
Evidence Amendment Bill 2020

Sexual Assault Support Service Inc. (SASS) Submission

February 2020



Sexual
Assault
Support
Service

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SASS submission

Introduction

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers, and deliver a Redress Scheme Support Service to survivors of institutional child sexual abuse.

The range of support options available at SASS includes counselling, crisis support, case management and advocacy. In addition, we provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

SASS welcomes the opportunity to respond to the Evidence Amendment Bill 2020.

Comments

SASS welcomes legislative change in this area to allow adult survivors of sexual violence the choice to identify themselves should they wish to do so.

Regarding subsection (4), we recommend the insertion of an additional provision (4)(e) that requires the person to have the requisite mental/legal capacity to make this decision. We understand that this may be intended to be covered within subsection (4)(c), but we propose that the requirement for a person to have the requisite mental capacity be made more explicit.

We are also concerned that subsection (5) is not sufficiently victim-focused, firstly in that the Court is only required to consult with the victim/witness in deciding whether to make an order or not, and secondly that publication must also be in the public interest. SASS' position is that where a victim wishes to be identified, and the other conditions have been met (ie that the victim has the requisite capacity to make the decision, and any other affected victims or witnesses have also consented), the priority of the Court should be to respect their wishes. The publication of identifying details in cases of other (non-sexual) crimes is not required to be in accordance with public interest, and we feel strongly that this should also be the case with crimes of sexual violence.

We recommend that subsection (5)(a)(i) be revised to read:

(5)(a)(i) has consented to the order, understanding that he or she may be identified if the order is made and information is published in accordance with the order.

SASS feels that the amendment from 'consulted' to 'consented' is vital to carry out the intention of this legislative reform. It is hard to see a situation in which the court would make an order to allow publication of identifying details despite the victim of the crime not consenting.

We also recommend a reversing of the onus in relation to the public interest test, so that subsection (5)(b) is amended to read:

Making such an order does not go against the public interest.

Lastly, we make three further comments we believe necessary to consider in ensuring that the Bill meets its intended aims:

1. The application process for a survivor to gain a court order authorising publication of their name should be user-friendly, transparent and timely. We understand from our clients that it is currently none of these. In our experience survivors of sexual assault have received no information or support throughout the process regarding their right to apply for anonymity to be waived; have not received transparency regarding any decision-making about this; and have had to undergo a lengthy and often costly process in order to exercise this option. One of our clients has described to us their intense frustration with the current process, viewing it as a system set up to protect perpetrators of sexual assault and to maintain the veil of silence surrounding sexual assault in general. We believe that most victims of sexual assault are not even aware that they have a right to apply for an order to allow publication.
2. In applying to waive their right to anonymity, a survivor should not have to provide any justification for why they want to do this.
3. Survivors should be notified of the option to waive their anonymity throughout the criminal justice process by Victims Support Services, Victims of Crime Service and the DPP. Information on this option, and how to apply for it, should be available on the relevant websites of these agencies and in print form.

We hope that the Tasmanian Government will take our views on this matter into account. Please contact us for any further details on this submission.