

Departmental Disclosure Statement

Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 July 2023

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Part One: General Policy Statement

This Bill is introduced under Standing Order 267(1)(a). This Standing Order permits an omnibus Bill to amend more than one Act to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy for this Bill is to reduce the harms experienced by victims of sexual violence participating in court proceedings.

Victims of sexual violence are particularly vulnerable because of the invasive and traumatising nature of the violence they have experienced. This type of violence can be detrimental to a victim's physical and mental wellbeing, and can have long-lasting psychological, social, and financial impacts. For a victim, participating in the court process can cause even further harm.

The Bill strengthens legislative safeguards to enhance protection for victims of sexual violence as they participate in court processes. It seeks to ensure that court processes are aligned with victims' needs, while preserving the fairness and integrity of the court system. The Bill implements this single broad policy by amending:

- the Crimes Act 1961, and
- the Criminal Procedure Act 2011.

The Bill contributes to work underway addressing sexual violence across New Zealand and the experience of victims in the justice system, including contributions to *Te Aorerekura* (the National Strategy and Action Plan), and giving effect to the new regulatory provisions introduced under the Sexual Violence Legislation Act 2021.

Amendments to the Crimes Act 1961 reduce the risk of child victims of sexual violence being questioned about consent to sexual activity.

Under section 128B (sexual violation), lack of consent and lack of reasonable belief in consent must be proved. The Bill inserts a new clause within section 128B, ensuring the section does not apply if the alleged victim is under 12. This prevents children from being subjected to questions in court about whether they wanted, asked for, or even enjoyed the sexual activity.

A child-specific offence, section 132 (sexual conduct with a child under 12), already guards against this line of questioning by explicitly preventing consent as a defence. The Bill amends section 132(1) (sexual connection with a child) so that the maximum penalty available is 20 years' imprisonment, aligning with that of sexual violation.

Amendments to the Criminal Procedure Act 2011 clarify the law so that automatic name suppression settings both protect complainants' privacy and support complainants' autonomy. The Bill does this by expanding the purpose of relevant provisions and requiring the court to consider complainants' views about the publication of identifying details.

Victims can be disempowered by the lack of streamlined process or readily available information for how to apply to lift automatic name suppression. A new, prescriptive process will be set out in the Criminal Procedure Rules 2012. The Bill amends section 203 (automatic suppression of identity of complainant in specified sexual cases) to account for this new process. Whether complainants want their privacy or to speak out about their experience, these amendments ensure the court system responds appropriately and efficiently.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>That's a lie: Sexual violence misconceptions, accusations of lying, and other tactics in the cross-examination of child and adolescent sexual violence complainants</i> (Dr Isabel Randell, August 2021): https://chiefvictimsadvisor.justice.govt.nz/assets/Chief-Victims-Advisor-report-Thats-a-lie-PDF.pdf</p> <p><i>Te Tangi o te Manawanui Recommendations for Reform</i> (Chief Victims Advisor, 2019): https://chiefvictimsadvisor.justice.govt.nz/assets/Uploads/Te-Tangi-.pdf</p> <p><i>Improving the justice response to victims of sexual violence: victims' experiences</i> (Gravitas Research and Strategy Limited, August 2018): https://www.justice.govt.nz/assets/Improving-the-justice-response-to-victims-of-sexual-violence-victims-experiences.pdf</p> <p><i>The Justice Response to Victims of Sexual Violence</i> (New Zealand Law Commission, R136, published 14 December 2015): https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Statement: Strengthening Legal Protections for Victims of Family Violence and Sexual Violence</i>, by the Ministry of Justice, dated 24 March 2023.</p> <p>This will be published at: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/; and https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Regulatory Impact Statement did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury.</p>	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
The size and nature of potential costs and benefits of the policy to be given effect by the Bill are detailed in the Regulatory Impact Statement prepared by the Ministry of Justice.	
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
The changes will require adjustment to process and practice for the following: Police, prosecutors, the judiciary, other legal professionals and court staff.	
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
We anticipate implementation through the Institute of Judicial Studies, the New Zealand Law Society, and the Ministry of Justice.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Justice analysed the Bill and did not identify any international obligations that conflict with the policies contained in the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

In preparation of this work, we consulted with specialist Māori social service providers on the issues more broadly. Māori are overrepresented as both victims and offenders of sexual violence. We undertook high-level analysis of the proposals against the Treaty, and concluded that overall, the proposals are likely to reduce inequities and support the Crown's obligations to actively protect Māori interests and rights.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Crown Law Office has provided advice to the Attorney-General. This advice will be available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

Clause 5 amends section 132(1) of the Crimes Act 1961 to increase the maximum penalty available for the offence of sexual connection with a child from 14 years' to 20 years' imprisonment.

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Offence and Penalty Vetting team at the Ministry of Justice was consulted on this amendment.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

YES

Clauses 7 and 8 expand the purpose sections of relevant name suppression provisions in the Criminal Procedure Act 2011, and requires courts to consider complainants' views with regard to the publication of identifying details. These provisions relate to the disclosure of personal information.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Ministry of Justice officials maintain active relationships with stakeholders that have an interest in sexual violence issues and legislative settings, including specialist service-providers and victim advocates. Through these, we have explored concerns about sexual violence legislative settings more broadly, and tested a range of proposals in response to these concerns.</p> <p>The following agencies were consulted on the policy: Crown Law Office, the Treasury, Department of Prime Minister and Cabinet, New Zealand Police, Oranga Tamariki, Department of Corrections, Ministry for Women, Ministry of Social Development, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Te Puni Kōkiri, Department of Internal Affairs, Ministry of Health, Whaikaha – Ministry of Disabled People, and Inland Revenue.</p> <p>The following legal professionals were also consulted to inform the best possible implementation of the policy intent: the judiciary, the New Zealand Law Society, Criminal Bar Association, Defence Lawyers Association, and South Auckland Bar Association.</p> <p>There will be the opportunity for stakeholders and the wider public to provide feedback and recommendations on the proposed changes through the Select Committee stage.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Bill's policy has been further tested with the Group in the Ministry of Justice responsible for delivering court services throughout the country.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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