

**Legislative Statement
for the
Sexual Violence Legislation Bill**

Presented to the House of Representatives

In accordance with Standing Order 272

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Introduction

- 1 The Sexual Violence Legislation Bill (the Bill) seeks to improve sexual violence victims' experiences in court, while preserving the fairness of the trial and the integrity of the criminal justice system. It responds to Law Commission recommendations from 2015 and 2019, relating to court processes and evidence laws in sexual cases.
- 2 The Bill:
 - a) amends the Evidence Act 2006, Victims' Rights Act 2002, and Criminal Procedure Act 2011;
 - b) aims to reduce the re-traumatisation sexual violence victims experience in court, which can unnecessarily exacerbate the significant impacts of sexual offending; and
 - c) is part of the Government's commitment to addressing sexual and family violence.

Background

- 3 The Law Commission's 2015 report *The Justice Response to Victims of Sexual Violence* (NZLC R136, 2015) found that the justice system often fails to respond appropriately to sexual violence victims, and recommended changes across the justice system.
- 4 The Commission's recommendations relating to the courts were underpinned by its finding that court processes are not aligned with victims' needs or recovery, and risk further traumatising those who come forward.
- 5 These issues, and the experiences of victims who have participated in prosecutions, can deter others from reporting offences and lead to fear and mistrust of the criminal justice process. Low reporting rates mean sexual offenders may not be held to account, resulting in missed opportunities to reduce reoffending and provide victims with a just resolution.
- 6 In *The Second Review of the Evidence Act 2006* (NZLC R142, 2019), the Law Commission recommended further changes to better support complainants of sexual violence, while maintaining defendants' fundamental procedural rights and the overall fairness of the trial.

Provisions of the Sexual Violence Legislation Bill

- 7 Key provisions in the Bill will:
 - a) clarify and extend restrictions on the admissibility of evidence about a complainant's sexual experience and disposition, to protect complainants from unduly invasive questioning. These amendments also help to dispel the idea that consent, or reasonable belief in consent,

can be derived from a complainant having thought about or consented to similar sexual activity in a different context:

- b) apply the criminal case restrictions on evidence of a complainant's sexual reputation, experience, and disposition, to civil cases too – with a narrow exception to the complete bar on reputation evidence. Cases of a sexual nature carry similar dynamics irrespective of their jurisdiction, and the rationale of protecting complainants and ensuring legitimate reasoning applies equally in civil cases:
- c) require Judges to intervene in inappropriate questioning of witnesses, and include a witness's vulnerability as one of the factors a Judge may consider in determining whether the questioning is unacceptable. This strengthens the basis on which Judges can control the nature and content of questioning:
- d) entitle sexual violence complainants and propensity witnesses to give their evidence in alternative ways. These amendments make it easier to shield witnesses from some of the stress of appearing in the witness box and may also improve the quality of their evidence, while still ensuring it can be heard and tested:
- e) make it clear that the entitlement to use alternative ways of giving evidence extends equally to pre-recorded cross-examination evidence, which is used very rarely under current law, and create a procedural framework with requirements and safeguards to ensure recording can happen effectively and fairly:
- f) require Judges to direct the jury on any myth or misconception relating to sexual violence that they consider relevant to the case, unless it has been adequately addressed in evidence already. Judicial directions addressing commonly held myths and misconceptions about sexual violence and the way victims and perpetrators “normally” behave will help support the jury to discharge properly its role as the fact finder:
- g) allow the court to be cleared of the public when a sexual violence victim's victim impact statement is presented, and clarify that victim impact statements may be presented to the court in alternative ways. These amendments will empower victims to exercise their rights to convey the impact of the offending to the offender and court, which can be an important part of the healing process, without having to suffer through unnecessary distress.

Conclusion

- 8 The Bill promotes fairer, more well-reasoned, and robust outcomes in sexual violence trials. Fundamentally, this Bill is about making sure that the system New Zealanders rely on to redress harm, doesn't instead add to that harm. It targets elements of the court process that cause undue re-traumatisation for sexual violence complainants, while retaining the fundamental principles and rights underpinning the justice process.