

Submission in response to the proposed Community Protection (Offender Reporting) Amendment Bill 2023



Tasmanian Family and Sexual Violence Alliance

Acknowledgements

We acknowledge the Aboriginal and Torres Strait Islander peoples as the Traditional Custodians and first peoples of the lands on which we live, work and play. We would like to acknowledge the ongoing impacts of colonisation and dispossession of the lands on First Nations People and pay our utmost respects to the Elders past and present.

We would also like to acknowledge the power and importance of lived experience in the prevention of sexual violence and express our sincere gratitude to the Tasmanian victim-survivors who gave their time, thoughts and feedback in consultation for the writing of this submission.



About the Tasmanian Family and Sexual Violence Alliance

The Tasmanian Family and Sexual Violence Alliance (FSVA) has emerged to address the need for a coordinated, strategic response to family violence, sexual violence, and child sexual abuse in Tasmania. Key functions and roles of the FSV Alliance include representing specialist services, centering the voices of victim-survivors in policy development, researching best-practice models, facilitating collaboration among service providers, and ensuring an intersectional approach to addressing violence. By doing so, it aims to optimise limited resources, provide comprehensive expert advice to the government, enhance knowledge-sharing among organisations, and incorporate the expertise of specialist organisations into policy development.

The establishment of the FSVA aligns Tasmania with other Australian jurisdictions that have peak bodies for addressing family violence and sexual violence. It offers benefits such as improved coordination, enhanced policy advice, greater opportunities for knowledge exchange, and a more holistic approach to addressing violence. Additionally, the FSVA intends to contribute to preventing and responding to all forms of child sexual abuse, aligning with broader governmental efforts in this area.

The organisations and representatives which make up the Tasmanian Family and Sexual Violence Alliance membership are:

Ex-Officio and Independent Chair: TasCOSS — Adrienne Picone

Steering Committee:

- Engender Equality — Alina Thomas
- Huon Domestic Violence Services — Fiona Barrett
- Laurel House — Kathryn Fordyce
- No to Violence — Lauren Palma
- Sexual Assault Support Service — Sandi Doherty
- Women’s Legal Service Tasmania — Yvette Cehtel
- Yemaya Women’s Support Service — Chris Drew
- Women’s Health Tasmania – Jo Flanagan
- Independent victim-survivor representatives — Nic McBride and Tess Moodie

Introduction

The Tasmanian Family and Sexual Violence Alliance (FSVA) welcomes the opportunity to provide a written submission in response to the proposed Community Protection (Offender Reporting) Amendment Bill 2023, hereby referred to as ‘the Bill,’ which intends to make a range of amendments to the Community Protection Offender Reporting Act 2005 (‘The Act’).

As a collective of organisations that are committed to supporting and advocating for victim-survivors of all forms of family and sexual violence in Tasmania, this submission has been developed in a way that draws on the perspectives and experiences of a range of stakeholders, including Tasmanian victim-survivors of childhood sexual abuse/violence, parents of children who have been subject to child sexual abuse/violence as well as members of the Tasmanian Family and Sexual Violence Alliance.

While the timeline for responding has been limiting, we have done our very best to represent the full diversity of views on the Bill within our stakeholder community and have used direct quotes from stakeholders in this submission where we thought it added value. For the purpose of protecting the privacy and safety of individuals, no names have been used in this submission. While quotes from sector representatives have been attributed to organisations for context, quotes from victim-survivors and parents have been kept entirely anonymous.

Overall, stakeholders are disappointed that the Tasmanian Government did not consult with victim-survivors or sector representatives prior to drafting the bill; and urges the government to redraft the bill in co-development with the sector and with consideration given to the effectiveness of similar models in other jurisdictions.

Consultation Methodology

For the purpose of this submission, the Tasmanian FVSA contracted an external consultant, who was supported by Laurel House, to review the legislation and relevant evidence and facilitate consultations with FVSA members, victim-survivors and parents of children who had been subject to child sexual abuse.

Victim-survivors and parents were recruited through an expression of interest process advertised on social media and via email, and support was provided by Laurel House counsellors and staff with lived-experience.

In total, the consultations included ten victim-survivors, two parents of children who had been subject to sexual violence and one parent of a child who had been convicted of a sexual offence.

While efforts were made to recruit participants of all genders, all registrations were from people who identified as women or gender diverse people; possibly due to the time constraints of the broader consultation.

Consultations were held one-on-one and in small groups via video-conference, utilising a semi-structured interview with open ended questions as prompts.



The Bill misses the mark

While reasons were varied, the sector representatives and victim-survivors whom we consulted with overwhelmingly felt that the proposed Amendment Bill misses the mark in its current form, especially given the recency of the Commission of Inquiry (COI).¹

In particular, participants were frustrated that the Tasmanian Government had prioritised the proposal of a publicly-accessible register of convicted sex-offenders, rather than prioritising and implementing any one of the 191 COI recommendations.²

In the COI report, the creation of a cross-government register of misconduct concerning complaints and concerns about child sexual abuse and related conduct was proposed in recommendation 20.9.³ However, this recommendation was not specific to sex offenders who have been convicted; but rather specified that the register ‘should contain records of substantiated and unsubstantiated matters, including those that did not proceed to investigation.’

Recognising that only a very minimal number of sex-offenders are ever convicted for their actions,⁴ and noting that there is a lack of evidence to suggest that sex-offender registers are effective at reducing the number of offences,⁵ stakeholders in the consultations said that the Tasmanian Government should implement the COI recommendations pertaining to the regulation and prevention of sexual offending, rather than making changes to the community offender register.

[1] Tasmanian Government (2023) ‘Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings,’ Viewed 13 February 2024 <<https://www.commissionofinquiry.tas.gov.au/home>>.

[2] Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings Report (2023) ‘Volume 1 Summary, recommendations and findings.’

[3] Ibid, p. 185.

[4] See e.g. ABS (2022) ‘Sexual Assault – Perpetrators: Sexual assault statistics for offenders proceeded against by police, criminal court outcomes for defendants, and prisoners in adult custody,’ Australian Bureau of Statistics, viewed 12 February 2024 <<https://www.abs.gov.au/articles/sexual-assault-perpetrators>>.

[5] See e.g. Naper, S et al. (2018) ‘Trends and Issues in Crime and Criminal Justice: What impact do public sex offender registries have on community safety?’ Australian Government, Canberra.



Out of the COI 191 recommendations, there were many recommendations which proposed legislation that would improve the prevention of and response to child sexual abuse. For example, recommendation 6.6⁶ calls for the creation of a Child-Related Incident Management Directorate to respond to 'allegations of child sexual abuse and related conduct - in schools, child safety services, out of home care and youth justice;' recommendations 6.11-6.13⁷ propose amendments to teachers registration requirements with respect to the safety of children; and recommendation 8.12 proposes introducing stricter regulations in regard to administering Working With Vulnerable People accreditation.⁸

Additionally, the COI report emphasised the importance of involving victim-survivors and children in any efforts to introduce or amend legislation.

While it is regrettable that the Tasmanian Government did not develop the proposed amendment Bill in consultation or collaboration, it is hoped that this submission will communicate the concerns about the Bill among victim-survivors and the sector, and influence the government to reconsider its implementation.

[6] Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings Report (2023) 'Volume 1 Summary, recommendations and findings.' p. 82.

[7] Ibid, pp. 85-86.

[8] Ibid,' p. 172

Places an onus of responsibility onto parents and carers

In reviews of sex-offender registration schemes from other states, it has been recommended that provisions be made to allow government entities, such as child protection agencies to directly inform parents if an adult they have contact with has been convicted of a sexual offence.⁹

In this context, the responsibility for making parents aware of risks posed by convicted sex offenders is on government agencies; while the responsibility for this awareness in the proposed Bill is on parents/carers.

"It does feel like it's shifting the responsibility to the average person."

– Victim-survivor.

While the ability for parents to access a register of sex-offenders was welcomed, stakeholders were concerned that it may create unintended consequences in contexts such as family court and child protection for parents, particularly mothers, who do not check the register prior to a child experiencing harm.

"I do have concerns about unintended consequences when it comes to child safety and that the concept of being a protective parent usually falls to mothers and that the bar that we set for that behaviour, especially through a child safety lens, is very high and I often see mothers penalised for quote, you know, failing to act protectively when they have been acting as protectively as they possibly can in very difficult situations."

– Solicitor, Women's Legal Services Tasmania.

"if you don't recognise a suspicious behaviour but they are on the register, are you going to be blamed for that as well?"

– Service Manager, Yemaya Women's Support Service.

[9] See e.g. Victorian Law Reform Commission (2012) 'Sex Offender Registration,' Victorian Law Reform Commission, Melbourne. , pp. 134-135 Viewed 21 February 2024 < https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/SOR_Final-Report_Full-text_0.pdf>.

This approach is inconsistent with international best practice. Specifically, the work of David Mandel who indicates that Governments and systems must stop focusing on a mother's protective behaviours and look to the perpetrator's behaviour, and ensure the eyes of the system remain on those perpetrators and behaviours. Perpetrators need to be made responsible for their behaviour. Systems need to stop focusing on how the mother responds to the risk and grapple with the risk.

In the consultations, it was raised that the focus on parental responsibility would likely disproportionately impact already disadvantaged groups of women, such as First Nations women, women with disabilities, and women from low socioeconomic backgrounds who are less likely to trust governments due to having histories of mistreatment and criminalisation from the justice system.¹⁰

Additionally, stakeholders were concerned that, for those parents who do check the register and find out that a person who has contact with their child is a convicted sex offender, the Bill does not include provisions for the justice system to support an intervention, but rather, places the entire onus on parents to remove their child from potential harmful situations, while also being unable to share the information they have obtained.

"I was trying to think of scenarios where it would be useful as a parent and I guess if you have, let's say an ex and the ex gets a new partner. And you're concerned about that partner. That's where it would be useful. That you could find out if that person's on the sex register but then my concern was, well, what the hell happens if you find out they are? Because to me there should be direct and immediate action by the police or judicial system. So that some sort of intervention that that person is never allowed to have a contact with your child. But that doesn't seem to be anywhere in the act."

– Victim-survivor and parent.

[10] See e.g. McCausland, R. and Baldry, E. (2023) "Who does Australia Lock Up? The Social Determinants of Justice", *International Journal for Crime, Justice and Social Democracy*, Vol. 12, no. 3, pp. 37-53. doi: 10.5204/ijcsd.2504; Matthew, W (2011) 'Non-disclosure of violence in Australian Indigenous communities,' *Trends & issues in crime and criminal justice* no. 405. Canberra: Australian Institute of Criminology.

The consultations raised concern that placing emphasis on checking a register of convicted sex offenders to protect the safety of children may create a false sense of security for parents and caregivers. While stakeholders in particular believed that information about convicted sex-offenders should be available to parents, it was stated that parents and caregivers must also be made aware of the risk factors and warning signs of grooming and child sexual abuse as a priority to the prevention of sexual harm against their children.

“We need an awareness campaign.”

– Victim-survivor.

“The focus should be shifted back to what are some of those early warning signs and red flags and where are we not looking.”

- Solicitor, Women’s Legal Services Tasmania.

Given that research suggests that only a very small proportion of sex-offenders are ever convicted¹¹ and that many victim-survivors are dismissed or not believed when they report through institutional systems,¹² stakeholders warned against relying on the absence of a name on a register to determine an individual as a safe person to be around their child or children.

“The register should not replace parents’ gut feeling.”

– Victim-survivor.

“Caregiver awareness of grooming and protective behaviours is more important for protecting children than their access to a register. Knowing someone is not on the register doesn’t give the green light that you can leave them with your child.”

- CEO, Sexual Assault Support Service.

[11] See e.g. ABS (2022) ‘Sexual Assault – Perpetrators: Sexual assault statistics for offenders proceeded against by police, criminal court outcomes for defendants, and prisoners in adult custody,’ Australian Bureau of Statistics, viewed 12 February 2024 < <https://www.abs.gov.au/articles/sexual-assault-perpetrators>>;

[12] See e.g. Murphy-Oikonen J, McQueen K, Miller A, Chambers L & Hiebert A. (2022) ‘Unfounded Sexual Assault: Women’s Experiences of Not Being Believed by the Police.’ J Interpers Violence, Vol. 37, pp. 11-12, viewed 12 February 2024 < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9136376/>>; Powell A, Flynn A & Burgin, R (2021) ‘Almost 90% of sexual assault victims do not go to police — this is how we can achieve justice for survivors,’ The Conversation, viewed 12 February 2024 < <https://theconversation.com/almost-90-of-sexual-assault-victims-do-not-go-to-police-this-is-how-we-can-achieve-justice-for-survivors-157601>>.

In order to protect the safety of children, sector stakeholders and parents said that everyone who enquires about whether a person is on the register should be automatically linked in with specialist sexual violence service to ensure they have support to identify the risk factors and perpetrator behaviours associated with grooming and committing child sexual abuse, and have the knowledge and tools to intervene if there is a perceived or actual risk to their child or children.

“From a service provision and safety perspective, any information given to caregivers would need to be paired with sufficient support and psychoeducation to ensure we do not provide a false sense of security, or alternatively provide information of a traumatic nature without relevant supports for the impact that will have on the individual and family.”

- CEO, Sexual Assault Support Service.

Importantly, stakeholders said that any additional resourcing for supports should go to existing specialist family and sexual violence services rather than creating a new entity specifically for this purpose.

“We already have groups that are specially designed to work with this type of an issue...Okay, give them more funding. You know, the services are already there. Make use of what's there.”

- Victim-survivor and parent.

[11] See e.g. ABS (2022) 'Sexual Assault – Perpetrators: Sexual assault statistics for offenders proceeded against by police, criminal court outcomes for defendants, and prisoners in adult custody,' Australian Bureau of Statistics, viewed 12 February 2024 < <https://www.abs.gov.au/articles/sexual-assault-perpetrators>>;

[12] See e.g. Murphy-Oikonen J, McQueen K, Miller A, Chambers L & Hiebert A. (2022) 'Unfounded Sexual Assault: Women's Experiences of Not Being Believed by the Police.' J Interpers Violence, Vol. 37, pp. 11-12, viewed 12 February 2024 < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9136376/>>; Powell A, Flynn A & Burgin, R (2021) 'Almost 90% of sexual assault victims do not go to police — this is how we can achieve justice for survivors,' The Conversation, viewed 12 February 2024 < <https://theconversation.com/almost-90-of-sexual-assault-victims-do-not-go-to-police-this-is-how-we-can-achieve-justice-for-survivors-157601>>.

The proposed changes to the register are inaccessible and ineffective

When reflecting on whether parents and guardians would access the register, victim-survivors and parents of children who have been subject to sexual abuse said that the process proposed in the Bill was not accessible. Rather than having to apply to the Commissioner about information on one particular individual (if that person has unsupervised contact with their child or children), victim-survivors and parents both said that the register, if implemented at all, should be far more accessible.

“So it is a lengthy, bullshit process, regardless to access this register, it is technically not accessible... because, you then have to go through the process, all the paperwork, all the bullshit essentially, to get the information for this register. And then you cannot only, not only do you have to go through that, but you have to then basically try not to get convicted for accessing it.”

- Victim-survivor.

“I don't believe that there are going to be many people that will try and access it just simply because of the hoops they've got to jump through to be able to get that information... I mean, if you're on a register, you're on the register irrespective of if your child spends three days in a year with that person, you, you know, if you've got a sex offender living in your area, you've got every right to know.”

- Victim-survivor.

Some of those involved in the consultations believed that the ideal model proposed was a publicly available online register of convicted sex offenders that anyone can access at will, while another proposed alternative was having a register that allows people to search within a certain geographical radius from their residence.

“I do know in (other places), there is like a website. You have to put your driver's license number in. So and then it gives you a list. Of all the sex offenders in the area. Is it possible for something like that to be done here?”

- Victim-survivor.

“See in Washington state. The laws are tougher than this. What they require to be done is let's say. Bob, six houses up, moves in. He has to notify, two houses down from his house that he is there and that he is an offender. Okay, that's Washington State and he's on an open register that can be checked.”

- Victim-survivor and parent.

In reforming the Bill, victim-survivors and parents asked that the Tasmanian Government look at other registers of sex offenders, such as the register in the United States of America (USA)¹³ which is public and can be accessed by anyone via a website or phone application.

However, the FSVA also emphasises that these alternative models of public registers would not mitigate the concerns of the sector that parents and carers may overly rely on the register and not consider that it is more likely that a child is at risk from an adult that is not on the register. The FSVA also notes that there is limited evidence to suggest that public registers are effective and encourages the Tasmanian Government to consider alternative mechanisms for intervention such as through rehabilitation supports for convicted sex offenders; particularly when perpetrators are under 18 years of age, coupled with strategies focused on supporting reporting and the experience of victim-survivors through the justice system.

[13] Smart Office of Sex Offender Sentencing, 'Monitoring, Apprehending, Registering and Tracking,' U.S. Department of Justice: Office of Justice Programs, Washington, Viewed 14 February 2024 <<https://www.nsopw.gov>>



Exceptions to the register perceived as minimising the impact of sexual violence

In reviews of other sex-offender registers, it has been recommended that exceptions to registration and reporting obligations should be made for certain groups of offenders, such as youth offenders, if convicted of acts not considered to be an indicator of risk to children or of future offending.¹⁴

The reasons for these recommendations are based on the evidence that labelling a child as a sex-offender may increase their chance of re-offending, while focussing on rehabilitation is likely to decrease chances of recidivist offending.¹⁵

However, while in the consultations, stakeholders recognised the importance of opportunities rehabilitation for offenders, some victim-survivors felt that the exceptions in the Bill worked to prioritise the privacy and safety of convicted sex offenders over that of children, victim-survivors and the community.

“There’s a lot in there that talks about protecting The sex offender. There just seems to be a lot more focus on enforcing against people. Who aren’t the sex offender.”

- Victim-survivor.

“This whole thing. It’s as if they want to be seen to be treating perpetrators and victims equally. It’s ridiculous.”

- Victim-survivor.

While it was recognised that restrictions to the register in the form of access requirements and exceptions for specific cohorts are essential to allow for young offenders to change or rehabilitate, some victim-survivors raised concerns that blanket exceptions for youth offenders disregards the safety of other children.

“Protecting people under the age of 18 who have harmed... who have sexually abused somebody... That certainly doesn’t increase justice for their victim survivor.”

- Victim-survivor and parent.

[14] See e.g. Victorian Law Reform Commission (2012) ‘Sex Offender Registration,’ Victorian Law Reform Commission, Melbourne, , pp. 67-70Viewed 21 February 2024 < https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/SOR_Final-Report_Full-text_0.pdf>.

[15] Ibid; Williams, V (2012) ‘Branding Children as Sex-Offenders,’ Law Reform Commission of Western Australia.

“You know, if we're looking at if I'm looking to see whether (let's say 'Bob') 6 doors down is a danger...and Bob's a grown man, I don't see that my six-year-old child needs to play with Bob. That's just kind of that common sense. But if Bob is 15 years old and my child is, let's say 13; and they go over to play with Bob and then something happens. But we find out later that Bob's got a huge history of this. Where is the protection because, as a parent, if I could have known that Bob was a danger, I would have not let my child go play.”

- Victim-survivor and parent.

“I think children versus children needs to have some adjustments. If you're kid is let's say 12 years old and they're still going to school, does the whole school need to know that they're a “perpetrator”? How do you protect that kid while they're at school? But how do you protect the others? When does the one out-weigh the many?”

- Victim-survivor and parent.

While sector representatives understand the concerns raised by parents/carers and victim-survivors about the very real effects on victim-survivors of the harmful sexual behaviours of children and young people under 18 years, they noted that, consistent with the United Nations Conventions on the Rights of the Child, it is necessary that children and young people are treated differently to adult offenders and are not unnecessarily criminalised.

It is also essential that sufficient funding for specialist harmful sexual behaviour programs and for training for school staff and other programs delivering support to children and young people to ensure safety planning is undertaken in a timely and comprehensive manner. Effective safety planning that includes appropriate communication and training strategies plays a critical role in ensuring that children and young people who may be a risk to other children are in receipt of specialist therapeutic support and adequate supervision to prevent harm to other children.

“It is critical that there is sufficient awareness, training and resourcing about harmful sexual behaviours in schools, child safety services, disability programs, sporting clubs and other settings where children and young people come together, and for our state-wide specialist harmful sexual behaviour programs for children and young people who have used harmful sexual behaviours. These are essential for the safety of other children and young people.”

- CEO, Laurel House.



In regards to the clause that exceptions can be made for offenders who have been convicted of ‘minor’ offences, victim-survivors also felt that the lives of offenders were being valued over that of victim-survivors; while the impact of sexual violence was being minimised.

“What is classified as a minor sexual offence and who's dictating What is a minor sexual offence? ... Saying that [to] the victim... It's basically saying you'll get over it. Like, it was just minor.”

- Victim-survivor.

“Minor or not, a choice was made. Right, they made the decision to ruin someone's life.”

- Victim-survivor.

In order to balance opportunities for rehabilitation with the concerns of victim-survivors about bias towards offenders; it is recommended that the Bill emphasise the need for discretion in Courts decision making and that the Tasmanian Government prioritise the implementation of reforms which acknowledge the impact of sexual violence and pay redress to victim-survivors. One recommendation from the COI report that could be prioritised for this purpose is recommendation 17.1¹⁶ which outlines how the Tasmanian Government can make the National Redress Scheme more accessible.

[16] Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (2023) 'Volume 1 Summary, recommendations and findings,' p. 163.

Disclosure rules are punitive and confusing

In all of the consultations, there was a unanimous rejection of the proposed provision that prevents parents and caregivers from disclosing any information they access through the register to anyone else, including relatives or people who share care of their children.

“Why don't you get permission to protect your loved ones? Why do I not get the right to protect my community?”

- Victim-survivor.

“Can you not tell your parents, your child's grandparents that may have some control over where your kids might go and who they may spend time with?”

- CEO, Laurel House.

In discussion around this provision, sector representatives and victim-survivors and parents outlined scenarios where this disclosure prohibition would not make sense. One scenario highlighted was that, under the proposed wording of the Bill, a parent or guardian who discovers that an individual that had contact or will have contact with their child was a convicted sex offender, would not be able to inform the child's other caregivers, such as the child's other parent or grandparent/s.

“So for example, if you find out that someone that your kid has contact with is on the register, you can't even tell like a co- parent or an ex-partner or a grandparent... That's ridiculous!”

- Victim-survivor and parent.

In this scenario, a number of individuals stated that victim-survivors and parents would most likely find another way to tell people, such as by saying ‘You need to check the register about x;’ which was perceived as unfair to parents and a risk to the children they are trying to protect.

“Don't make me use code words to protect my children.”

- Victim-survivor and parent.

Similarly, multiple victim-survivors and parents said that if they found out someone in their community was a convicted offender, they would want to find a way to warn others, because not being able to do so may create a feeling of failure of not being able to do anything to prevent perceived harm.

In one case, a victim-survivor who was also a parent explained that the rules in the Bill would prevent them telling others:

“From a parent point of view, I have you know my, my child was abused. And by a staff member of a school and, when that happened, we faced a situation where the school was extremely threatening towards us as parents. ... I was very concerned about every other child at that school. Because the perpetrator was that still at that school. And I desperately had this desperate feeling that I wanted to let the other parents know (but) I was we were threatened very clearly that they would prosecute us. They would, they would take us to the highest court in the land if we if we told anybody. And, and he wasn't convicted. We didn't win and he wasn't convicted. But I have an experience of that feeling of powerlessness and of utter grief over not being able to protect other children. If he had been convicted and I still had that feeling? Of not being able to tell them. You know, and even being not even being able to tell them in hindsight that they would be able to you know, check with their children, whether their children had been targeted by him. I can't even imagine. Like the additional grief and angst that we would have felt...And although I would like to say that I would go ahead and tell anyway, I had 2 children. I mean we would have faced prosecution and jail so would I have told? I don't know. Because it would have possibly meant going to jail and leaving them without a mother.”

- Victim-survivor and parent.

While in other cases, victim-survivors said that they would tell people anyway.

“I can think of a number of circumstances where we would really want to share and we're not going to hold back. We're gonna share that information we find out with others who are likely to come into contact with that person.”

- Victim-survivor.

“Can you start a Gofund me? for me please in case I need to cover legal fees because this is where I'm at the moment. There is not going to be any law that would make me shut my mouth about people that have done things to children.”

- Victim-survivor.

Additionally, stakeholders were unclear on what the boundaries of disclosure entailed and had questions about whether telling someone to check the register, or even talking to a counsellor or other service provider about their concerns would be a breach of the legislation.

“If you say to someone you should call the Registrar of the Community Offender Register and ask about that person, are you effectively disclosing and thus breaking the law?”

- CEO, Laurel House.

“Can you say that without saying, hey, Bob's on the sex registry? You need to check the sex registry.”

- Victim-survivor and parent.

“So, let's say the parent of a victim, a child victim, does reveal that (information) through... perhaps they need support and they talk to their family member or their counsellor or whoever they talk to and they reveal the identity of the sex offender...And they're in prison for 2 years...”

- Victim-survivor and parent.

To ensure the safety of children and the community is protected, whilst balancing the rights of convicted offenders, stakeholders suggested that victim-survivors and parents should be able to tell their family and friends the names of convicted offenders on the register, but not specific information about the crimes they had committed.

“I want the right to be able to say their names.”

- Victim-survivor.

Noting that victim-survivors and parents would otherwise be telling their friends and families to ‘check the register,’ it is likely that a balanced approach like the one suggested would also save the resources associated with receiving a flood of inquiries from different people within the same networks.

Some victim-survivors raised concerns about what information would be disclosed when someone sought information from the register. There were concerns that the disclosure may inadvertently reveal information about the victim-survivor’s identity or their experience of abuse. These victim-survivors were keen to understand how their privacy or the privacy of other child victims would be maintained if this legislation was enacted.

Deterrence for survivors to speak out

In the consultations, a major concern that victim-survivors had was that the Bill would increase protections for perpetrators at the expense of victim-survivors being able to access help and speak out about their experiences.

"If this goes through, it will be oppressive for victim-survivors and liberating for offenders."

- Victim-survivor.

"Could you imagine? Could you imagine how few people are going to actively be able to come out and advocate for themselves."

- Victim-survivor.

Of most concern were the clauses that make it an offence to:

- Publish, distribute or display any form of identifying information about a convicted sex offender (section 34B)
- Incite harassment towards a convicted sex offender (section 34A).

While the recent public commitment from Felix Ellis MP to remove the word 'animosity' from the proposed amendment to section 34A¹⁷ was welcomed, victim-survivors were concerned that the remaining clause would still be a backwards step from previous developments in Tasmania, especially regarding the legislative change to Section 194K of the Evidence Act 2001 (Tas)¹⁸ in 2020 which provided victim-survivors of sexual violence the right to speak out publicly.

"Have we not learned from Grace?"

- Victim-survivor and parent.

"It is the fact that we have fought to have voice for so long. And we've been told we've got a voice and we're doing it. We have a voice. And then, then, someone brings a piece of legislation that can remove that voice. That's the bit that sits with me."

- Victim-survivor.

[17] See e.g. Holmes, A (2024) 'Plans to make 'inciting animosity' towards sex offenders a criminal offence faced a backlash — now it's being scrapped,' ABC News, online, viewed 13 February 2024 <<https://www.abc.net.au/news/2024-01-10/animosity-towards-sex-offenders-in-new-tasmanian-laws/103299622>>.

[18] Tasmanian Government (2020) 'Continuing to protect victims – changes to the Evidence Act and the Criminal Code' Media Release, Viewed 14 February, 2024 <https://www.premier.tas.gov.au/releases/continuing_to_protect_victims_changes_to_the_evidence_act_and_the_criminal_code>

If the Bill were to be passed, victim-survivors said that the word 'harassment' in particular would need to be well defined so that victim-survivors could not be arbitrarily charged for telling their stories or speaking out to protect the community.

"It is not clear what harassment is."

- Victim-survivor and parent.

"I would like a little bit more clarification around what is deemed harassment. No, we shouldn't be going after, you know, sex offenders with pitchforks and wanting to burn down their houses and stuff like that... (but), I'd like a little bit more clarification."

- Victim-survivor.

"What do they classify as harassment? Could harassment mean a text message? Could it be a message via Facebook? Could it be someone going up going 'I know what you've done' in a public setting. We need to know the exact details."

- Victim-survivor.

Additionally, victim-survivors had questions about whether the change to 34B would apply to journalists and emphasised that, if it did, this would have implications for how sexual violence is reported, and may also hinder victim-survivors from speaking freely in the media about their experiences or limit the freedom to use their story in advocacy.

"So...penalties for publishing, distributing and displaying identifying information about a convicted sex offender. That ain't sitting fucking well with me. And I'll tell you why. This part irritates the fuckery out of me because I'm like, I'm going through all of these to be able to get to the end of it to be able to say these people had sexually and physically abused me as a small child, I want the right to be able to say their names. And I feel I'd also like to see how that would look for media reporting.... is this going to prevent media from being able to put things up. I think that it would decrease justice for victim-survivors, I think that that would take away their rights. I think a victim-survivor has the absolute right to privacy. Unless of course they've gone forth and gone to the media and tell their story like I have."

- Victim-survivor.

While victim-survivors acknowledged that convicted sex-offenders have a right to be protected from vigilante behaviour it is also unclear why these additional clauses are needed – if not to deter victim-survivors from speaking – when protections are already in place via other legislation. Under the Tasmanian Anti-Discrimination Act 1998 for example, it states that it is an offence to discriminate against or treat someone less favourably than someone else based on a number of attributes, including a person’s ‘irrelevant criminal record’;¹⁹ while the Online Safety Act 2021 regulates against online abuse and bullying,²⁰ and the Defamation Act 2005²¹ regulates against causing serious harm to a person’s reputation by publishing material about them that changes public perceptions.

[19] Tasmanian Government (2023) Anti-Discrimination Act 1998, Viewed 13 February 2024 <<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1998-046#GS16@EN>>.

[20] Australian Government (2022) Online Safety Act 2021, Viewed 13 February 2024 <<https://www.legislation.gov.au/C2021A00076/latest/text>>.

[21] Tasmanian Government (2021) Defamation Act 2005, Viewed 14 February, 2024. <<https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-2005-073>>



Conclusion: Draft a new Bill in consultation with victim-survivors, their parents and the sector

In all of the consultations conducted, participants cited disappointment that the Bill had not been informed by stakeholders and said it felt clear that victim-survivors had not had significant, if any, input in the drafting of the amendment.

“You can tell something’s not right with the amount of bias being placed on us rather than the people who are being convicted. It’s not hearsay. They’ve gone through the process of knowing everyone knows that they’ve done something wrong. They made the decision. It’s been proven again and again and again. Because it’s not like you just prove it once when you go through the system.”

- Victim-survivor.

In line with this feedback as well as the recommendations from the COI recommendations, the Tasmanian Family and Sexual Violence Alliance urges the Tasmanian Government to go back to the drawing board and draft a new Bill in consultation with victim-survivors and sector organisations .

“Let victim-survivors do the work.”

- Victim-survivor.

“It is disappointing that this bill was not drafted in the same way as the Child and Youth Safe Organisations Act 2023 that saw a high level of engagement with the specialist and mainstream services sector and with victim-survivors via the LEAP group. This was a vast improvement on the initial iteration of the bill proposed in 2020, and showed the value of effective consultation. It is a shame that the Government did not take the same approach to the development of the Community Protection (Offender Reporting) Amendment Bill, especially since it was clear since the announcement that the sector had concerns about the proposal.”

- CEO, Laurel House.

In doing so, it is also essential that the Tasmanian Government align with the National Plan to End Violence Against Women and Children 2022-2032²² and Tasmania’s Third Family and Sexual Violence Action Plan 2022-2027,²³ both of which highlight the necessity of working first and foremost with victim-survivors on any legislative reform relevant to family and sexual violence.

“No effective solutions can be developed without the people most affected by them, and whom this National Plan intends to serve. Victim-survivors must be at the heart of solutions.”

- National Plan to End Violence.

Additionally, the Alliance encourages the Government to consider that there is a lack of evidence that punitive measures such as sex-offender registers have any significant impact on the rates of sexual offending²⁴ and encourages working with the sector to invest resources in areas that will be most likely to result in a safer community for all Tasmanians.

Going forward, we would welcome further discussion with the Tasmanian Government about the proposed amendments and would encourage the Government to consider the necessity of stakeholder consultations in the development and implementation of any future legislation concerning family and sexual violence. The FSVA is willing and able to support the Government with consultations with the sector and victim-survivors, their family members and supporters.

[22] Commonwealth of Australia (2022), National Plan to End Violence against Women and Children 2022-2032, Department of Social Services, Canberra <https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf>

[23] Tasmanian Government (2022), Survivors at the Centre – Tasmania’s Third Family and Sexual Violence Action Plan 2022-2027, <https://www.safefromviolence.tas.gov.au/__data/assets/pdf_file/0025/254734/220157-DoC-Family-Sexual-Violence-Action-Plan-2022-27_wcag.pdf>

[24] See e.g. Naper, S et al. (2018) 'Trends and Issues in Crime and Criminal Justice: What impact do public sex offender registries have on community safety?' Australian Government, Canberra.