



# Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020

Bill Brief

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Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second Reading Speech can be found at the Library's Infolink [page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary Documents website](#).

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# Executive summary

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## Background

In November 2016, the Andrews Government announced a review of the state laws relating to suppression orders. A former Supreme Court of Appeal Judge was appointed to undertake a review of the *Open Courts Act 2013* and to consider what improvements could be made. The review was completed in 2017 and recommended that, following an offender's conviction, adult victims of sexual assault or family violence should be able to disclose their identity if they so desired—including in cases where they were abused as a child.

In August 2018, the Victorian Attorney-General introduced the *Open Courts and Other Acts Amendment Bill 2018*. The Bill sought to introduce a new process in the *Judicial Proceedings Reports Act 1958* that would enable courts to make an order lifting the prohibition on publishing the identity of a sexual assault victim, if the victim consented to that information being disclosed. The Bill lapsed at the conclusion of the 58<sup>th</sup> Parliament but, following re-election of the Andrews Government, was subsequently reintroduced in February 2019. The Bill received the Royal Assent in May 2019.

The *Open Courts and Other Acts Amendment Act 2019* came into operation in February 2020. While the new law provided a pathway for victims of sexual offences whose cases were subject to a suppression order to tell their stories, the changes it made to the *Judicial Proceedings Reports Act* meant that it effectively created a requirement for *all* victim-survivors to seek a court order to be able to speak out under their own names.

Victim-survivors were very critical of the newly imposed conditions and expressed concern about the prohibitive cost of accessing a court order and difficulty in navigating the process, including the associated trauma that could arise. The Let Us Speak campaign was subsequently launched in August 2020 in response to the perceived lack of action by the Andrews Government, with the aim of reforming what it labelled a 'gag law'.

In response to the campaign, the Government announced that it would be fast-tracking reforms to enable victim-survivors to speak about their experiences without a court order—a decision that was also informed by recommendations from the Victorian Law Reform Commission in its *Contempt of Court* report.

## The Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020

The Bill was introduced to the Victorian Parliament on 13 October 2020. In the second reading speech, the Attorney-General detailed how the Bill seeks to make it easier for victim-survivors of sexual offences to speak publicly about their experiences and to determine when and how their stories are published. The Bill would do so by amending section 4 of the *Judicial Proceedings Reports Act* to allow for a victim, whether an adult or child, to self-publish identifying details of their experience at any stage during proceedings—so long as they do not identify any other victim who has not consented to being identified.

Under the Bill, an adult victim would be able to give written permission to others—such as to a media outlet—for details of their experience to be published, if they are of decision-making capacity; the publication must also be in accordance with any limits set by the victim. For a child victim, written permission must be accompanied by a supporting statement from a registered medical practitioner or registered psychologist, who considers that the child understands what it means to be identified as a victim of a sexual offence.

The Bill would also enable the court to make an order allowing the details of a victim's experience to be published—a court order is required for an adult victim-survivor who does not have decision-making capacity, for a child without a supporting statement, or when disputes over publication exist. In the case of a victim-survivor, the court could make an order where it has considered the views of any victims likely to be identified; in the case of a deceased victim, this can occur where the court has considered the views of the deceased victim (if known) and the views of family members (but not if that person is also the alleged/convicted offender). When making the order, the court must consider it in the public interest to do so and must not take the views of the alleged/convicted offender into account. It also cannot make an order if it would lead to the publication of a victim's identity without the victim's permission, if that victim is a living adult with decision-making capacity or a child who has made a supporting statement.

Additionally, the Bill would insert a new section to ensure that a person who published or saw published any information likely to identify the victim of a sexual offence between 16 April 1991 and the Bill's enactment, would not be liable for an offence under the Act if the publication was made by the victim themselves, or if the person had permission from the victim at the time to publish that information. The retrospective protection would not apply to past publications where a child victim was identified (even if the child victim authorised it), or where an adult victim did not authorise publication.

### Responses to the Bill

Responses to the Bill have been mixed. The Let Us Speak campaign is satisfied that the Bill restores agency to adult survivors, though it has expressed some concern about the proposed provisions for child survivors. The campaign is especially critical of the provisions relating to deceased victims that prohibit the publication of the victim's identity without a court order. It argues that the Bill should be reversed to permit publication by the families where desired, and for court orders to instead be sought should they wish for the deceased victim's identity to be suppressed. The campaign is also critical that the Bill does not allow a victim-survivor to provide general permission to have their identity published, nor does it take into account the republication of online material.

The Liberal Nationals have also criticised the provisions relating to deceased victims, and argue that the Bill should not proceed until concerns have been addressed and victims' families consulted. The Justice Party supports victim-survivors having control over how and when their identifying details are published, and wants the Bill to get the balance right between allowing victims to speak and protecting those who want to remain anonymous. The Victorian Greens support the Bill.

In general, victim-survivors have welcomed the Bill, particularly the removal of the court order requirement. However, families of deceased victims are deeply critical of the Bill and don't like that they will be forced to seek a court order before being able to publicly identify their loved ones—especially as many have already been speaking about them for some time. Similarly, while the media has welcomed the amendments allowing victim-survivors to share their experiences without need of a court order, a coalition of media organisations has joined together in opposition to the proposed 'gag' on the families of deceased victims.

In contrast, the Director of Public Prosecutions supports the Bill's requirement for families of deceased victims to seek a court order, given that each situation is unique and that families may not always agree on the way forward. The Law Institute of Victoria supports the Bill's safeguards, though it called for ongoing consultation to ensure that the reforms are appropriate. The Victims of Crime Commissioner also believes that the proposed legislation strikes the right balance between allowing victims a voice and protecting others' privacy.

Since the Bill's introduction, the Attorney-General has clarified that it has been the case under Victorian law for decades that families and the media are prohibited from publicly identifying deceased victims of sexual assault and that the Bill does not put additional restrictions in place. The Government has committed to work on a long-term solution, in consultation with families and advocates, to address the complexity of these reforms.

### Other jurisdictions

Victoria is currently the only Australian jurisdiction in which victim-survivors are required to obtain a court order to be able to self-identify in the media. Until recently, similar laws were still in place in the Northern Territory and in Tasmania, although these laws have since been changed.

Provisions vary across jurisdictions. For example, in the Australian Capital Territory, victims of sexual offences can consent to having their identity published in all cases, while victims in New South Wales and South Australia can consent if they are at least 14 years or 18 years old, respectively. In Queensland and Western Australia, victims must be over the age of 18 at the time of publication, provide consent in writing and have the mental capacity to consent; this is the same in the Northern Territory and in Tasmania, although in these two jurisdictions all legal proceedings must first be finalised before publication can occur. Similarly to Victoria, Tasmania is the only other Australian jurisdiction where naming deceased victims of sexual assault without a court order is criminalised.

In all jurisdictions, publication cannot occur if doing so would directly or indirectly identify another victim who has not consented to their identity being published.

# Introduction

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The Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020 was introduced in the Legislative Assembly in October 2020.

The Bill seeks to amend the:

- *Judicial Proceedings Reports Act 1958*, in relation to publishing the identities of sexual assault victims;
- *Victims of Crime Assistance Act 1996*, in relation to the delegation of certain powers;
- *Victims of Crime Commissioner Act 2015*, in relation to the Committee under that Act;
- *Defamation Act 2005* and the *Limitation of Actions Act 1958*, to include further model provisions;
- *Corrections Act 1986*, in relation to certain detention orders and prisoner mail;
- *Forests Act 1958*, to enable specified persons to carry out specified activities in the Fire Rescue Victoria fire district; and the
- *Workplace Injury Rehabilitation and Compensation Act 2013* and the *Accident Compensation Act 1985*, in relation to pre-injury average weekly earnings, and for other purposes.

This Bill Brief looks **exclusively** at the provisions relating to the Judicial Proceedings Reports Act, namely the ability of victim-survivors of sexual offences to self-publish their experiences, to give permission for their identities to be published in the media, or for families to do so following a victim's death. This is due to the considerable interest in this issue within the community and the media, and in recognition that sexual assault and family violence present a significant health and welfare problem in Australia. The Australian Institute of Health and Welfare reports that around one in six women, and one in 25 men, have experienced at least one sexual assault since the age of 15.<sup>1</sup> Similarly, one in six women, and one in 16 men, have experienced physical or sexual violence by a current or previous partner since the age of 15.<sup>2</sup>

The Brief contains several sections. First, it provides the contextual background to the Bill's introduction, including a timeline of recent reports, legislation and events. Next, it considers the Bill itself and the provisions relating to victims of sexual offences and the ability to publish their identities. It then discusses stakeholder responses to the Bill, and concludes with a comparison of the relevant legislation in Australian jurisdictions.

Please note that this paper should not be considered a complete guide to the subject.

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<sup>1</sup> Australian Institute of Health and Welfare (2020) *Sexual assault in Australia*, Canberra, AIHW, p. 1.

<sup>2</sup> Australian Institute of Health and Welfare (2019) *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, AIHW, p. 4.



## Background

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This section provides a brief timeline of recent reports, legislation and events leading to the introduction of the Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020, insofar as it concerns victims of sexual offences.

### Review of the Open Courts Act

In November 2016, the Andrews Government announced it would be reviewing the state laws relating to suppression orders. Former Supreme Court of Appeal Judge, Frank Vincent, was appointed by then-Attorney-General, Martin Pakula, to undertake a Review of the *Open Courts Act 2013* and to ‘consider whether it strikes the right balance between people’s privacy, fair court proceedings and the public’s right to know’.<sup>3</sup>

The Review was completed in 2017 and made 18 recommendations.<sup>4</sup> Following the Review’s publication, the Victorian Government committed to an overhaul of the state’s suppression orders and supported 17 of the 18 recommendations in full or in principle. One recommendation was listed as being under further consideration.<sup>5</sup>

The Review recommended that, following an offender’s conviction, adult victims of sexual assault or family violence should be able to disclose their identity if they so desired—including in cases where they were abused as a child.<sup>6</sup> The Andrews Government supported this recommendation in principle.<sup>7</sup>

### Open Courts and Other Acts Amendment Bill 2018

On 8 August 2018, and in response to several of the recommendations made by the Vincent Review, the Victorian Attorney-General introduced the Open Courts and Other Acts Amendment Bill 2018. Among the proposed amendments were changes to the law to enable victims of sexual or family violence offences to tell their stories.<sup>8</sup>

At that time, under the Open Courts Act, courts could make suppression orders prohibiting the disclosure of a victim’s identity, for the victim’s protection. Similarly, the *Judicial Proceedings Reports Act 1958* provided a statutory prohibition against identifying victims of certain sexual offences. As a result, victims were inadvertently prevented from speaking publicly about their experiences should they wish to, such as through the media.<sup>9</sup>

To address this, the Bill sought to introduce a new process in the Judicial Proceedings Reports Act that would enable courts to make an order lifting the prohibition on publishing the victim’s identity, if the victim consented to that information being disclosed.<sup>10</sup> It also sought to make clear that, where a

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<sup>3</sup> M. Pakula, Attorney-General (2016) *Review of suppression order laws*, media release, 9 November.

<sup>4</sup> Department of Justice and Regulation (date unknown) ‘*Open Courts Act Review*’, Engage Victoria website.

<sup>5</sup> M. Pakula, Attorney-General (2018) *Suppression orders set for major overhaul*, media release, 29 March.

<sup>6</sup> See: Recommendation 15; F. Vincent (2017) *Open Courts Act Review*, prepared for the Victorian Government, p. 11.

<sup>7</sup> Victorian Government (date unknown) *Open Courts Act Review – Table of Recommendations*, pp. 2–3.

<sup>8</sup> M. Pakula, Attorney-General (2018) ‘*Second reading speech: Open Courts and Other Acts Amendment Bill 2018*’ *Debates*, Victoria, Legislative Assembly, 8 August, p. 2682.

<sup>9</sup> *ibid.*

<sup>10</sup> *Open Courts and Other Acts Amendment Bill 2018*, cl 15.

suppression order had been made under the Open Courts Act to protect a victim's identity, victims of sexual or family violence offences could apply to have such an order revoked.<sup>11</sup>

The Bill clarified that these processes would be available to victims over the age of 18 and following the conviction of the offender. It also specified that, in cases where multiple victims were involved, the identity of non-consenting victims could not be disclosed.<sup>12</sup>

The Bill lapsed at the conclusion of the 58<sup>th</sup> Parliament.<sup>13</sup>

## Open Courts and Other Acts Amendment Bill 2019

The Andrews Government was re-elected in November 2018 and the lapsed Bill was subsequently reintroduced, in February 2019. In her second reading speech, Attorney-General Jill Hennessy stated that the reintroduced Bill was in the same form as the 2018 Bill (see above), and represented the first stage of intended reforms to the state's suppression order regime.<sup>14</sup> Ms Hennessy also revealed that the Government had asked the Victorian Law Reform Commission to assist in the development of further reforms.<sup>15</sup>

The Open Courts and Other Acts Amendment Bill 2019 passed both Houses of Parliament, and received the Royal Assent on 7 May 2019.<sup>16</sup> On the Bill's passing, the Attorney-General expressed that 'The laws are designed to enhance public confidence in Victoria's legal system and empower victims to share their stories publicly without fear of breaking the law'.<sup>17</sup>

## Contempt of Court Report

As the Attorney-General had mentioned, a review of the law relating to contempt of court, the Judicial Proceedings Reports Act and the rules around the publication of information was referred to the Victorian Law Reform Commission, in October 2018.<sup>18</sup>

In the Terms of Reference, the Commission was asked, among other things, to consider whether and how that Act should be reformed, including whether the Act, or other legislation, 'should be amended to temporarily restrict the publication of sensitive information in relation to alleged sexual or family violence criminal offences upon the laying of charges'.<sup>19</sup>

The Commission produced a consultation paper in May 2019, calling for submissions on a range of issues, including prohibitions on publication under the Judicial Proceedings Reports Act relating to victims of sexual offences and a victim's ability to speak.<sup>20</sup>

It put forward a number of questions, including:

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<sup>11</sup> *ibid.*, cl 10.

<sup>12</sup> *ibid.*, cl 15.

<sup>13</sup> (date unknown) 'Open Courts and Other Acts Amendment Bill 2018', Victorian Legislation website.

<sup>14</sup> J. Hennessy, Attorney-General (2019) 'Second reading speech: Open Courts and Other Acts Amendment Bill 2019', *Debates*, Victoria, Legislative Assembly, 20 February, p. 423.

<sup>15</sup> *ibid.*

<sup>16</sup> (date unknown) 'Open Courts and Other Acts Amendment Bill 2019', Victorian Legislation website.

<sup>17</sup> J. Hennessy, Attorney-General (2019) *Suppression order overhaul passes Parliament*, media release, 2 May.

<sup>18</sup> Victorian Law Reform Commission (2019) *Contempt of Court: Consultation Paper*, Melbourne, VLRC, p. xii

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*, p. xxiii.

- When should a victim be able to consent to publication of identifying material?
- Should the court's supervision and permission also be required?
- What, if any, special provision should be made for child victims?<sup>21</sup>

The Commission's final report was tabled in the Victorian Parliament on 4 August 2020.<sup>22</sup> In relation to the *Judicial Proceedings Reports Act 1958*, the Commission recommended that:

The law should continue to restrict the publication of material that identifies victims of sexual offences, and increase the maximum penalty for this offence to six months imprisonment ...

Although the identification of victims in sexual offence cases is restricted, victims who wish to tell their story should be able to do so. The law should be amended to make it clear that an adult victim can agree to be identified at any time, including prior to charge, post-charge and/or at trial, *without requiring the court's permission*.<sup>23</sup>

Relatedly, the Commission is currently undertaking a review of the state's laws relating to sexual offences, and how the justice system could improve its response. It is due to report by 31 August 2021.<sup>24</sup>

## Amendment Act comes into operation

The *Open Courts and Other Acts Amendment Act 2019* came into operation on 7 February 2020.<sup>25</sup> While the new law provided a pathway for victims of sexual offences whose cases were subject to a suppression order to tell their stories, the changes it made to the *Judicial Proceedings Reports Act* meant that it effectively created a requirement for *all* victim-survivors to seek a court order to be able to speak out under their own names.<sup>26</sup>

The new laws apply in cases where an offender has been convicted, as well as in cases where charges have been laid against the accused and proceedings are pending.<sup>27</sup> Failure to comply can result in a penalty for individuals of up to \$3,304 and/or up to four months' imprisonment, and up to \$8,261 for a corporation.<sup>28</sup>

The first individuals to be granted a court order to have their identities published were sisters Dassi Erlich, Nicole Meyer and Elly Sapper, who were allegedly sexually abused by their school principal, Malka Leifer.<sup>29</sup>

<sup>21</sup> Victorian Law Reform Commission (2019) *Contempt of Court: Summary of the Consultation Paper*, Melbourne, VLRC, p. 19.

<sup>22</sup> Victorian Law Reform Commission (2020) '[Contempt of Court: Report \(html\)](#)', VLRC website.

<sup>23</sup> Victorian Law Reform Commission (2020) *Contempt of Court*, Melbourne, VLRC, p. xix; emphasis added.

<sup>24</sup> Victorian Law Reform Commission (2020) '[Improving the Response of the Justice System to Sexual Offences: terms of reference](#)', VLRC website.

<sup>25</sup> Victorian Government (2019) *Victoria Government Gazette*, no. s 170, p. 1.

<sup>26</sup> [Judicial Proceedings Reports Act 1958](#), s 4(1CA); R. Burgin, A. Powell & A. Flynn (2020) '[Explainer: why is Victoria fast-tracking reforms to sexual violence 'gag laws' and to what effect?](#)', *The Conversation*, 29 October.

<sup>27</sup> Let Us Speak campaign (date unknown) [Factsheet: Changes to sexual assault media reporting laws in Victoria](#), End Rape On Campus Australia, Marque Lawyers and Rape & Sexual Assault Research & Advocacy initiative, p. 1.

<sup>28</sup> [Judicial Proceedings Reports Act 1958](#), s 4(2). At 1 July 2020, the value of a penalty unit in Victoria is \$165.22; see Department of Justice and Community Safety (2020) '[Penalties and values: Penalty units](#)', DJCS website.

<sup>29</sup> S. Deery (2020) '[Repeal for gag laws](#)', *Herald Sun*, 14 October.

## Victims speak out

Following amendment of the Judicial Proceedings Reports Act, victim-survivors expressed concern about their diminished ability to share their experiences under the new legislation. These concerns included the prohibitive cost of accessing a court order and difficulty in navigating the process, as well as the associated trauma that may arise from the memory of their trial and interaction with the court.<sup>30</sup>

Victim-survivors quoted in the media spoke of the muzzling effect the new laws had on them, with one victim-survivor of clergy abuse expressing that, “First you’re silenced by the abuse, then by the church. Now you’re silenced by our own laws ... Silence is a killer. It means you’ve got no control again”.<sup>31</sup> Similarly, a victim-survivor of family violence sharing her experience of the new law said that the court had asked her to seek the consent of her offender in order for her identity to be revealed: “It gives him all the power. It takes me back to when I was a child I had to shut up and do what he said”.<sup>32</sup>

In April 2020, a member of the media contacted the state’s Attorney-General on a victim-survivor’s behalf, to highlight some of these challenges.<sup>33</sup> Further correspondence was sent to the Attorney-General in following months, detailing the victim-survivor’s experience of navigating the court system under the new laws.<sup>34</sup> On 26 August 2020, and in response to the perceived lack of action by the government, the *Let Us Speak* campaign was launched in Victoria with the aim of reforming what was labelled a ‘gag law’.<sup>35</sup>

The campaign, led by journalist Nina Funnell, is a collaboration between End Rape On Campus Australia, Marque Lawyers, and the Rape & Sexual Assault Research & Advocacy initiative. It has also set up a fundraiser to support its work and to help Victorian survivors cover their court costs.<sup>36</sup> The campaign has assisted around ten victim-survivors to lodge applications for a court order,<sup>37</sup> and a number have been granted so far.<sup>38</sup> At 9 November 2020, the campaign had raised \$71,829.<sup>39</sup>

## Changes announced by the Victorian Government

In response to the Let Us Speak campaign and concerns raised by victim-survivors, the Attorney-General made the following statement:

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<sup>30</sup> See, for example: N. Zivcic (2020) ‘Rape laws in Victoria mean sexual assault victims can’t easily speak out but survivors need their voices back’, *ABC News*, 4 September; A. Cooper & N. Towell (2020) ‘Push for law change allowing sexual assault survivors to self-identify’, *The Age*, 28 October; R. Burgin, A. Powell & A. Flynn (2020) op. cit.; A. Schultz (2020) ‘“Ignorance, incompetence, misinformation”: how did Victoria’s sexual assault laws go backwards?’, *Crikey*, 27 August.

<sup>31</sup> Reported in N. Funnell (2020) ‘#LetUsSpeak: Gerald Ridsdale, Ballarat survivors gagged under new laws’, *Herald Sun*, 27 August.

<sup>32</sup> Reported in N. Funnell (2020) ‘#LetUsSpeak campaign: “Outrageous” demand Victoria Government is making of rape victim’, *News.com.au*, 31 August.

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> N. Funnell (2020) ‘#LetUsSpeak: Victoria blocks sexual assault victims from using real names’, *News.com.au*, 26 August.

<sup>36</sup> Let Us Speak campaign (date unknown) *Factsheet: Changes to sexual assault media reporting laws in Victoria*, op. cit., p. 2.

<sup>37</sup> N. Funnell (2020) ‘#LetUsSpeak: Man sexually assaults, rapes girl, 13, after camping trip’, *News.com.au*, 8 October.

<sup>38</sup> N. Funnell (2020) ‘I have just won the right to speak my own name in public’, *The Australian*, 26 October.

<sup>39</sup> See: <https://www.gofundme.com/f/stop-silencing-survivors>

The changes that took effect in February were about reducing barriers and improving clarity for victims who want to talk about their experiences, not about introducing new restrictions for survivors who want to go public with their story.

I am aware of the concerns raised by victims and advocacy groups regarding the effect of these reforms and have asked the Department of Justice and Community Safety to urgently look at whether further changes are needed to ensure they are effective.<sup>40</sup>

On 28 August 2020, the Government announced that it would be fast-tracking reforms to enable victim-survivors to speak about their experiences without requiring a court order.<sup>41</sup> It committed to introducing those reforms to Parliament by the end of 2020 and said it would be drawing upon recommendations from the Victorian Law Reform Commission, as well as from a series of roundtables with victims to be convened by the Department of Justice and Community Safety in September.<sup>42</sup>

A Bill was subsequently introduced in October 2020.

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<sup>40</sup> The Project (2020) '[Victoria Government Statement And Let Her Speak Fact Sheets](#)', *10Play*, 26 August.

<sup>41</sup> J. Hennessy, Attorney-General (2020) '[Urgent changes to ensure victim-survivors can speak up](#)', media release, 28 August.

<sup>42</sup> *ibid.*

# Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020

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The Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020 was introduced to the Victorian Parliament on 13 October 2020.<sup>43</sup> The Andrews Government stated that the Bill would ‘provide more control to victim-survivors over how, when and in what way their identity and story is published’.<sup>44</sup>

## Second reading speech

The second reading speech was delivered on 14 October 2020 by the Attorney-General, who explained that the Government had ‘listened to victim-survivors, who have movingly and compellingly told us current processes are not working for them’.<sup>45</sup> She expressed that the Bill would ‘make it easier for victim-survivors of sexual offences to speak publicly about their experiences, and control when and how their stories are published by others’.<sup>46</sup>

The speech touched upon the Victorian Law Reform Commission’s *Contempt of Court* report, which had highlighted the shortcomings of the Judicial Proceedings Reports Act and put forward a case for modernisation and reform. Ms Hennessy also acknowledged that the way in which society views and understands sexual offending has changed over time, as has the way in which information is published and distributed.<sup>47</sup>

The Attorney-General asserted that ‘it has become clear that the law is overly complex and does not give sufficient agency to victim-survivors over their stories’, and shared that the Bill would ‘make a range of important changes to better enable victim-survivors to publish their own experiences, and to give permission for others to do so’.<sup>48</sup> She advised that specific legal advice lines had recently been established at the Women’s Legal Service and at Victoria Legal Aid to support victim-survivors who have enquiries about publication.<sup>49</sup>

The Bill is reportedly the first step in the Andrews Government’s planned ‘overhaul’ of the Act.<sup>50</sup>

## Proposed reforms

Essentially, the Bill seeks to amend section 4 of the *Judicial Proceedings Reports Act 1958*, which relates to the prohibition on reporting of names.

First, the Bill would insert new definitions into section 4(1) of the Act, for the terms ‘adult’, ‘child’, ‘court’, ‘decision-making capacity’, ‘permission’ and ‘relevant person’.<sup>51</sup> It also updates the definition

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<sup>43</sup> J. Hennessy, Attorney-General (2020) *Empowering victim-survivors to speak on their terms*, media release, 13 October.

<sup>44</sup> *ibid.*

<sup>45</sup> J. Hennessy, Attorney-General (2020) ‘Second reading speech: Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020’, *Debates*, Victoria, Legislative Assembly, 14 October, p. 2662.

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.*, p. 2665.

<sup>50</sup> *ibid.*, p. 2662.

<sup>51</sup> *Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020*, clause 3(1)(a).

of ‘publish’ to clarify that electronic communication may also mean by social media, and substitutes a new definition of ‘sexual offence’ in line with the meaning given in the *Criminal Procedure Act 2009*.<sup>52</sup>

It would amend section 4(1)(A) of the Act to make clear that an offence applies before court proceedings have begun, during proceedings and once proceedings have completed—regardless of the outcome of those proceedings. The Bill also clarifies that the offence remains in place if the victim dies.<sup>53</sup>

The Bill would create a new section, 4(1BA), which allows for a victim, whether an adult or child, to self-publish identifying details of their experience, regardless of where proceedings are up to—this could be on a victim’s social media, for example. The exception to this, however, is if in publishing those details, the victim would identify any additional victim who has not expressly given permission to be identified.<sup>54</sup>

Under the Bill, an adult victim would be able to give permission to others, such as to a media outlet, for details of their experience to be published, if they are of decision-making capacity and if the permission is given in writing. The publication must also be in accordance with any limits set by the victim—such as, that only their first name be used or that their image be omitted.<sup>55</sup>

Provisions to safeguard child victims include that permission must be accompanied by a supporting statement made by a registered medical practitioner or registered psychologist, who considers that the child understands what it means to be identified as a victim of a sexual offence and the consequences of losing anonymity.<sup>56</sup>

In either case, the publication must not identify any other victim who does not consent to being identified.

Additionally, the Bill would enable the court to make an order allowing details of a victim’s experience to be published:

- **In the case of a victim-survivor:** where it has considered the views of any victims likely to be identified, and considers it in the public interest to do so;
- **In the case of a deceased victim:** where it has considered the views of the deceased victim (if known), the views of family members of the deceased victim (but not if that person is also the alleged/convicted offender), and it considers it in the public interest to do so.<sup>57</sup>

A court order would be required for an adult victim-survivor who does not have decision-making capacity, for a child without a supporting statement, or when disputes over publication exist (such as between multiple victims).<sup>58</sup>

Further, the Bill specifies that the court must not take the views of the alleged/convicted offender into account when making an order, nor can it make an order if doing so would lead to the publication of a victim’s identity without the victim’s permission, if that victim is a living adult with decision-making

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<sup>52</sup> *ibid.*, cl 3(1)(b)–(c).

<sup>53</sup> *ibid.*, cl 3(2)(b).

<sup>54</sup> *ibid.*, cl 3(3).

<sup>55</sup> *ibid.*, proposed subsection (1BB).

<sup>56</sup> *ibid.*, proposed subsection (1BC).

<sup>57</sup> *ibid.*, proposed subsection (1BF).

<sup>58</sup> [Explanatory Memorandum: Justice Legislation Amendment \(Supporting Victims and Other Matters\) Bill 2020](#), p. 6.

capacity or a child who has made a supporting statement.<sup>59</sup> A court could also make an order on its own motion, or on application by a person with a ‘sufficient interest’ who is not the alleged/convicted offender.<sup>60</sup>

Lastly, the Bill would insert new section 4A—*Publication between 16 April 1991 and commencement of this section not an offence in certain circumstances*. The proposed section provides that a person who published or saw published during that timeframe any information likely to identify the victim of a sexual offence, would not be liable for an offence under the Act if the publication was made by the victim themselves, or if the person had permission from the victim at the time to publish that information.<sup>61</sup>

However, the retrospective protection would not apply to past publications where a child victim was identified (even if the child victim authorised it), or where an adult victim did not authorise publication.<sup>62</sup> In any case, any prosecution for an offence under the Act could only occur with the permission of the Director of Public Prosecutions.<sup>63</sup>

## Bill passes Legislative Assembly

The Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020 passed through the Legislative Assembly, without amendment. It was introduced and second-read in the Legislative Council on 29 October 2020.<sup>64</sup>

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<sup>59</sup> [Justice Legislation Amendment \(Supporting Victims and Other Matters\) Bill 2020](#), cl 3(3), proposed subsection (1BG).

<sup>60</sup> *ibid.*, proposed subsection (1BH).

<sup>61</sup> *ibid.*, cl 4.

<sup>62</sup> [Explanatory Memorandum](#), op. cit., p. 8.

<sup>63</sup> [Judicial Proceedings Reports Act 1958](#), s 4(4).

<sup>64</sup> (date unknown) [‘Justice Legislation Amendment \(Supporting Victims and Other Matters\) Bill 2020’](#), Victorian Legislation website.



## Responses to the Bill

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This section contains a brief overview of some responses to the Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020.

### Let Us Speak campaign

The Let Her Speak campaign was started in 2018 by journalist, Nina Funnell, alongside a victim-survivor of sexual assault in Tasmania, who at that time was prevented from being able to self-identify in the media.<sup>65</sup> The campaign aimed to amend the laws in Tasmania and the Northern Territory to allow any victim-survivor over the age of 18 to waive their right to anonymity, if they chose, without risk of prosecution to themselves or to any media outlet that published their story with consent.<sup>66</sup> The campaign was ultimately successful in those jurisdictions (see jurisdictional comparison, below).

The campaign was then initiated in Victoria in August 2020, in response to the amendments made to the Judicial Proceedings Reports Act through the enactment of the *Open Courts and Other Acts Amendment Act 2019*, and was renamed to 'Let Us Speak' in recognition that victim-survivors of all genders had subsequently joined.<sup>67</sup> As mentioned earlier, the Victorian campaign is a collaboration between End Rape on Campus Australia, Marque Lawyers and the Rape & Sexual Assault Research & Advocacy initiative.

In its response to the Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020, the Let Us Speak campaign has said, 'While we support the government's commitment to restoring agency to survivors to make their own choices regarding the publication of their identities, the draft Bill includes several problematic provisions'.<sup>68</sup> The campaign is satisfied that the Bill restores agency to adult survivors, though it expressed concerns about the proposed provisions for survivors under the age of 18—namely, that it is not clear as to why 18 has been determined as the age limit, given that the age of criminal responsibility is 10 and the age of consent is 16—and described the decision to require a medical professional or psychologist to validate a victim's consent as having 'no solid evidentiary basis'.<sup>69</sup>

However, the campaign is most critical of the provisions relating to deceased victims that prohibit the publication of the victim's identity without a court order, which it terms 'extremely problematic'.<sup>70</sup> The campaign states that, up to this point, the law has been unclear on whether the media and others can name deceased victims of sexual assault and that this Bill would explicitly criminalise doing so, in the absence of a court order. In practice, this would mean that a victim-survivor relative of a deceased sexual assault victim, such as a sibling, would also be prevented from self-publishing without a court order if they would indirectly identify the deceased person. Michael Bradley, from the campaign's

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<sup>65</sup> L. Knowles (2019) 'Finally, she can speak', *ABC 7.30*, 12 August.

<sup>66</sup> N. Funnell (2018) 'Let her speak: Shocking reason woman can't tell her sexual assault story', *News.com.au*, 8 November.

<sup>67</sup> Let Us Speak campaign (date unknown) *Factsheet: Changes to sexual assault media reporting laws in Victoria*, op. cit., p. 2.

<sup>68</sup> Let Us Speak campaign (2020) *Response to proposed amendments to Judicial Proceedings Reports Act 1958 (Vic)*, End Rape On Campus Australia, Rape & Sexual Assault Research & Advocacy, and Marque Lawyers, 27 October, p. 1.

<sup>69</sup> *ibid.*, p. 2.

<sup>70</sup> *ibid.*

legal partner, Marque Lawyers, has labelled the change ‘an absolute disaster in the making’ and one that will cause ‘mayhem’ at a practical level.<sup>71</sup>

The Let Us Speak campaign claims that the Bill is ‘essentially replacing one gag-law with another’ and that, while the issue is a fraught one, the provisions ‘have not been well considered and will have unintended negative consequences’.<sup>72</sup> It argues that the Bill should instead take the opposite course where deceased victims are concerned and the prohibition should not apply, as families of deceased victims already have avenues available to them should they wish for publication of the victim’s identity to be suppressed.<sup>73</sup>

Additionally, other criticisms include that the Bill does not allow a victim-survivor to provide general permission to have their identity published, meaning that media outlets must contact the person on each occasion to seek permission—a process that survivors have previously viewed as ‘intrusive and harassing’.<sup>74</sup> The campaign also drew attention to the practicalities of the retrospective/‘amnesty clause’, which does not take into consideration the republication of online material.<sup>75</sup>

## Political parties

The **Liberal-National Opposition** has criticised the Bill, including the provisions relating to deceased victims of sexual assault. The Shadow Attorney-General, Edward O’Donohue, has stated that ‘Labor, in its haste to fix one of its mistakes may have now created another’.<sup>76</sup> The Opposition subsequently moved an amendment in the Legislative Assembly to ‘preserve the legal rights for the families of deceased sexual assault victims to speak publicly about their loved ones, victims’ rights and law reform’.<sup>77</sup>

When that amendment was defeated, the Opposition then introduced a reasoned amendment that sought to defer debate on the Bill until the provisions relating to deceased victims were improved, arguing, ‘This Bill mustn’t pass without these victims’ voices being heard, Attorney-General, delay debate, consult and get it right, we will work with you to achieve this’.<sup>78</sup> The Opposition was adamant that it would seek to maintain the ‘legal status quo’ as far as deceased victims were concerned and, should that not be achieved, then it would be voting against the Bill.<sup>79</sup>

On the Bill’s successful passage through the Lower House, unamended, the Liberal Nationals again voiced their concern, highlighting that numerous relatives of deceased victims opposed the Bill and

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<sup>71</sup> M. Bradley (2020) ‘Victoria’s new bill for murdered rape victims isn’t just wrong, it would cause mayhem’. *Crikey*, 26 October.

<sup>72</sup> Let Us Speak campaign (2020) *Response to proposed amendments to Judicial Proceedings Reports Act 1958 (Vic)*, op. cit., p. 2.

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*, p. 3.

<sup>75</sup> *ibid.*

<sup>76</sup> E. O’Donohue, Shadow Attorney-General (2020) *Labor must address victim gag mess*, media release, 26 October.

<sup>77</sup> E. O’Donohue, Shadow Attorney-General (2020) *Liberal Nationals will move amendment to support victims of crime and their families*, media release, 27 October.

<sup>78</sup> E. O’Donohue, Shadow Attorney-General (2020) *Daniel Andrews must not ignore pleas from victims’ families*, media release, 28 October.

<sup>79</sup> *ibid.*

arguing that it ‘cannot proceed without change and these very real concerns of those who have already suffered so much, being addressed’.<sup>80</sup>

Elsewhere, **Justice Party** MP, Tania Maxwell, stated that ‘It is very important that victim-survivors have control over if, when, or how their identity and details of their suffering are published’.<sup>81</sup> These sentiments were shared by fellow Justice Party MP, Stuart Grimley, who said that he had been contacted by many victim-survivors and hoped that the Government would get the balance right between allowing victims to speak and protecting the privacy of those who wished to remain anonymous.<sup>82</sup> The **Victorian Greens** have indicated that they will be supporting the Bill.<sup>83</sup>

## Victims and their families

Victim-survivors of sexual assault have welcomed the Bill, notably the proposed removal of the requirement to seek a court order to publish their experiences under their own names.<sup>84</sup> However, families of deceased victims have been very critical of the explicit requirement the Bill puts in place that they must first seek a court order before being able to publicly identify their family members—especially as many have already been speaking about them for some time. Currently, ambiguity in the law has been understood by media lawyers as permitting publication of the details of sexual assault cases where the victim has died.<sup>85</sup>

In response to the proposed changes, Chrissie Foster AM, who is an advocate for people impacted by child sexual abuse, stated that the requirement ‘seems unattainable and a great burden to put in the way of victims or supporters who do want to talk about it’, adding that, if the stories of deceased sexual abuse victims had not been told by their families, then numerous inquiries may never have begun in the first place.<sup>86</sup> Others have labelled the provision an ‘absolute violation of the victim’s family members’ civil rights ... a violation of our dignity’,<sup>87</sup> as well as ‘a heartache on all of us who lost our precious ones’.<sup>88</sup> Grace Tame, the victim-survivor at the heart of the original Let Her Speak campaign in Tasmania, has said she finds the Bill to be ‘disgusting’ and ‘unbelievable’, arguing that it further stigmatises sexual assault.<sup>89</sup>

Since the law changed in early 2020, a victim-survivor who has been trying to obtain a court order to speak under her own name has highlighted that, even if this barrier is removed by the new Bill and she no longer needs to seek a court order for herself, she will still not be able to speak publicly. This is because doing so will identify her deceased sister, who was a victim of sexual assault, too. So, to speak

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<sup>80</sup> E. O’Donohue, Shadow Attorney-General (2020) *Statement on the Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020*, media release, 4 November.

<sup>81</sup> Reported in S. Deery (2020) ‘Sex assault victims’ law win’, *Geelong Advertiser*, 14 October.

<sup>82</sup> (2020) ‘Grimley Welcomes #LetUsSpeak law changes’, *Pyrenees Advocate*, 16 October.

<sup>83</sup> T. Read, Victorian Greens (2020) ‘Second reading speech: Justice Legislation Amendment (Supporting Victims and Other Matters) Bill 2020’, *Debates*, Victoria, Legislative Assembly, 29 October, p. 3103.

<sup>84</sup> See, for example, (2020) ‘Chance to speak is the right of victims’, *Riverine Herald*, 19 October; and J. Taylor (2020) ‘Victoria to ‘urgently’ fix law that stops sexual assault survivors speaking out’, *The Guardian*, 28 August.

<sup>85</sup> L. Henriques-Gomes (2020) ‘Families of deceased sexual assault victims would need court order to speak out under Victoria law’, *The Guardian*, 26 October.

<sup>86</sup> N. Funnell (2020) ‘Laws to silence the relatives of murder victims’, *The Australian*, 26 October.

<sup>87</sup> M. Gearin (2020) ‘Victorian law reforms would require rape-murder victim families to apply to court to publicly reveal details’, *ABC News*, 28 October.

<sup>88</sup> *ibid.*

<sup>89</sup> N. Funnell (2020) ‘Disgusting’ law would silence rape survivors’, *The Australian*, 3 November.

openly about her experience, the victim-survivor would need to apply for a court order under the amended law after all—but in her deceased sister’s name instead.<sup>90</sup>

## The media

The Media, Entertainment & Arts Alliance (MEAA), the union for Australia’s journalists, has welcomed the amendments allowing victim-survivors to share their experiences without need of a court order. The Acting Director declared that the amendments ‘remove the silence around sexual assault and the penalties that cruelly punished survivors ... They also remove an impediment that prevented the media from reporting on significant issues in our community that are clearly in the public interest’.<sup>91</sup> However, the MEAA is part of a coalition of media organisations—including the AAP, ABC, News Corp Australia, Nine, SBS, The Guardian and others—who have joined together in opposition to the proposed ‘gag’ on the families of deceased victims.<sup>92</sup> In a joint letter sent to the Government, the media coalition said:

“Many families want the opportunity to speak for their loved ones well after their deaths. Requiring such families to seek a court order in order to give their relative a voice requires them to engage in a costly exercise that must, by necessity, cause unnecessary trauma.”<sup>93</sup>

The coalition argued that the move was unsupported by law and that it would put Victoria at odds with mainland Australian jurisdictions.<sup>94</sup>

## Government statement

In response to criticism raised by the Let Us Speak campaign, the Opposition, victims’ families and the media, the Attorney-General released a statement explaining it was already the case under Victorian law that families and the media were prohibited from publicly identifying deceased victims of sexual assault, and that this prohibition ‘has been in place for decades’.<sup>95</sup>

Ms Hennessy was adamant that no additional restrictions were being put in place and argued that, without the amendments put forward in the Bill, there remained no way to identify a deceased victim of sexual assault legally or safely.<sup>96</sup> The Attorney-General added that this Bill represented an interim measure, with further work to be done on a long-term solution, in consultation with families and advocates, to address the complexity of these reforms.<sup>97</sup>

## Other responses

In a statement, the **Director of Public Prosecutions**, Kerri Judd QC, explained that the Office of Public Prosecutions assists hundreds of victims of sexual offences and their families every year as they navigate the criminal justice process, and that each individual will hold a unique view about how much information should be shared publicly. It is for this reason, she argues, that ‘The default position must be to refrain from publishing until victims and their families have had an opportunity to consider their

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<sup>90</sup> N. Funnell (2020) ‘[Laws to silence the relatives of murder victims](#)’, op. cit.

<sup>91</sup> Media, Entertainment & Arts Alliance (2020) [Sexual assault survivors in Victoria can now tell their stories](#), media release, 13 October.

<sup>92</sup> N. Funnell (2020) ‘[Disgusting’ law would silence rape survivors](#)’, op. cit.

<sup>93</sup> Reported in *ibid.*

<sup>94</sup> *ibid.* In Tasmania, it is currently against the law to name deceased victims of sexual assault without a court order; see: Let Us Speak campaign (2020) [Response to proposed amendments to Judicial Proceedings Reports Act 1958 \(Vic\)](#), op. cit., p. 2.

<sup>95</sup> J. Hennessy, Attorney-General (2020) [Protecting people to speak about sexual assault](#), statement, 28 October.

<sup>96</sup> *ibid.*

<sup>97</sup> *ibid.*

position, give their consent or advise the court of their position'.<sup>98</sup> Further, Ms Judd cautions, this is because once the information has been published in a digital format, it is 'impossible to completely undo the damage'.<sup>99</sup>

The Director made an additional statement agreeing with the Attorney-General's assessment that, currently, the law 'prevents publication likely to lead to the identification of a victim of a sexual offence, including where the victim is deceased' (though they can still be identified as a homicide victim).<sup>100</sup> While she has not pursued enforcement of the legislation against victims and their families—as it was considered not in the public interest to do so—enforcement had been pursued when reporting or anticipated reporting has caused distress to victims and families. As such, Ms Judd concludes that the Bill does not seek to change this position, but instead 'provides mechanisms for victims and families to be able to publish relevant information where they desire to'.<sup>101</sup>

The **Law Institute of Victoria** (LIV) has expressed support for the Bill's safeguards, acknowledging that they were designed to protect the privacy of victims, even after their death. In a statement, LIV asserted that 'Identifying a deceased person as a victim of sexual assault is a complex issue. It is often in these sensitive and distressing circumstances that the need for robust judicial oversight is warranted'.<sup>102</sup> LIV argued that if a victim consented to publication of their identity during their lifetime, that this should continue after death; and, in other cases, the court must take the potentially opposing views of family members into account to ensure that proper consideration occurs before the release of sensitive information.<sup>103</sup> LIV also called for further consultation with the relevant groups, including victims' families and the media, to ensure the reforms were appropriate.

Similar views were shared by the **Victims of Crime Commissioner**, Fiona McCormack, who said that 'In circumstances where a victim has died, there are sensitivities for families that need careful consideration and further consultation is important to fully understand how to both protect victims and allow them to have a voice'.<sup>104</sup> She believes that the proposed legislation 'gets the balance right' in allowing survivors to speak without a court order, and protecting others' privacy.<sup>105</sup>

Scholars within the field of law and criminology have expressed a range of views. For example, in some instances the provisions relating to deceased victims have been called 'sensible' for the protections they provide to victims and families.<sup>106</sup> In other cases, the Bill's 'flaws' have been highlighted—such as that, under the new provisions, deceased victims would only be identified through reference to the crime committed against them or to the perpetrator.<sup>107</sup>

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<sup>98</sup> Office of Public Prosecutions Victoria (2020) *Statement from the Director of Public Prosecutions Kerri Judd QC*, media release, 26 October.

<sup>99</sup> *ibid.*

<sup>100</sup> Office of Public Prosecutions Victoria (2020) *Statement from the Director of Public Prosecutions Kerri Judd QC*, media release, 28 October.

<sup>101</sup> *ibid.*

<sup>102</sup> Law Institute of Victoria (2020) *Victims privacy deserve protection, says Law Institute of Victoria*, media release, 27 October.

<sup>103</sup> *ibid.*

<sup>104</sup> Reported in A. Cooper & N. Towell (2020) *op. cit.*

<sup>105</sup> *ibid.*

<sup>106</sup> G. Barns (2020) 'Sexual assault law change is not the gag order critics claim', *The Age*, 26 October.

<sup>107</sup> R. Burgin, A. Powell & A. Flynn (2020) *op. cit.*

## Jurisdictional comparison

Victoria is currently the only Australian jurisdiction in which victim-survivors are required to obtain a court order to be able to self-identify in the media.<sup>108</sup> Until recently, similar laws were still in place in the Northern Territory and in Tasmania, although these laws have since been changed.

Below is a brief summary of the relevant legislation in each Australian jurisdiction.<sup>109</sup>

Jurisdiction	Relevant legislation	Notes
<b>ACT</b>	<i>Evidence (Miscellaneous Provisions) Act 1991</i>	Under section 74 of the Act, victims of sexual offences can consent to having their identity published in all cases, unless doing so would directly or indirectly identify another victim.
<b>NSW</b>	<i>Crimes Act 1900</i>	Under section 578A of the Act, victims of certain sexual offences can consent to having their identity published if: <ul style="list-style-type: none"> <li>▪ they are 14 years or older at the time of publication; and</li> <li>▪ they do not directly or indirectly identify other victims as a result.</li> </ul>
<b>NT</b>	<i>Sexual Offences (Evidence and Procedure) Act 1983</i>	<p>In November 2019, the Sexual Offences (Evidence and Procedure) Amendment Bill 2019 was introduced to the Legislative Assembly, with the aim of changing the law to allow survivors of sexual assault to share their experiences without risk of prosecution.<sup>110</sup></p> <p>The Bill was referred to the Legislation Scrutiny Committee, which reported in March 2020 and recommended that the Bill be passed, with amendment.<sup>111</sup> The <i>Sexual Offences (Evidence and Procedure) Amendment Act 2020</i> was subsequently passed and came into effect on 29 July 2020.</p> <p>Under the newly amended section 6 of the Principal Act, victims of sexual offences can consent to having their identity published if:</p> <ul style="list-style-type: none"> <li>▪ they are over 18 at the time of publication;</li> <li>▪ they provide written consent;</li> <li>▪ they have the mental capacity to consent;</li> </ul>

<sup>108</sup> N. Funnell (2020) '#LetUsSpeak: Gerald Ridsdale, Ballarat survivors gagged under new laws', op. cit.

<sup>109</sup> This section has been informed by: Let Us Speak campaign (date unknown) *Australian media laws: when can sexual assault survivors consent to be named?*, End Rape On Campus Australia, Marque Lawyers and Rape & Sexual Assault Research & Advocacy initiative; and Tasmania Law Reform Institute (2013) *Protecting the Anonymity of Victims of Sexual Crimes*, Hobart, University of Tasmania, p. 13.

<sup>110</sup> L. Roberts (2019) 'Northern Territory sexual assault survivors will be able to share their stories', *ABC News*, 28 November.

<sup>111</sup> Legislation Scrutiny Committee (2020) *Inquiry into the Sexual Offences (Evidence and Procedure) Amendment Bill 2019*, final report, Darwin, Legislative Assembly of the Northern Territory, March.

Jurisdiction	Relevant legislation	Notes
		<ul style="list-style-type: none"> <li>they do not directly or indirectly identify other victims as a result; and</li> <li>all legal proceedings are finalised, including any appeals.</li> </ul>
QLD	<i>Criminal Law (Sexual Offences) Act 1978</i>	<p>Under section 10 of the Act, victims of sexual offences can consent to having their identity published if:</p> <ul style="list-style-type: none"> <li>they are over 18 at the time of publication;</li> <li>they provide written consent;</li> <li>they have the mental capacity to consent; and</li> <li>they do not directly or indirectly identify other victims as a result.</li> </ul>
SA	<i>Evidence Act 1929</i>	<p>Under section 71A of the Act, victims of sexual offences can consent to having their identity published if:</p> <ul style="list-style-type: none"> <li>they are over 18 at the time of publication; and</li> <li>they do not directly or indirectly identify other victims as a result.</li> </ul>
TAS	<i>Evidence Act 2001</i>	<p>In October 2019, Tasmania’s Attorney-General committed to amending the state’s <i>Evidence Act 2001</i> to enable victims of sexual assault to speak publicly, if they wanted to.<sup>112</sup></p> <p>In March 2020, the Evidence Amendment Bill 2020 was introduced.<sup>113</sup> The Bill successfully passed through the Parliament, and the <i>Evidence Amendment Act 2020</i> came into effect in April 2020.<sup>114</sup></p> <p>Under the newly amended section 194K of the Principal Act, victims can consent to being identified in the media if:</p> <ul style="list-style-type: none"> <li>they are over 18 at the time of publication;</li> <li>they provide written consent;</li> <li>they have the mental capacity to consent;</li> <li>they do not directly or indirectly identify other victims as a result; and</li> <li>all legal proceedings are finalised, including any appeals.</li> </ul> <p>Tasmania is the only other Australian jurisdiction where naming deceased victims of sexual assault without a court order is criminalised.<sup>115</sup></p>

<sup>112</sup> L. Roberts (2019) op. cit.

<sup>113</sup> A. Humphries (2020) ‘Sexual assault survivors in Tasmania win right to speak out publicly’, *ABC News*, 3 March.

<sup>114</sup> Parliament of Tasmania (2020) ‘*Evidence Amendment Bill 2020*’, Parliament of Tasmania website.

<sup>115</sup> Let Us Speak campaign (2020) *Response to proposed amendments to Judicial Proceedings Reports Act 1958 (Vic)*, op. cit., p. 2.

Jurisdiction	Relevant legislation	Notes
<b>WA</b>	<i>Evidence Act 1906</i>	<p>Under section 36C of the Act, victims of sexual offences can consent to having their identity published if:</p> <ul style="list-style-type: none"> <li>▪ they are over 18 at the time of publication;</li> <li>▪ they provide written consent;</li> <li>▪ they have the mental capacity to consent; and</li> <li>▪ they do not directly or indirectly identify other victims as a result.</li> </ul>



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- [Judicial Proceedings Reports Act 1958](#)
- [Justice Legislation Amendment \(Supporting Victims and Other Matters\) Bill 2020](#)
- [Open Courts Act 2013](#)
- [Open Courts and Other Acts Amendment Act 2019](#)
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