



SUBMISSION TO NORTHERN TERRITORY SEXUAL VIOLENCE PREVENTION AND RESPONSE FRAMEWORK

19 AUGUST 2019

Australia's Right to Know coalition of media companies appreciates the opportunity to make this submission to the *Northern Territory Sexual Violence Prevention and Response Framework Discussion Paper* (the Discussion Paper).

Northern Territory law currently prohibits the identification of survivors telling their stories and being identified if they so freely choose. In fact, it is up to the court to make an order to the contrary. This is paternalistic, anachronistic and requires change.

It is imperative that complainants/victims/survivors of sexual violence have the right to consent to being identified if they if they wish, without requiring a court order. This is currently prohibited by section 6 of the *Sexual Offences (Evidence and Procedure) Act 1983 (NT)* (the Act).

We note that the language of the Act prohibits "complainants" from being identified. This does not constrain the prohibition to the timeframe of any legal action, but also applies post that any court process, regardless of the outcome of the court.

Section 6 states:

Publication of complainant's identity prohibited

Subject to section 9, a report made or published concerning an examination of witnesses or a trial shall not reveal the name, address, school or place of employment of a complainant or any other particular likely to lead to the identification of a complainant, unless the court makes an order to the contrary.

We strongly urge that this legislation be amended as soon as possible. We recommend an exemption for consent be added to section 9 of the Act to achieve this purpose.

Specifically we recommend that section 9 of the Act – exempted reports – be amended to add subsection 9(i)(d) as below:

Section 9 – Exempted reports

(1) Sections 6 and 7 do not apply to:

(a) a report made for the purposes of an examination of witnesses or a trial, or of a proceeding on appeal arising from a trial;

(b) a report made verbatim of a judgment or decision delivered in a trial or in a proceeding on appeal arising from a trial and contained in a recognized series of law reports; or

(c) a report made to or on behalf of the Agency primarily responsible for law and the administration of justice, the Director of Public Prosecutions, the Police Force of the Northern Territory or the Agency primarily responsible for health, welfare and community services, for the purposes of the Department, the Director or Police Force to or on behalf of which it is made- ; or

(d) a report made with the consent of the complainant who is an adult at the time of giving consent.

This recommendation is based on the following sound reasoning:

SUPPORTING MATERIAL IN THE DISCUSSION PAPER

In particular we refer to the Discussion Paper to support this recommendation.

The Discussion Paper highlights that:

- sexual assault is a whole of community issue and a community responsibility to address (page 5);
- preventing sexual violence can be approached in the same way other social and health concerns within the community are prevented, especially where they require social and/or behavioural change and where there may be social stigma about the issue like bullying or domestic violence (page 10);
- providing the community with information about sexual violence can enhance efforts to change behaviour that leads to sexual violence, reduce the stigma for people experiencing and potentially affect the conduct of those committing sexual violence (page 10); and
- a range of groups, including the media, have an important role to play in preventing sexual violence (page 11).

IDENTIFICATION OF COMPLAINANTS IN SEXUAL OFFENCE PROCEEDINGS

Northern Territory is out of step with other jurisdictions

The prohibition on identifying victims of sexual offences in the absence of a court order is out of step with the majority of states and territory jurisdictions in Australia. New South Wales, Victoria, South Australia, Western Australia and Australian Capital Territory allow for identification with the victim's consent, with each state applying varying age parameters on such consent.¹ We note that this matter is under active review in Tasmania.

We recommend the Northern Territory join the majority of jurisdictions by permitting the identification of "complainants" who are adults at the time of publication and who want to be identified. We believe that adult victims should have the right to consent to being identified if they if they wish, without requiring a court order.

¹ The ACT and Victoria allow for identification with the victim's consent (*Evidence (Miscellaneous Provisions) Act 1991* (ACT), s. 40 and *Judicial Proceedings Reports Act 1958* (VIC), s.4). In NSW the victim must consent and be at least 14 years of age (*Crimes Act 1900*(NSW), s. 578A. In South Australia and Western Australia the victim must consent and be at least 18 years of age (*Evidence Act 1929* (SA), s. 71A and *Evidence Act 1906* (WA), s. 36C).

Such an approach was reported in the 2013 Tasmania Law Reform Institute Report into Protecting the Anonymity of Victims of Sexual Crimes². The Report says:

[Protective provisions] reflect the notion that victims of sexual assaults are stigmatised by the community and that the complainant is entitled to be shielded from such so-called odium. But there is a compelling argument that the existence of the stigma – because of historical community prejudice against sexual assault victims based on notions of victim blaming – is the problem that needs to be addressed. Arguably, when the complainant consents, there is a strong public interest in publishing their identity as it may help to overcome the shame that seems to attach to sexual assault complainants. Of those respondents to [the Issues Paper] who addressed this question, most were in favour of permitting publication with the victim's consent. As an example, Women's Legal Service Tasmania stated:

*'Victims have no need to be ashamed and should not be kept hidden if this is not their wish. In our practice, many victims of sexual crime feel a strong need to have their story heard, and for others to know what has happened to them.'*³

The Report goes on to cite the NSW case of *R v Al*⁴ which concerned the sexual assault of 18 year old Jessica Loiterton. A taxi driver attacked Ms Loiterton after a night out with friends. The driver – who turned off the car's security camera before sexually assaulting Ms Loiterton twice – was subsequently sentenced to at least eight years in prison. At the start of the trial, Brennan J made orders prohibiting Ms Loiterton from being identified. However, upon the verdict being delivered, *The Daily Telegraph* – with Ms Loiterton's consent – applied for that order to be lifted.

In revoking the order Brennan J noted⁵:

There is a public interest in overcoming what seems to have been the community attitude for many years that victims of sexual assault should be ashamed. That is not the case at all. Although I have not heard submissions on sentence yet I anticipate that when I do sentence the offender I will be making some comment concerning the complete lack of blame which should be attributed to Ms Loiterton and her friends. Victims of robberies are not ashamed, victims of frauds may be embarrassed that they have been duped but their names are still published. Why should a person in Ms Loiterton's position, entirely blameless who has been preyed upon by a taxi driver, feel embarrassed at what happened to her.

There is a public interest in overcoming what remains of community attitudes which suggest that people in Ms Loiterton's position should be ashamed. I am satisfied that far from this being a case where publication is not in the public interest I make a positive finding that it is in the public interest for a victim of sexual assault who consents to her name being published having her name being published. Ms Loiterton should not, by implication, be forced to hide away, embarrassed about what has happened to her. She is entitled to hold her head up high and identify herself as a blameless victim of sexual assault.

As a result, a number of reports appeared in the media identifying Ms Loiterton which gave wide coverage to the issue of sexual assault and not only encouraged other victims to come forward but also a series of law reforms aimed at making court proceedings less onerous on sexual assault victims. Similar reports have also been published in relation to Tegan Wagner and Malika Maddox.

The fact that choosing to be identified remains the exception rather than the rule necessarily indicates that sexual assault victims do not feel unduly pressured to identify themselves.

² http://www.utas.edu.au/data/assets/pdf_file/0005/461768/S194k_Final_05_A4.pdf.

³ Ibid. p 22.

⁴ [2008] NSWDC 318 [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWDC/2008/318.html?stem=0&synonyms=0&query=title\(%22008%20NSWDC%20318%22\)&sm_au=iVV2Tq34jHqD1Njk](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWDC/2008/318.html?stem=0&synonyms=0&query=title(%2022008%20NSWDC%20318%22)&sm_au=iVV2Tq34jHqD1Njk).

⁵ at [6]-[7].

Research

Research continues to show that sexual violence goes unreported in a significant number of cases. Jenny Mouzos and Toni Makkai found⁶ that:

- Only one in ten victims of physical and/or sexual violence by current spouses and one in five victims of physical and/or sexual violence by boyfriends regarded the incident as a crime; and
- Very few of the women surveyed who experienced physical and/or sexual violence had sought assistance from a specialised agency and few had reported the most recent incident to police: *‘almost half of the women who did not report the incident thought that it was too minor to involve the police or judicial authorities.’*

The ability of the media to put a face to surviving and overcoming sexual violence will encourage other victims who might not otherwise have had the courage to do so to come forward and report their abuse.

#LetHerSpeak /#LetMeSpeak

We cannot make this submission without referencing the #LetHerSpeak campaign that draws attention to the issues arising from the prohibition on identification posed by legal prohibitions in the Northern Territory and Tasmania (noting the Tasmanian provision is currently being reviewed). The campaign has included stories by and about sexual assault victims who are able to be identified either because the assaults occurred in other states which allow for consent or, in the case of Grace Tame, because the victim went to onerous extent of obtaining a court order permitting her to identify herself as the victim of a sexual offence. The important role putting their name to their stories had on healing and defying out-of-date perceptions of the crime cannot be understated. The campaign has also included stories about sexual assault victims who want to be identified but cannot be due to prohibitions.

Below are examples of stories in that campaign.

news.com.au, 12 August 2019, [‘Monster hiding in plain sight’, Grace Tame’s ‘repulsive’ schoolgirl sexual abuse ordeal revealed](#)

news.com.au, 15 April 2019, [Gang rape survivor’s surprise donation from the attacker’s cousin](#)

news.com.au, 8 April 2019, [‘He had pure evil in his eyes’: Schoolgirl’s gang rape horror story finally revealed](#)

The Mercury, 8 April 2019, [Talking Point – The survivor should make the call](#)

The Mercury, 7 April 2019, ‘My story to tell, on my terms’ & ‘Survivor’s call: It’s time to change the law’ (attached at **Appendix C**)

The Mercury, 16 November 2018, [Let Her Speak: A flawed law gagging rape and sexual assault victims to be reviewed](#)

news.com.au, 8 November 2018, [Let her speak: Nina Funnell on ridiculous law that needs to be changed](#)

ABC Four Corners program, I Am That Girl

In 2018 the ABC’s Four Corners broadcast *I Am That Girl*, concerning an incident which had led to the trial and acquittal of a man on charges of rape in NSW. In that program the complainant in the proceedings appeared on camera and discussed her experience at length, providing her views on the legal treatment of notion of consent in the case. The program triggered widespread public discussion of the adequacy of existing laws and the NSW Attorney General acknowledged it as an important factor in their decision to commission the NSW Law Reform Commission review of Consent in Relation To Sexual Offences⁷. The fact that the complainant could, under section 578A of the *Crimes Act 1900* (NSW), consent to her identification and appear on camera was

⁶ “Women’s Experiences of Male Violence Findings from the Australian Component of the International Violence Against Women Survey” (IVAWS) at pp 4-5.

⁷ <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/sexual-consent-laws-to-be-reviewed.aspx>

instrumental in exploring the issue in all its nuance and complexity and also permitted the ABC to include interviews with her friends and family without fear of inadvertently identifying her.

Other broadcast stories about alleged sexual assault

Shortly before making this submission, the ABC published a series of stories in which two young female members of the Liberal Party discussed their experience of alleged sexual assault by other members and the Party's handling of their complaints. Both women provided interviews and were identified by name and image.

Those stories have resulted in widespread discussion of the culture within political parties and the Liberal Party has responded by announcing that it is working towards a new code of conduct and dispute resolution process⁸.

Although neither of the women's complaints were the subject of criminal charges at the time of publication, legislation such as section 6 of the *Sexual Offences (Evidence and Procedure) Act 1983* would have made the publication of the stories significantly more difficult had the circumstances been slightly different.

RECOMMENDATION – We recommend that section 9 of the Sexual Offences (Evidence and Procedure) Act 1983 (NT) be amended.

Specifically we recommend adding subsection sub section 9(1)(d) as follows:

Section 9 – Exempted reports

(1) Sections 6 and 7 do not apply to...

...

(d) a report made with the consent of the complainant who is an adult at the time of giving

⁸ <https://www.abc.net.au/news/2019-08-02/liberal-code-of-conduct-bullying-sexual-assault-allegations/11377280>