and publicly identify him as my abuser. In 2001 a law had been introduced and I wasn't going to be allowed to speak anymore. The things that went through my mind were incredible. I was distraught beyond belief. It was like my world came crashing down as it was so important to me to look into that camera and say my piece knowing everyone would know who I was talking about.

I had learned enough about the way the media works and especially how audiences relate to a story to know that the impact of me speaking out in the future would be greatly diminished if I couldn't be identified. Think about the difference between those two messages and the power they hold....

“Steven Fisher, anti-abuse advocate today said that mandatory sentencing should be considered” compared to: “Steven Fisher, victim of notorious paedophile Garth Stephen Hawkins says that mandatory sentencing should be considered”.

Those two statements are like chalk and cheese when it comes to the power they hold and especially grabbing the audience's attention. I knew that, and I felt robbed of my right to further help and educate other people. I felt the power that I had slowly developed would be instantly taken away. I was crushed. I was angry at the system and I felt that once again the system was protecting the abuser, not me. The DPP explained to me why the victim gag law was brought in and agreed with it in certain circumstances. The DPP then dropped another bombshell. I could try to seek a court order. That was my only option. They were honest and told me one had never been granted in Tasmania. My stomach dropped and I nearly cried. Then they also advised that after the fees and lawyers charges it would cost as much as \$10,000. I felt deflated and further abused by the system.

I then rang my contact at the ABC and explained things to her. She was shocked. But she also had a plan. She informed me she would meet with her boss and see if she could convince him to pay the filing and lawyer's fees. She said it was a longshot but he just might be swayed to risk the \$10,000. Then began a whirlwind of emotions I have never experienced all at once. Hope, anxiety, sadness, to name but a few.

I was informed by the ABC approximately three days later that they would be willing to pay the cost. I was elated! Until, that was, we went through what it was we would need to do to be successful. We had to prove that it would be “in the public interest”. So began a whirlwind of meetings with lawyers, doing affidavits, and basically reliving in my mind the whole story again. I was exhausted and was feeling more and more that I was losing the strength and courage I had built up over the years. I was finding it hard to understand why the system that I thought was in place to protect me was now basically re-traumatising me.

Then came the day of the hearing. I did not sleep at all the night before. I did not know whether the magistrate would make a decision on the day or reserve his decision which would mean more stress and waiting. Then finally a decision was made! It was granted! The elation and relief I felt was incredible. I could do all the things I needed to do to help my healing process and help others.

This was a great outcome but one I hope no other survivor ever has to go through. The time has come to change law S194K. But I believe there needs to be provisions as outlined below.

- I believe the age of consent should be 18 years of age.
- I believe consent needs to be given in writing (including electronic writing such as text message/ email)
- I believe the person must have the capacity to consent
- I believe that the law should also consider 'self-publication' as a distinct possibility given these times of Social Media

'JANE DOE', TASMANIA



Over two years ago I made the decision that I wanted to waive my right to anonymity and speak out publicly in the interest of raising awareness and improving the public's understanding of complex issues like grooming. Under Tasmanian law, I cannot be identified as the victim of a

sexual offence unless the court orders otherwise. I have recently undertaken this process. It has been time consuming, expensive and stressful. I have had financial assistance and other support in doing this but I am aware that not all survivors have those means or the support of media organisations or groups such as EROC and Marque Lawyers.

My inability to speak up until now has also impeded my ability to perform other work I am passionate about. Since May 2016, I have worked on a voluntary basis as an advocate for a not for-profit organisation (Beyond Abuse) that guides survivors of child abuse through the complex systems they encounter when trying to bring their abuser to justice or receive compensation. Through my advocacy, I have assisted other survivors of sexual abuse who do not have access to adequate support or platforms through which to make their voices heard. It has been painfully ironic that while I support other survivors to find their voice, I have been denied my own. I am well aware that being publicly identified comes at the inherent risk of slander and humiliation, but such outcomes could never outweigh its potential for widespread positive change. I believe a thorough, honest and dignified public discussion of my case wherein I am able to be named and thereby humanised, would present a pivotal opportunity to advance the discourse, and enable me to continue my work as an advocate for survivors of sexual abuse.

Indeed, if for no other reason, Section 194K should be amended on the basis that it perpetuates inequality. For protective purposes or otherwise, the oppressive component by which victims are criminalized for identifying themselves publicly but perpetrators are not, is simply unjust. Survivors should have the right to publicly speak about their experiences, whether they choose to exercise it or not.

For me, the motivation for sharing my story publicly has less to do with vindication or recovery than a desire to spread awareness, information, and ultimately, hope. As I see it, every story, by its unique circumstances, has invaluable educative potential. When I was 15, I was groomed and repeatedly molested and raped by my 58- year-old high school maths teacher, Nicolaas Ockert Bester. Although he was convicted of these crimes, he only served 22 months in jail. I am now 24, and as I have gotten older, the more cognisant I've become of the disturbing insidiousness of what happened.

The only qualification for true understanding is experience. Sexual abuse survivors inherently possess the most astute, unparalleled insights into crimes of this nature; how perpetrators operate, and the effects of trauma.

The obvious goal is to completely eradicate sexual violence, but this is sadly an idealistic and unlikely reality. What we can do, however, is continue to build a safe, accepting environment for victims and encourage widespread cognisance of their struggles. In any given case, between a survivor and the general public, we should aim to foster mutual respect and an ability to relate to the other wherever possible. We are in need of survivors who are ready to be completely open, and prepared to have tough discussions in the pursuit of greater understanding. I am one such survivor.

Yet so long as victims remain in silence while perpetrators can speak, the cycle of abuse will inevitably continue. Characteristically disposed to manipulation and abuse of power/influence, sexual offenders capitalize on the silence of survivors. The knowledge that their victims will be unable to defend themselves publicly, reinforces the confidence and security of predators in the implementation of their crimes. What's more, affirmed by society's tendency to doubt and even blame victims, predators often forewarn their targets that public identification will lead to ostracism, in order to further isolate and intimidate those victims into submission.

In the event that a victim does report an offender to police, under the current law, it is the abuser who becomes the focus on the public platform in the aftermath. The media often publish pictures of their faces, list their credentials and achievements, and offer humanizing backstory. Thriving off attention, negative or otherwise, the abuser can then use their newfound platform to deny responsibility, offer a profusion of excuses and beg sympathy. All the while their gagged victims are reduced to nondescript pronouns. In the absence of a face, name, and right of reply, survivors of abuse are forced to endure further degradation and debasement. And thus Section 194K guarantees the prolonged victimization of victims.

The internalization of traumatic memories, shame and guilt has the same destructive potential as enduring the traumas themselves. Truly, it can take the

better part of a lifetime for even survivors themselves to make sense of their personal experiences. It wasn't until almost seven years after coming forward that I thought to learn more about the various calculated stages of grooming.

Over the last nine years that I have been processing and privately discussing my own experiences, it has become disturbingly apparent that there are large gaps in our collective comprehension of sex crimes. For example, despite a large number of cases having already been covered by the media, there remains a frightening lack of understanding within society of the layered complexities of sexual and psychological violence. For instance, not nearly enough is known about the typical personality profiles of predators; how they operate; nor the processes by which they carefully select, condition and manipulate their victims, as well as their victims' friends and family members.

Analysing, distilling and discussing the details of abuse are necessary steps in the ongoing healing process for both victims and the wider community. When we band together as a community in the pursuit of progress, we bolster both individual and collective strength. The upshot of this is an increased likelihood of victims to speak up, knowing they are backed by their peers.

Beyond its potential to further our understanding of abuse as an isolated issue, I believe this discourse has a greater relevance. The collective elements of sexual violence present a microcosm of larger scale abuses of power. Drawing from my own experience, I have noticed many parallels between the manipulation tactics employed by sexual predators and the unethical practices of powerful institutions. I am hopeful that the current trend of publicly exposing and holding to task individual predators will not only continue, but that the lessons we learn in the process are eventually applied in a broader context. We have a long way to go in undoing systemic injustices.

Amending Section 194K is a good place to start.

'LEIA', TASMANIA



On Christmas Eve 1993 Leia* was abducted, beaten, held at blade point and gang raped. She subsequently went through three separate trials. Leia later spoke out through [news.com.au](https://www.news.com.au)/ The Mercury and The Project. Because Leia is from Tasmania, she is not able to speak using her real name. Here are her words on why the law should change.

“As one of many rape survivors impacted by this law, I would like to explain the harm the law causes and the reasons why I want to tell my story under my real name.

As rape survivors, we didn't get a choice in what happened to us, but we should get a choice in what we can say about it.

I understand that the law is intended to shield survivors from the impact of being identified, but as an adult and someone that has survived what I have, I believe I should have the choice to use my name without legal ramifications for myself or others.

Without my name or my face, it is not my story, it is just my words, and I am just another number. This is dehumanising in the extreme.

Already my story has been told many times by many people other than me: police, prosecutors, defence barristers, journalists and, most of all, the town gossips.

Burnie is a small place and, in 1993, the story of the 16-year old girl who was gang-raped in a paddock on Christmas Eve quickly got around town. Within hours it was on radio and then in the newspapers. One journalist somehow managed to find out the exact location of the paddock where it happened to me. A part of me was left dead in that paddock that Christmas so I can't tell you what it felt like to flick on the TV one day and see that place again, and another person sharing intimate details about a story that was not hers to share.

I've had to tell my story too, of course. Over and over, in fact. Just never on my own terms.

Through police interviews, counselling sessions and during the multiple trials spanning two years, I was forced to relive every detail of what happened to me. At times, court felt like being raped all over again. I don't think I'll ever forget spending my 18th birthday on the witness stand being drilled with questions and being told I wasn't telling the truth. I still find that one hard to forgive.

Back then in the 1990s, the courts were open and anyone off the street could walk in and sit down and listen — and people did. Small towns can crucify you, and in those days victims were never protected by the courts. The result was that my identity quickly became public knowledge, and my story, public property.

And now I want it to be my property again: my story to tell on my terms.

In total, I've now waited 25 years, and it's been a long, complex process of recovery. There were times when I was younger when I didn't want to talk about what I had been through at all. But as I got older I realised there is healing in talking about and sharing my experience with others.

I'm hoping that telling my story in public under my real name will help other survivors feel at ease to talk about the trauma they have been through too. I want to say to other survivors: You did not ask for this. No person ever asks for it. You will survive. You can get through it with help.

Nor should the topic of sexual assault be taboo and in this day and age no survivor should ever be told that they can't talk about what happened to them.

Yet my lawyers have recently advised me that because of section 194K of the Evidence Act, I am unable to talk to media or write a book about my experiences under my real name. The only exception is if I seek and am granted a court order exempting me from s194K.

This is an expensive process likely to cost several thousand dollars, which is money I don't have. A fundraiser has been started, but in the long term, I believe the law must be changed so that other survivors can also speak out without being financially penalised in the process.

It also seems cruel to me that convicted perpetrators are able to speak, yet the survivors are denied this same right. Are we not allowed our voices and names too, if we choose? When we are forced to talk from the shadows it dilutes our stories and robs us of our ability to connect with others. There is power in being

able to say my name. Not only does it help shatter the stigma to have survivors speak, but there is educational value too in survivors being able to participate in public debates as full public citizens with unique and valuable insights to share.

I have also been advised that the existing law was supposedly put in place to protect people like me from media exploitation and backlash. While there is always a risk in speaking to media, unfortunately the law assumes that I am not able to assess those risks or make decisions in my own best interest, and that that responsibility must be outsourced to the courts.

But on the contrary I have thought about this from all perspectives. I believe that speaking would be healing and I know that if there were any public criticism or backlash against me, that I am strong enough and wise enough to deal with it. In fact I understand the risks better than most, as in a small town, I have already born the backlash of being outed as a sexual assault survivor.

I think about what I have already endured and I know I have the courage to be named. When I was a teenager, I survived being raped, beaten and told I was going to be killed. Going through that and the court cases was the hardest thing I have ever had to do.

The trials were extremely mentally and physically draining and at one stage, it drove me to the point of suicide. But I knew I had to keep going to see it through to the end. I had this drive to prove my truth and when I gave evidence the final time, I remember saying to myself, “I will not cry and I will not break down because they win every time I do and I will not let them win.”

When the court cases were finally over, I thought I could get back to my life, but everything had changed and in a small town, people continue to gossip. There were also reminders everywhere. The driver of the ute I was taken in was never charged with anything because he left the paddock before the rapes took place and agreed to give evidence against the others. Up until just a few years ago, I would see that same man still driving that same ute around town.

Of course the closeness of small towns can provide healing moments too. After the third trial I was working at a local restaurant as a waitress. One night I had served a woman a meal. I took her the bill and she was looking at me oddly and then she said, “Can I hug you? I was on the jury in your court case and I just want to hug you.”

She started crying and I so I hugged her and said, “I’m going to be OK”. I told her that because that’s what I wanted her to walk away with, not what she had seen and heard in court. I didn’t want her to remember the trauma of court, and I

didn't want her to remember me that way. So I told her I was going to be alright.

But the truth was that I didn't know for sure that I was going to be OK. I was on so many medications and still suffering nightmares, flashbacks, panic attacks and other symptoms of trauma.

Christmases in particular were a huge struggle for me in the years after I was raped. But then I became a mother and my life changed forever. Suddenly Christmas wasn't about my pain and suffering anymore. My boys taught me the joy of life again. Over time, I gradually learnt to be present in that moment on that day for myself and my husband and children and whoever shares that day with us.

I sometimes look back at what I went through when I was 16 and wish I could have had someone to reach out to, who knew and understood what I was going through back then. If I had been able to see survivors speaking publicly in the media without shame or stigma back then, it probably would have saved me from a lot of self-destruction and confusion that I've experienced.

If I could speak to other survivors right now I would tell them this: there is a grieving process that survivors go through and it may take some time, but you will get through it. You are not to blame no matter how much you feel you are to blame. Surround yourself with positive people and don't be scared to talk about what you went through. Reach out to those in the community that can help. Take one day at a time and know your journey is an important one.

If I could go back in time and give my younger self a pep talk, I would say: it's OK to be scared and it's OK to be angry but don't stay there too long. Right now you are terrified and confused, but know that it is safe to let people love and support you through this time and the trials you are about to go through. Even though you blame yourself right now and it feels like you always will, you will learn to forgive yourself eventually. In time you will have a beautiful loving family and a life you cherish. So it's OK to have bad days, but just don't stay there too long, little one.

We are survivors, not victims, and at the end of the day we are amazing people. We deserve to be heard."

TARA MOSS, NSW AND BC CANADA



“I believe the laws in Tasmania should come into line with other states, to reflect a survivors’ right to tell her or his own story” says Tara Moss, who is a rape survivor as well as an internationally acclaimed author of 11 books, human rights advocate, model and documentary maker.

“We have the right, as human beings, to have a voice and to tell our stories if we choose to. Gagging survivors, even for the most well-meaning purposes, is hugely

problematic and sends a message that they have no agency, no control over their own stories and their own lives, just as they had no choice in what was done to them.

In Tara’s first non-fiction book, *The Fictional Woman*, she details several cases of sexual harassment and assault she has experienced in her life, including a rape at age 21, committed by a man who offered her a lift after an acting class in Vancouver.

Though she went to police and her assailant later did jail time after several more women came forward with allegations against the same man, it took Tara almost 20 years to publicly tell her story in full.

“Not everyone is in a position to speak out, or at a place in their lives where that is something they can manage or wish to do, but when survivors do speak out it can be immensely important and we should respect that right and listen, and allow them the dignity of a name if they choose to be identified.”

Even before the #MeToo movement, in 2016, Tara published *Speaking Out*, a handbook for women on how to find their voice.

“There has long been a deeply damaging history of silence around issues of sexual assault and abuse. Silence shames the victims or survivors of sexual violence, and it protects the predators. Silence also fuels misunderstanding and myth, perpetuating misconceptions about victims or survivors, and about perpetrators themselves: Who this happens to; who commits these crimes; what sexual assault actually is.

“#MeToo has been a huge moment for making the world face the size of the problem through the voices of survivors.”

“The fact that more survivors are now speaking out is an empowering step for all survivors and for our communities and society as a whole. It also helps those who may not at this moment be in a position to safely talk about their experience by showing them they are not alone, are not to blame, and there is a way forward.

SAXON MULLINS, NSW



“Silencing people is never the right thing to do” says Saxon Mullins whose decision to waive her right to anonymity over her rape led to a review of the consent laws in NSW.

In 2013, Saxon reported to police that she had been raped by Luke Lazarus behind Soho nightclub in Sydney’s Kings Cross. Lazarus was eventually acquitted of the crime on appeal, but the case created significant controversy because the judge found that while Lazarus might not have known it, Saxon did not consent.

Saxon later spoke out on *4 Corners*.

“Early on, my case got a bit of publicity and I felt like I was a silhouette in my own story. My story isn’t about him. I’m the main character in my story and I didn’t get to say anything” says Saxon.

Saxon says that there are also psychological benefits to being able to tell one’s story in public.

“Before I told my story publicly, I always worried about how [new] people [I met] would eventually find out. Speaking out took away the fear of how people would find out and it put the decision in my hands. It was a part of taking ownership of my story.”

“Now I get to be myself without my guard up. I don’t have to relive that moment again and again and again of ‘outing’ myself, and having others realise that I’m the girl at the centre of the Lazarus case.

“Up until then everyone else got to have a say, in stories and in comments and tweets about my case and who I might be.

“Telling people not to speak about their truth is insane” she says.

“Speaking up means I’m not worried about people finding out now. When people can’t speak up because of the law, the harm is that it silences people. It says their voice doesn’t matter.”

Saxon’s decision to speak up led to an inquiry into consent laws in NSW and multiple survivors seeking counselling support.

BRI LEE, QLD



Sexual assault survivor and author of *Eggshell Skull* Bri Lee has also joined the #LetHerSpeak campaign, saying that laws in Australia which prohibit survivors from speaking should “110%” be changed.

In her book, Bri details the many barriers that sexual assault survivors encounter as they speak out through the criminal justice system.

“I can only imagine what it would feel like for an individual to go

through the crime, and then the justice system, and only then be told they don’t have the right to tell their story publicly. It’s a cruel and unusual thing for the state to do to an individual”.

As a sexual assault survivor herself, Bri has first-hand experience of what it means to speak out publicly first through the courts and then through the media.

“There is so much power in someone being able to take control and speak out about their own story.”

“For me, just telling everyone [about my abuse] and getting it out in the open was a really critical step in being able to completely move on from it. Shame can only fester when sexual abuse is a secret.”

“I think the more people are able to share their stories, the more normalised the discussion becomes. Then we might get to the point in society where we not only acknowledge how unfortunately common these crimes are, but how it is also possible to survive and even thrive afterwards.

JANNIKA JACKY, WA



Jannika Jacky was raped on the day of her 18th birthday by someone she thought she could trust. Having lent her college dorm room key to a visiting friend who was staying with her, Jannika found herself unable to get into her room. So a male ‘friend’ at her college at the University of Western Australia invited her to wait in his room. In near freezing conditions, Jannika accepted.

But once alone with Jannika, he raped her.

Three years later she spoke out to the media.

“Being able to speak out is important in reclaiming your story and telling it in the way you experienced it. People often bring their own ingrained cultural assumptions to sexual assault. Telling your story in your own words is a way of addressing the misconceptions that people carry” says Jannika.

“[For me] it was also an affirmation to myself to realise that the shame was not on me, it was on my perpetrator.

Jannika says that concealing survivors’ identities against their wishes doesn’t protect survivors.

“The impact of the law in the Northern Territory and Tasmania is that it silences victims. Sharing your story gives it a face. It humanises the issue and shows how people experience the aftermath of it.

“It’s a form of erasure [to deny people this option]. Erasure is dehumanising. In lots of ways, this law is another form of oppression.

Jannika, who is an Aboriginal woman, says that Indigenous survivors are often invisible within mainstream media depictions of sexual assault survivors and that having more available survivor role models is crucial.

“The issue of visibility is really important. Aboriginal survivors are often presented as victims, not survivors. When you are talking about an already very marginalized community of people, it’s a further form of erasure.

Jannika says that when laws prohibit survivors from full and equitable participation in public discussion, this can create a vacuum which allows non-survivors and outsiders to impose solutions which may not be in the best interest of survivors themselves.

“The cultural and social obstacles that survivors face are both feeding into and sustaining this law. It’s super frustrating and ultimately another form of oppression.

“It took a lot out of me to tell my story, but it was also really quite healing. It was important to tell things as they were, and not allow my perpetrator to get away with his rose tinted version of events.

JOANNA WILLIAMS, VIC



Joanna Williams was 24 when she landed an internship with the Australian Defence Abuse Response Taskforce. Every day for the next two months Joanna would read the psychological impact statements of survivors of abuse within the Australian Armed Forces.

And as she did, bit by bit, she would come to terms with her own rape which had occurred years earlier.

“I knew I had been sexually assaulted as a 20-year-old, but it was only when I read a survivor’s story - which broke down every effect that being raped had on her life - that I realised the impact that that same event had had on my life. When my supervisor found me crying at my computer, I told him that I had just read my story for the first time.

“From that moment on, I knew something had to change. So I started to finally tell the truth to those around me; not just about how I was raped, but also how commonplace sexual assault and harassment were in my life.

Over the next month Joanna disclosed her rape over and over again to dozens of family members and friends.

“After that, I then reported my rape to the police, and threw a ‘rape reporting party’ with the 50 people who I loved the most. I will never forget the look on the bartender’s face when I answered truthfully after he asked what we were celebrating.

But revealing her identity as a rape survivor was far from easy.

“Coming out to my friends and family was hard but coming out to my larger social network was terrifying. But I knew that I wanted to speak out because I wanted others to know they weren’t alone like I had felt. Posting the status that outed me as a survivor on Facebook was one of the scariest moments of my life”.

But when Joanna turned her phone on later that day, the post had received over 200 likes, and her inbox was overflowing with friends disclosing their own assaults. This gave Joanna the support to continue speaking out, and she later posed for a striking portrait as part of the “Red My Lips” campaign which invites members of the public to wear red lipstick for a month to raise awareness about sexual assault and victim blaming. (The photo is also a tribute to the front cover of Tara Moss’s book, *The Fictional Woman*, which Joanna says she drew strength from.)



“I wasn’t nervous as she covered my face in the words that I saw when I looked in the mirror - slut, addict, broken, alone, bad, voiceless, damaged. I think it’s because I knew that once the photo was taken, those feelings would go away – that once I vocalised them they would stop haunting me.

“Months later when the photo was officially shown, I finally felt free from the weight of my rape.

Joanna continued to speak out, later sharing her story in full with news.com.au and Nina Funnell.

“Speaking out allowed me control over how my story ended and it helped me to create a sense of hope for myself, for a future where my experience was no longer ‘normal’. I spoke out under my real name because I wanted to change the story for those who came after me, so that they didn’t feel as abnormal or alone as I had. I also choose to use my name to show others that there was absolutely nothing to be ashamed about with this experience and that being raped isn’t a value judgement on who you are or your behaviours.

“But most importantly for me, it kept me alive.

“It gave me permission to start working through everything that I had ignored and allowed me to feel comfortable with accessing the mental health system. In many ways, speaking out was my healing process, especially since sexual assault support services continue to be over-stretched and underfunded.

Joanna, who works in public health, now runs [“Bits and Bods”](#), an organisation which supports women and gender diverse young people to tell their stories. She has also recently won a Layne Beachley Scholarship for this work.

“There are so many reasons why survivors tell their story. We’re not a homogenous community - each survivor chooses to tell their story for different reasons, as each survivor has a unique story.

Joanna is proud to stand alongside Jane Doe in pushing for law reform.

“This law – like the rest of the sexual assault system - is designed to re-traumatise survivors and it needs to be changed”.

“Not allowing survivors to ‘out’ themselves signals to survivors that we shouldn’t be telling our story to the media, friends, family or even health practitioners; that our mental health doesn’t matter; and that survivors should be ashamed of what someone chooses to do to us.

Joanna says that the existing laws in Tasmania and the Northern Territory are likely to deter survivors from going through the criminal justice system, as the system merely “strips survivors of the ability to control their story, both during

the court case and for the rest of their lives” and that this in turn is likely to cause survivors to live with additional shame, stigma and mental health concerns.

“These laws are highly likely to intensify the high rates of mental ill health that survivors experience, leading to increased rates of self-harm, eating disorders, substance abuse and suicide attempts” says Joanna.

“We need urgent reform. We need to #LetHerSpeak.”

JANE CARO, NSW



In 2017, author and social commentator Jane Caro published “*Unbreakable*”, an edited collection of several sexual assault survivor voices from across Australia.

In a bid to give other women in the book permission to share their own experiences, Jane opened the book with her own traumatic experience of sexual molestation involving a doctor.

“When we put that book together, we offered every woman a chance to write anonymously, and only one choose to and that was only because she still worked in the industry which she was writing about, but otherwise all the women wanted to put a name to their story.

“I think a few of the contributors found it extremely confronting, but all of them felt that writing their story under their own name was a way of taking control of it. When you tell your story, you take it back. It becomes your story: not your perpetrator’s story, *your* story.

“Crafting experiences into stories is also what therapy is all about. It allows you to connect with other women who identify with aspects of your story. We’ve all felt frightened, or violated at some point. Finding that connection with others is what helps you re-enter community. There is a universal kind of experience.”

Earlier this year Jane won a Walkley award in Women’s Leadership for her book *Unbreakable*.

She says that the #MeToo movement has demonstrated the cathartic and healing power of women disclosing sexual abuse without shame, en masse.

“The whole of point of the #MeToo movement is that women are saying to one another you haven’t done anything wrong. You have nothing to be ashamed of. I’ve been there too.”

Jane is fully in support of amending the law in Tasmania and the Northern Territory.

“What’s happening in Tasmania is just so disempowering. Even the act of the courts saying ‘you should be anonymous’ suggests to [victims] that [they have] done something wrong and should have to hide it. That’s totally damaging. If Jane Doe had been the victim of any other crime, you wouldn’t have to hide it.

“Secrecy and silence keeps the world safer for perpetrators. Speaking up and shattering silence makes the world safer for the vulnerable.”

FREYA WILLIS, ACT



Freya Willis was six months into her university degree at the Australian National University (ANU), when she was raped by a fellow university student at a club and societies event. The man was someone she knew and trusted.

“I was much more intoxicated than he was and he separated me from my friends and we went back to a room where we were both staying and that was where it happened.”

Freya first shared her story with her residential college community in 2016, before speaking out to the media in 2017.

“For so long my experience as a survivor was typified by a feeling of disempowerment. I felt like I had lost ownership of my body and my emotions – the only thing I had left was my story.

“Sharing my story was an incredibly empowering experience. It enabled me to reframe this negative experience and use it to make a positive contribution to my community.”

Freya later joined a campaign run by End Rape On Campus Australia to establish the first ever 24/7 sexual assault counselling hotline specifically for survivors in university communities. The campaign was successful in securing \$500,000 in funding from Universities Australia, for Rape and Domestic Violence Services Australia.

Whether talking to a counsellor, the media, or the judicial system, Freya says that it is “vital that survivors have the autonomy to share their story if and when they choose.”

“For me, I saw how sharing my story could help other survivors who felt alone and isolated. For so many survivors, it is through hearing others speak out that they are able to process their own experiences and disclose for the first time and begin the process of recovery. But moreover, sharing my story sparked

important and honest conversations in my community about consent, violence against women, mental health, sex and a range of other issues. Without the voice of survivors, these conversations cannot be productive because an entire class of people are silent”.

“Changing the law is the first step to allowing these support networks to develop and conversations to happen.”

CODIE BELL, ACT



Sexual assault survivor, Codie Bell, is the founder of “Restorative ANU”, a restorative justice group “which explores ways to address harm and violence, outside of the limitations of the criminal justice system.”

Codie established Restorative ANU, after reporting to her university in 2016 that she had been sexually assaulted by a fellow student in 2015. After being passed through multiple sets of hands at the university, Codie spoke out publicly.

“Speaking out made other survivors feel less alone. It also put the shame on to my perpetrator, and the university that chose to ignore it. It meant I didn’t have to be ashamed anymore.

“Owning my story was so important because at the time people were talking about sexual assault in terms of abstract statistics, and I wanted to let people know the human face of the problem. It wasn’t just important that I put a human face to suffering, of course. I also wanted to show people a survivor.

According to Codie, not all rape and sexual assault survivors are the same, and a one-size-fits all criminal justice system does not work for many. Some survivors prefer other avenues of redress and Codie says that having a range options is empowering for survivors.

“What happened to me was horrible, but I am still a young woman like any other. What my perpetrator chose to do doesn’t define me.

“I want to extend that experience to any survivor in Tasmania or the Northern Territory who wants to speak out. I think victims of crimes have a right to identify themselves. Sexual violence, more than other crimes, is an act that takes away the victim’s control over their body and agency over their life. This law only serves to rob a victim of further control over their healing process.

SARAH MONAHAN, FLORIDA



“Writing ‘*Allegedly*’ was the best therapy I could ever have. Going to court doesn’t let you tell your story. It’s so fragmented and distorted” says former *Hey Dad!* child star and sexual abuse survivor, Sarah Monahan.

“Being allowed to tell your truth in your own words is hugely important to healing and recovery.”

“I think survivors in Tasmania should be able to speak because it’s important to put into your own words what happened to you. It’s taking back your truth, your power, and your right as a human to have your own voice.”

In March 2010, Sarah publicly disclosed that she had been sexually abused on the set of *Hey Dad!* by Robert Hughes, the actor who played her on-screen father. The abuse did not happen in Tasmania which is why Sarah could choose to be named in media. The disclosure encouraged other women to come forward.

Hughes was subsequently arrested in London in August 2012. He was extradited to Australia and in April 2014, he was convicted of 10 sexual and indecent assault charges against girls in the 1980’s. Hughes was sentenced to six years jail.

In 2016 Monahan published a book about her experiences.



Scarlett Franks, 25, NSW

Scarlett Franks is a student at the University of Sydney and works in the Faculty of Medicine and Health in qualitative mental health research. She is also a survivor of complex trauma and was gang raped in high school.

Since then, Scarlett has used her experience to campaign for the rights of other survivors.

“I was first motivated to identify publicly as a survivor after an ordeal with NSW Victims Services, which took almost six (traumatising) years to process my claim for compensation. I was inspired to go public by the courage of a young Sydney woman Katrina Keshishian, a survivor who spoke to ABC’s *7.30 Report* in 2014 about her similarly dismal experience with NSW Victims Services and whose activism led to an amendment to reverse the retrospective application of new legislation that significantly reduced compensation awards. Without Katrina’s advocacy, I myself would have received woefully less compensation.

“Survivor’s stories are often told whether they like it or not by people and agencies they cannot control—whether in the criminal justice, healthcare, or welfare systems, the media, or by the offenders themselves. Even when they mean well, other people can disempower a survivor by recounting the violence for their own purposes. Survivors deserve the right to tell their story in their

own words under their own name, if they choose, and reclaim some power over their experience of powerlessness.”

Scarlett has now joined the #LetHerSpeak campaign for law reform arguing that there is therapeutic value and public benefit in survivors being able to tell their own stories on their own terms.

“Telling my story of sexual violence has helped dispel some of the shame that often leads survivors to vacillate between isolation and retraumatising relationships. When I tell my story to others it becomes more coherent when I tell it to myself, and this coherence allows me to be kinder to myself and more discerning in deciding when, how, and to whom I share my history.

“Telling my story has helped me find a community of survivors putting their lived experience to work in understanding, preventing, and healing violence against women and children. This has not only helped give meaning to my personal recovery journey but introduced me to artistic, academic, and vocational opportunities where now I too contribute as a survivor-advocate and survivor-researcher.

“When survivors share their stories, it can not only raise alarms about people or institutions who may be perpetrating or concealing sexual violence but can educate the public about the realities of rape and abuse. Most portrayals of sexual assault in the media, movies, and TV has understandably misled many people about what can reasonably be expected of survivors. For instance, given that traumatic memory is encoded in the brain differently from general experiences, many survivors are left with sensory fragments of what happened to them rather than chronological stories. Not being able to tell a chronological story or recall every detail is normal and common, and yet this is something I learned for the first time only after hearing another survivor speak publicly about it. Survivor-advocates can generate the public support necessary for more survivor-centred policy making. Forcing them to remain anonymous can dehumanise the story, giving people permission to disregard it. Discouraging survivors from speaking publicly reinforces the homogenous stereotypes of survivors that underwrite dangerous myths about rape and abuse.

“Telling my story has given the opportunity to contribute a survivor’s experience to sexual health policy-making with the Australian Association of Adolescent Health (AAAH), Headspace, and Family Planning NSW. I’ve worked with the Victims and Witnesses Court Support Association assisting survivors and witnesses with court appearances. I have given interviews with journalists about the Australian Human Rights Commission’s *Change the Course* report and End Rape on Campus Australia’s *Red Zone Report* on sexual violence in Australian universities. I’ve had the opportunity to attend NASPA’s

Sexual Violence Prevention and Response conferences in the United States and learn from survivor-practitioners and researchers working to address sexual assault in American universities.



(Scarlett now uses her position to help educate on a range of issues which impact on survivors.)

Georgie Burg, VIC



My name is Georgie Burg. Before I waived my right to anonymity, I was known only as ‘Survivor 577’.

When I was 13, an Anglican serial paedophile priest named John Philip Aitchison raped me for the first time. He repeatedly raped me four more times, molesting and abusing me over a period of two years.

It took about 29 years to finally jail him for 9 years (5 non parole), in August 2018.

I waived my right to anonymity not long after sentencing, because if the justice system forced me to name what was done to me, I deserved to say my own name, in public – to be proud and unashamed of who I am. I spoke out to encourage other survivors to come forward with their own stories, to build my identity by myself. To take control of the narrative of my own life, instead of having it written for me.

During the justice process, people speak for you, on your behalf. I was nothing more than a set of initials in a court transcript, but I was tested, held accountable for two days in a remote witness room.

I felt like my dignity and personal autonomy wasn’t viewed as important. I wanted to feel empowered, to leave the shame, silence and terrible isolation of being without an identity behind me. It’s a hugely important step that every survivor should be able to make for themselves. And it was absolutely transformative to my recovery. My life has completely changed since I came forward.

It is a critical aspect of humanity that survivors are allowed to choose what happens in their own lives. The concerns for personal privacy and confidentiality are being made in isolation without survivor engagement. We are seeing this perpetuated by institutions who are trying to keep survivors isolated. It's not in the best interests of survivors. It's in the best interests for cover ups and to protect powerful people.

The missing step here is actually consulting with the survivors concerned, allowing them to decide for themselves what is in their best interests and then respecting and encouraging that decision.

Section 194K of the Evidence Act must be changed – not at some point in the future. Now.

Jane Doe, Stephen Fisher and the other survivors who have challenged this act are societal heroes because they are speaking out and demanding the right to simply have their identity.

If the justice system allows survivors to be brutally examined and cross examined for days when testifying, survivors have earned the right to speak about their abuse on their own terms. They deserve the justice system to support them in this – survivors are made to wait years for these cases to be resolved. We respect and adhere to the processes of justice and the importance of due diligence.

The justice system loses the right to speak for us at the point a sentence is handed down. That is the point where a survivor deserves to set the narrative of their own story.

An example of why it's so important for sexual assault survivors to have their own voices is in *The Book of Messages from the Royal Commission into Institutional Responses to Child Sexual Abuse*, held in the National Library (with copies in every State Library).

In those 1054 survivor messages we can see the cost of enforced silence. I decided to draw from those thoughts; the most valuable resources we have in the country – survivors themselves.

I looked at 135 Messages (over 10% of 1054). In that sample, I noted recurring themes of what happens when survivors are silenced, prevented from speaking, told that their stories have no place in the public eye.

These messages speak of motivations in speaking out. Survivors talk of wanting to prevent further abuses by sharing their own stories. To educate about sexual abuse. They spoke of the need to empower themselves, to give hope and for their own psychological health. More than 80% had multiple themes of all these factors. The remaining 20% referring to the need to have their own identity, to be believed and the liberating effect of what sharing their story did for their lives. They talked about how they felt afterwards.

The Royal Commission itself has volumes of data about the horrific impacts of silencing survivors, drawn from more than 4000 child abuse survivors that chose to step forward in the Commission and speak out. I am one of them – Survivor 577. And I share every one of the feelings that other survivors talk about.

In terms of internal peace, my experience is mirrored by the other survivors in the Book of Messages. Now I can simply say my name, build my identity the way I want to.

It has been profoundly meaningful to the way I interact with society, too.

In honesty, if I had been prevented from speaking out – after 25 years of silence – I would not be alive today. That's how important this is. It is a human right.

The journalists I've worked with have been universally respectful and interested in empowering me. They believe in my potential and want to pass the microphone so I can contribute something to society, so that I'm more than just another sad story of abuse.

I'm doing things that I thought was only for other people. Like sitting on Government committees for Redress and Child Safety to make sure other kids like I was will be safer in the future.

Like taking part in PhD studies to make a difference in tertiary understanding of the impacts of abuse and grooming mechanisms in real life. I'm studying a degree in criminology and encouraging other survivors to find their own voices. I've found that every time I speak out publicly, it creates a space for other survivors to talk openly, without shame, judgement or fear.

Most importantly, since I took control of my own voice – I've actually met other survivors of my perpetrator. I have new brothers and sisters to replace our lost families. I see the difference that speaking out has on them – on other survivors, families and teenagers who tell me they've learned something.

I feel like my life isn't wasted. That perhaps I can lay a piece of pavement to change horrific legislation and laws that not only diminish survivors, but dehumanise those that enforce those laws.

It takes great bravery to speak out publicly. I think the people who make these laws could learn a great deal from the bravery of survivors who testify about the most terrible events that a human can endure.

Because at the moment, what is happening is cowardly and inhuman. Everyone who is involved in making laws, upholding them, administering them have a debt owed to survivors – and your own children, who you claim to love.

Prove it. Be brave like us. Be empowering. Change this legislation. Refuse to allow shame, fear and silencing be perpetuated. Justice needs everyone.

Joining the #LetHerSpeak movement may be the most important thing I ever do. To stand shoulder to shoulder with these great, courageous survivors is one of the biggest privileges of my whole life.

I stand proudly with them. I am survivor 577. My name is Georgie Burg.

#LetHerSpeak.

7. ABOUT THE AUTHORS



NINA FUNNELL is an author, journalist and anti-sexual assault advocate. Across 2017/2018 Nina was shortlisted for four Walkley awards for her reporting on sexual assault in university communities, winning the Our Watch Walkley for Best Journalism Campaign of the Year (2017). She has been awarded the United Nations Media Australia award (2017) and an Australian Human Rights Commission Award (2010). In 2018 she was named one of the most 100 influential women in Australia by Fairfax media and was one of four finalists for NSW Woman of the Year. In 2019, Nina was awarded the inaugural Walkley Freelancer scholarship to assist in a major investigation across 2019.

Nina is currently a director of End Rape On Campus Australia, a member of the Our Watch Media Advisory Group and a board member of Youth Law Australia. Nina is also an ambassador for the Full Stop Foundation and the Hills Women's Sanctuary for women leaving domestic violence. Nina has previously served on the NSW Premier's Council on Preventing Violence Against Women, the board of the NSW Rape Crisis Centre, and the board of Rape and Domestic Violence Services Australia.

Nina is a guest lecturer in the Media and Communications department at the University of Sydney, where she also studied, graduating with first class honors in Media and Communications in 2008. She is the co-author of one nonfiction book (Harper Collins, 2014) and has contributed book chapters to multiple anthologies.

In 2007, Nina was sexually assaulted while travelling home from university. She has since spoken publicly about the assault and uses her platform in media to advocate for the rights of other survivors. Through her advocacy over half a million dollars has been raised to better fund sexual assault support services and her journalism has led to several institutional reviews and police investigations.



MARQUE LAWYERS

Founded by managing partner Michael Bradley and colleagues in 2008, Marque is a Sydney-based commercial law firm with a strong passion for human rights.

Marque engages extensively with cause-based pro bono and social justice work, including assisting refugees and asylum seekers and working directly with advocacy groups and not-for-profits like EROC Australia to support their work.

Marque has worked on many fronts with EROC, including directly supporting victims and providing legal backing for

EROC's advocacy. The firm habitually takes up leading and outspoken positions on issues in which its team believes, such as marriage equality, changing the date of Australia Day and the Me Too movement.

As a firm devoted to equality and diversity (and an 84% female team), the cause of changing all the paradigms around women's right to feel safe is of critical importance to Marque.

It is proud to be lending its expertise and voice to the #LetHerSpeak campaign and in the crafting of this joint submission with EROC Australia.

