

Supplementary Departmental Disclosure Statement

Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill, dated 19 July 2023, can be found at this link <https://disclosure.legislation.govt.nz/bill/government/2023/274>

This supplementary 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.

7 November 2024

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

The main areas of change to the original disclosure statement include:

- describes the changes made by the proposed amendments
- identifies features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

Part One: General Policy Statement

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 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.

In addition to the amendments in the existing Bill, as set out in the original Departmental Disclosure Statement, there are two Amendment Papers. These respond to concerns that existing name suppression settings in the Criminal Procedure Act 2011 may not support victims, enhance openness of court proceedings, and ensure people convicted of serious sexual crimes are identified and held to account in a way that encourages reporting of sexual violence.

Inserting new clause 6A: This Amendment Paper amends the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill, by inserting new clause 6A, which amends section 200 of the Criminal Procedure Act 2011. Section 200 provides that the courts may make orders that suppress the identify of defendants.

Currently, decisions made under section 200 are made by the court, and the law requires that the court take the views of victims into account. The amendment provides that, in the case of an adult defendant who is convicted of a sexual offence, these orders may only be made with the agreement of the victims (unless they cannot be contacted or, if contacted, they are unable or unwilling to engage with the court). In cases that involve more than one victim, orders may only be made in respect of the victims who agree or who are unable or unwilling to engage with the court. They must provide that nothing may be published that could reveal the identity of those victims. These orders must not prevent the identification of the person convicted in relation to any victims who have disagreed.

This amendment will empower victims of sexual violence, many of whom feel unheard and unsupported through the current process.

Inserting new subclauses into clause 8: This Amendment Paper amends the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill by inserting new subclauses into clause 8, which amends section 203 of the Criminal Procedure Act 2011. Section 203 deals with automatic suppression of the identity of complainants in sexual cases.

Currently, automatic suppression is only given to complainants of specified sexual offences (the majority of sexual offences in the Crimes Act 1961). Complainants in cases involving intimate visual recording offences are not given name suppression automatically, but can apply to the court, which has discretion to suppress their identity. This gap in legislative protection can cause shock and distress to complainants. It means some victims could be identified without their knowledge or agreement.

The amendments extend the application of section 203 to include all offences of a sexual nature as well as the current reference to sections 128 to 142A or 144A of the Crimes Act 1961. This will align section 203 of the Criminal Procedure Act 2011 with—

- sections 199(3) and 199AA(5) of the Criminal Procedure Act 2011;
- the definition of sexual case in section 4(1) of the Evidence Act 2006;
- the definition of sexual case in section 4 of the Victims' Rights Act 2002.

This amendment ensures all victims of criminal offences of a sexual nature are automatically given name suppression. Broadening section 203 ensures all victims do not miss the benefits of automatic name suppression.

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?	NO
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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>In addition to the Regulatory Impact Statement on the changes made by the Bill as introduced (refer to the original departmental disclosure statement), the following are relevant to the amendments:</p> <p><i>Regulatory Impact Statement: Changing name suppression settings in sexual violence cases</i>, by the Ministry of Justice, dated 15 August 2024</p> <p><i>Annex to Regulatory Impact Statement: Extending automatic name suppression for complainants where crimes are of a sexual nature</i>, by the Ministry of Justice, dated 9 October 2024</p> <p>These will be published at:</p> <p>https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/</p> <p>and</p> <p>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
The RIS and Annex did not meet the threshold for receiving an independent opinion on quality from the RIA Team based in the Ministry for Regulation.	

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
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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 amendments are detailed in the Regulatory Impact Statement and Annex 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 affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
The changes made by the amendments will require adjustment to the new legal requirements by the Police, prosecutors, the judiciary, other legal professionals and court staff, and the media.	
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
We anticipate implementation of the changes made by the amendments through the Institute of Judicial Studies, the New Zealand Law Society, and the Ministry of Justice. We anticipate prosecutors would be involved in seeking the views of the victim on whether defendant name suppression should be granted in applicable cases.	

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?
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We have not identified any international obligations which conflict with the amendments.
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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?

Due to time constraints, no consultation with Māori partners or groups has been undertaken to understand the specific impact these amendments may have on Māori offenders, victims, and whānau, and any potential mitigations.
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Māori are overrepresented as victims of crime, including sexual assault. They may consider the impact of these proposals to be beneficial should they wish to see greater denunciation of and accountability for the offending they experience, and greater protection for victims.

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
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The Crown Law Office will provide advice to the Attorney General. If the Attorney-General agrees to waive legal privilege, the advice will be available here: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
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Clause 6A amends the ability of the court to issue name suppression orders in cases involving defendants convicted of an offence against any of sections 128 to 142A of the Crimes Act 1961 or any other offence against a person of a sexual nature. The change means, in these cases, the court may not make a name suppression order without the agreement of the victim unless the court is unable to contact the victim; or able to contact the victim but the victim is unable or unwilling to engage with the court.

In cases where the victim's view is determinative, the defendant would not be able to appeal the order made or apply for judicial review of the decision.

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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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
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The amendments are to provisions in the Criminal Procedure Act 2011 relating to defendant and complainant name suppression. They impact the use of personal information.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

The Privacy Commissioner was consulted on the Cabinet paper.

The Privacy Commissioner noted that privacy considerations are of vital importance in cases of sexual crime, whereby information relating to the defendant is often inextricably linked to information relating to the victim and also potentially third parties.

The Privacy Commissioner was supportive of the intent of the proposals, to improve victims' autonomy and influence. However, he was concerned that the proposal in clause 6A has not been subject to a more thorough policy process.

The Privacy Commissioner noted that he has not been made aware of any planned or completed fulsome engagement. The Privacy Commissioner warned that proceeding without more fulsome analysis and a wider engagement process risks unintended consequences and systematic impacts, and potentially causes harm to victims and third parties.

The Privacy Commissioner recommended further work and consultation prior to Cabinet agreeing to the proposal.

The Minister of Justice will invite the Justice Committee to re-open for public submissions on the proposals to test their workability.

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

The Ministry of Justice conducted targeted consultation on the clause 6A amendments with the Chief Victims Advisor, the Public Defence Service, and the New Zealand Law Society. This is summarised in the RIS at [53-57].

Independent Victim Advocate, Ruth Money, was also consulted in the policy development stage. She also indicated support for clause 6A amendments, as they would help survivors move forward, help restore open justice, and start to assist the community to educate and speak more openly about sexual violence.

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?

NO

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 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?	YES
<p>Clause 6A amends the ability of the court to issue name suppression orders in cases involving defendants convicted of an offence against any of sections 128 to 142A of the Crimes Act 1961 or any other offence against a person of a sexual nature. The change means, in these cases, the court may not make a name suppression order without the agreement of the victim unless the court is unable to contact the victim; or able to contact the victim but the victim is unable or unwilling to engage with the court.</p> <p>In cases where the victim's view is determinative, the defendant would not be able to appeal the order made or apply for judicial review of the decision.</p>	

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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